

Service Tax on Financial Leasing Services Upheld

No to Foreign Loans in LLPs

Government Ironing out Draft Takeover Code

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The Supreme Court of India ("SC") has upheld the levy of service tax on financial leasing services.

The Association of Leasing and Financial Companies ("ALFC") had challenged the constitutional validity of the levy first before the Madras High Court, and thereafter before the SC contending that the financial leasing services, including equipment leasing and hire purchase, are transactions in the nature of "deemed sales". ALFC further contended that while the state legislature has the power to levy sales tax on transactions of sale, the Central Government cannot impose service tax on such transactions.

The SC, in its judgment delivered earlier this week, however observed that in a financial leasing transaction, the lessor (finance company) renders financial services to its customer(s) and what is taxed under the impugned provision is the income, by way of finance/interest charges in addition to management fees/documentation charges earned by the finance company. The taxable event is the service which is rendered by the finance company to its customer(s). The relevant provisions, in so far as they relate to levy of service tax on this service are within the legislative competence of the Parliament, and are constitutionally valid.

No To Foreign Loans in LLPs

The Ministry of Finance ("MoF") and the Reserve Bank of India ("RBI") have opposed changes in the External Commercial Borrowings ("ECB") policy of the Government of India to allow overseas borrowings by Limited Liability Partnerships ("LLPs").

The views of the MoF and the RBI have been expressed in response to one of the questions raised by the discussion paper floated by the Department of Industrial Policy and Promotion on permissibility of foreign investment in LLPs in India. In their view, LLP structures are likely to be adopted by professionals and small businesses that do not need large scale overseas funding.

The industry however feels that a restriction on ECB would create an unnecessary divide and hamper the development of LLP entities.

It is noteworthy that India notified the LLP act in 2009, legitimizing the LLP structures. The tax treatment of the LLPs has been made clear later in 2009, while the workability of the structure is still under consideration by various professional bodies. The requisite amendments/clarifications to the governing acts are awaited to enable professionals such as Advocates, Chartered Accountants, Company Secretaries, and Cost and Work Accountants to function under the LLP structure.

Government Ironing Out Draft Takeover Code

Deliberations are on between the Securities and Exchange Board of India ("SEBI"), MoF and Ministry of Corporate Affairs on the draft takeover code, aimed to overhaul India's corporate acquisition regime.

The prominent issues for discussions are SEBI's recommendations that any acquirer should, upon acquiring 25% shareholding of any listed company, make an open offer to purchase shares from other shareholders of the company. The threshold limit for making an open offer is currently set at 15%. Further, SEBI has recommended that the open offer should be made to buy 100% shares of the target company, against the current requirement of an offer to buy only 20% of the shares.

The industry players expect that finalization and notification of the takeover code will still take a few months.