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March 28, 2011 New Delhi, India




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## Accounting Treatment of Compensation

The Supreme Court of India ("SC") in its judgment dated March 16, 2011 in Guffic Chem Pvt. Ltd. vs. C.I.T, Belgaum and Another has distinguished between the nature of revenue receipts and capital receipt. The SC opined that any compensation received by the assessee for the loss of agency is a revenue receipt whereas any compensation received by an assessee which is attributable to a negative or a restrictive covenant will be treated as a capital receipt.

In the given case, the assessee transferred its trade marks to Ranbaxy and received INR 5 million as non-competition fee and agreed not to carry on directly or indirectly the business hitherto carried on by the assessee. The agreement entered between the assessee and the Ranbaxy stipulated that the amount received by the assessee was in consideration of the restrictive covenant undertaken by the assessee for loss of the source of income. The restrictive covenant was valid for a period of 20 (twenty) years commencing from the date of the agreement.

The SC, overruling the judgment of the Karnataka High Court, held that the non-competition fee being in the nature of compensation for a restrictive covenant shall be treated as capital receipt and not as revenue receipt for the purposes of the Income Tax Act, 1961.

## New Form for Reporting Foreign Investments

The Reserve Bank of India ("RBI") has recently by a circular replaced Part B of Form FC-GPR by a separate "Annual Return on Foreign Liabilities and Assets" with an intention to capture the statistics relating to the foreign direct investment ("FDI") as well as overseas investments in a more comprehensive manner.

In terms of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000, a company is required to report the details concerning the FDI in the company with the RBI.

The reporting of the FDI is to be done in the prescribed Form FC-GPR which is divided into two parts – Part A and Part B. Part A deals with the details pertaining to the receipt of the FDI and consequent issue of securities by an Indian company and is to be submitted with the regional office of the RBI within 30 (thirty) days of such issue. Before the recent change, Part B of Form FC-GPR was to be submitted by July 31st of each year by the Indian company, pertaining to all investments in it by way of direct/portfolio investments/re-invested earnings etc., during the preceding financial year.

The new annual return is to be submitted by July 15th of each year with the Director, External Liabilities and Assets Statistics Division, Department of Statistics and Information Management (DSIM), Reserve Bank of India and stipulates reporting of FDI received as well as overseas investments effected by the Indian companies during the preceding financial year.

## Introduction of the PFRDA Bill

With an intention of setting up a regulator for the insurance sector, the Government on March 24, 2011 introduced the long awaited Pension Fund Regulatory and Development Authority ("PFRDA") Bill, 2011 in the lower House of the Indian Parliament.

The main object and intention behind PFRDA Bill is "to provide for the establishment of an Authority to promote old age income security by establishing, developing, and regulating pension funds, to protect the interests of subscribers to schemes of pension funds and for matters connected therewith or incidental thereto."

A Bill for setting up of the PFRDA was initially introduced in the Parliament which could not be passed and ultimately lapsed in 2009. In the interim, the PFRDA has been functioning since 2003 under an executive order, albeit without any statutory powers. The Bill, when passed, would accord statutory status and quasi judicial powers to PFRDA enabling it to inter alia impose penalties on any entity violating PFRDA's norms.