Chokshi & Chokshi

Weekly Update ● April 2011

Reserve Bank of India

RBI brings fresh norms to help banks manage risks: The Reserve Bank of India came out with fresh norms for tightening the risk management of banks, asking them to scale up to the Basel-II norms — the third stage of international banking norms. The Advanced Management Approach (AMA) norms, released by RBI, will guide banks to measure operational risk, maintain solvency and migrate to the next stage of the capital adequacy requirements. The AMA guidelines, which deal with computation of capital charge for managing operational risks, are likely to be implemented from April 1, 2014. To meet the Basel-II norms for risk management, RBI had already put in place the Basic Indicator Approach and the Alternative Standardised Approach.

RBI may implement Mohanty Panel's LAF proposals: The Reserve Bank of India may implement the recommendations of the working group on operating procedure of monetary policy on May 3, when it announces the annual monetary and credit policy for financial year 2011-12. On March 15, the working group, chaired by RBI Executive Director Deepak Mohanty, had submitted its report, for which comments and suggestions were invited till end-March. RBI has, since then, held various discussions on the recommendations with market participants. Market participants expect the recommendations on a single policy rate, including oil bonds for reverse repo operations, second liquidity adjustment facility (LAF) and increasing the daily requirement of cash reserve ratio from the current 70 per cent to 80 per cent are likely to be implemented soon.

SEBI

SEBI wants IPOs priced realistically: The heavy losses suffered by investors because of the poor performance of initial public offers (IPOs) during the last financial year have the Securities and Exchange Board of India worried. Financial year 2010-2011 saw high wealth erosion for investors in the IPO market. Nearly 70 per cent of the 51 IPOs fell below their offer price. The estimated wealth erosion for investors in these IPOs was in the excess of Rs 3,600 crore, excluding the gains from the Coal India issue. The regulator has raised concerns with merchant bankers involved in the past several issues and yet again asked them to be extra cautious and "more realistic" while arriving at the price band for a company, say officials. The concerns were raised by Sebi in a recent meeting with a few bankers. Sebi has already proposed that all merchant bankers should disclose the track record of their past issues in the draft red-herring prospectus and the lead managers' website. The rule is yet to be implemented.

TAXATION

Service Tax: CBEC issued service tax Notifications 29 to 37 on 25 April 2011 which includes Notification bringing into force certain provisions of the Finance Act, 2011 with effect from 1 May 2011. All these notifications will be effective from 1 May 2011.

Notification 29/2011-ST

The new taxable services and amendments to existing taxable services defined under section 65 of Finance Act, 1994 (the Act) will be brought into effect from 1 May 2011.

Notification 30/2011-ST

The services provided by a clinical establishment or by a doctor providing services from any clinical establishment would be exempt from the whole of service tax.

Notification 31/2011-ST

Taxable service provided by a hotel, inn, guest house, etc where the declared tariff is less than INR 1000 per day has been exempt from the whole of service tax. Declared tariff has been defined to include charges for all amenities in the accommodation unit, like furniture, air-conditioner, refrigerators etc but does not include discounts offered on published charges.

Notification 32/2011-ST

Hitherto, services of representation before any statutory authority by a practicing Chartered Accountant or Cost Accountant or Company Secretary were exempt from the payment of service tax.

This exemption has been withdrawn and such representation services by a practicing Chartered Accountant or Cost Accountant or Company Secretary would be liable to service tax with effect from 1 May 2011.

Notification 33/2011-ST

The services of pre-school training or coaching or any coaching or training leading to a grant of certificate or diploma or degree or any educational qualification which is recognised by law for the time being in force when provided by a commercial coaching or training centre has been exempt from whole of service tax.

Notification 34/2011-ST

1. Service tax would be payable on 30% of the gross amount charged for the taxable service provided by a restaurant, having air-conditioning and which has license to serve alcoholic beverages
2. Service tax would be payable on 50% of the gross amount charged for the taxable service provided by a hotel, inn, guest house etc in relation to provision of accommodation for a continuous period of less than three months

Notification 35/2011-ST

An option has been given to a life insurance company to pay service tax either on the gross premium charged to a policy holder after deducting the amount allocated for investment or savings on behalf of the policy holder, if such amount has been intimated to the policy holder or 1.5 % of the gross premium charged by the life insurance company to the policy holder. The two options will not be available where the entire premium paid by the policy holder to the life insurance company is towards only risk cover in life insurance.

Notification 36/2011-ST

The taxable service provided by a restaurant having facility of air-conditioning and has license to serve alcoholic beverages and accommodation services provided by a hotel, inn, guest house etc, shall be treated as export in case such restaurant or hotel is situated outside India.

Notification 37/2011-ST

The taxable service provided by a restaurant having facility of air-conditioning and has license to serve alcoholic beverages and accommodation services provided by a hotel, inn, guest house etc, shall be treated as received in India in case the restaurant or hotel is situated in India.

Service tax diminution likely for internal shipping: Transport of goods through coastal and inland shipping may get cheaper, as the finance ministry is planning to increase service tax abatement for the sector. A higher abatement is being proposed to bring some parity in levy of service tax on movement of goods through road, rail and shipping. The service tax on shipping was introduced in Budget 2009-10. In Budget 2011-12, the government provided an abatement of 25 per cent on transport of goods through coastal and inland shipping. The industry has been asking for uniformity in service tax abatement between shipping and other transportation modes such as road and rail. The finance ministry gives 75 per cent abatement in case of road transport. It has also provided 70 per cent abatement for the railways.

Procedure for regulating refund of excess amount of TDS deducted and/or paid: The CBDT has prescribed Procedure for regulating refund of excess amount of TDS deducted and/or paid by Circular No. 2/2011, dated 27-4-2011. The excess payment to be refunded would be the difference between the actual payment made by the deductor to the credit of the Central Government and the tax deductible at source. In case such excess payment is discovered by the deductor during the financial year concerned, the present system permits credit of the excess payment in the quarterly statement of TDS of the next quarter during the financial year. In case, the detection of such excess amount is made beyond the financial year concerned, such claim can be made to the Assessing Officer (TDS) concerned. However no claim of refund can be made after two years from the end of financial year in which tax was deductible at source.

Madras HC notice to govt on MAT levy for SEZs: The high court here today agreed to issue notices on a petition by a group of Special Economic Zone (SEZs) developers against the Minimum Alternate Tax (MAT) levy introduced in the Union Budget of 2011-12. The budget levied 18.5 per cent MAT on SEZs. The contention of the petitioners, the Tamil Nadu Association of SEZ Infrastructure Developers, is that they and the units in SEZs are exempt from MAT under Section 115 of the Income Tax Act. These fiscal incentives have been promised and committed in the SEZ Act, 2005, they argue. A representative from the Association said the Union Government had negated its own SEZ Act. The Act said it would exempt all taxes and levies for those companies which set up units in SEZs. An association member said withdrawal of the promised concessions under the SEZ Act was bound to send a wrong signal to investors, both domestic and overseas. The HC has asked the government counsel to appear and the court was to also serve notice to the finance ministry and revenue department.

CORPORATE LAW

Investors to get e-mails as India Inc sent on green drive: The government has asked corporate to communicate with their shareholders electronically in order to cut down on the use of paper. The move is part of the latest 'green initiative' by the ministry, but could also help companies cut costs by obviating the need for paper-based communication. Under the Information Technology Act, 2000 service of documents in electronic mode is considered valid delivery. The ministry of corporate affairs has directed all companies to maintain a formal register of valid e-mails of all its shareholders where key communication like notices of company meetings can be send. Currently, companies are required to communicate with their shareholders through the postal route. The ministry has informed its regional directors as well as the registrar of companies of its decision, asking them to ensure that companies start electronic communication. The Government has issued notification no. 18/2011 dated 29.04.2011 for clarification regarding sending copies of Balance Sheets and Auditors Report etc., to the members of the company as required under section 219 of the Companies Act, 1956 through electronic mode. In cases where any member(s) has not registered his e-mail address for receiving the Balance Sheet etc through e-mail, the Balance Sheet etc., will be sent by other modes of services as provided under section 53 of the Companies Act, 1956.

Revised procedure for appointment of cost auditor by companies: Ministry has reviewed the existing procedure followed by the companies for seeking prior approval of the Central Government for appointment of cost auditor under section 233B(2) of the Companies Act, 1956. In supersession of any earlier order/circular issued in this regard, the revised procedure to be followed by the companies and cost auditor has been revised by General Circular No. 15/2011, dated 11.04.2011.

GENERAL

PSU Should Source At Least 20% of Requirement from SMEs: The MSME Ministry has sought Prime Minister Manmohan Singh's intervention to examine the industry's demand to make it mandatory for the Public Sector Units (PSUs) to procure at least 20 percent of their requirements from micro, small and medium enterprises (MSMEs), said MSME Minister Virbhadra Singh. "We have asked them (Prime Minister and Finance Ministry) to look into the demand of the industry," Singh told a news agency recently. The MSME are demanding that the government should make it mandatory for all government departments, public sector units and state-funded infrastructure projects to purchase 20 percent of their requirements from the sector. The government now procures a meager volume of 4 to 5 percent from MSMEs, out of its annual Rs 1,70,000 crore purchase.