

Levy of Service Tax on Commercial Rent – Referred to A Larger Bench of DHC

Relax Fdi Norms For Convertible Instruments: DIPP

Exemption Under Section 212(8) of the Companies Act, 1956

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The Delhi High Court (“DHC”) yesterday, ordered the adjudication of writ petitions challenging the levy of service tax on renting of commercial property, by a larger bench of the DHC to be constituted in this regard.

Further to the order of the Supreme Court of India, the writ petitions came up before the DHC yesterday for final arguments and adjudication. Mr. S. Ganesh, Senior Advocate, appeared on behalf of the Petitioners and the Additional Solicitor General of India appeared on behalf of the Government, and put forth their respective preliminary arguments.

Upon consideration of the arguments made by counsels for both sides, the DHC ordered adjudication of the writ petitions by a larger bench to be constituted by the Chief Justice of DHC. The matter is now listed for next hearing on Tuesday, February 22, 2011.

Relax FDI Norms For Convertible Instruments: DIPP

The Department of Industrial Policy and Promotion (“DIPP”) wants to relax the foreign direct investment norms for convertible instruments. This move of DIPP is aimed at encouraging greater private equity participation and venture capital deals in the country.

Presently, the price of all the capital instruments that are issued to foreign investors has to be decided upfront, at the time of issue of the instruments. Arguably, this condition deprives the foreign investors of getting a better valuation afterwards, in the event of better performance by the investee company. This precondition, reportedly, constrains flexibility in the industry and prevents FDI inflows into the country.

Departure from the current norms for convertible instruments would provide flexibility to the private equity and venture capital investors, who would then have the opportunity to link the conversion price of the instruments to the performance of the investee company.

DIPP Secretary, Mr. R. P. Singh has written a letter to Finance Secretary and Reserve Bank of India Governor seeking their views on the issue.

Relaxation in the norms for convertible instruments, if any, might be seen in the consolidated FDI Policy of India due to be released on March 31, 2011.

Exemption Under Section 212(8) of the Companies Act, 1956

The Ministry of Corporate Affairs (“MCA”) has released a circular granting exemption to the holding companies from attaching the particulars of its subsidiaries to the balance sheet of the holding company in terms of Section 212 of the Companies Act, 1956 (“Act”).

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Section 212 of the Act stipulates that at the end of any financial year, a holding company is required to attach to its balance sheet, the particulars of its subsidiaries, including their balance sheet, profit and loss account, auditors' report, report of the Board of Directors, etc.

The MCA circular is prompted by a large number of applications received from the holding companies under section 212(8) of the Act seeking exemption from the aforesaid requirement. Accordingly, in terms of the circular, the provisions of Section 212 of the Act shall not apply to those holding companies, which would abide by and fulfill the conditions laid down in the circular including resolution of the Board of Directors of the holding company to this effect, inclusion of consolidated and audited financial statement of the holding company and all subsidiaries in the annual report with specific information, availability of the accounts of the subsidiaries for inspection by the shareholders, etc.