

India
Tax
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In this issue:

Industry Updates

- Tourism
- Hospitality
- Leisure

Direct Tax

Indirect Tax

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Industry Updates

Tourism

India, a tourist hotspot; sees six to eight per cent increase in foreign tourist arrivals in 2008

According to initial figures prepared by Ministry of Tourism, (MoT) there has been six to eight per cent increase in foreign tourist arrivals in 2008 compared to 2007. Last year the tourist arrivals in the country were 5.3 million compared to 5.08 million in 2007. According to a senior MoT official, foreign exchange earnings from the tourism sector showed a growth of eight per cent at USD 11.5 billion last year as compared to USD 10.70 billion registered in 2007.

Hospitality

Hotels can avail of ECBs up to USD 100 million

The Government has permitted hotels to avail of External Commercial Borrowings (ECBs) up to USD 100 million per year both for foreign currency and rupee capital expenditure for permissible end-uses, other than for land acquisition, under the automatic route.

RBI offers lower interest rates to non-CRE hotel properties

Entrepreneurs seeking loans to set up hotel properties, which they aim to run themselves, will be able to avail of lower interest rates. The Reserve Bank of India (RBI) has mentioned in its draft guidelines that it will not include these exposures under Commercial Real Estate Exposures (CRE).

Choice Hotels to invest Rs 1,500 crore in new properties

Choice Hotels is planning to invest Rs 1,500 crore over the next two years to double the number of its hotels from the present 25 to 50 across India. The company has already started construction of 21 more hotels.

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Ginger unveils its first mixed use property

Roots Corporation Limited, a wholly owned subsidiary of the Indian Hotels Company Limited, has launched its GenNext Smart Basics Hotel Ginger in Ludhiana.

Lemon Tree plans to invest Rs 1,200 crore in India

Lemon Tree Hotels is mulling over an investment plan of Rs. 1,200 crore to set up a pan-India chain of hotels. As per the capex plan, the company intends to have 20 hotels aggregating 2,500 rooms by 2011.

FRHI aims to establish its presence in India by 2015

Canada-based hotel chain, Fairmont Raffles Hotels International (FRHI), aims to create an extensive hotel portfolio in the Indian market. The Group plans to introduce all its three brands, namely, Raffles, Fairmont and Swissotel in the country and establish properties under these brands by 2015.

Pacifica Companies focuses on hospitality portfolio in India

Pacifica Companies, the San Diego-based real estate and asset management group, has marked its foray into the Indian hospitality sector. The company is focused on building its hospitality portfolio in the country.

Leisure**Lavasa Corporation Ltd. to set up first space-themed park near Pune by 2010**

Lavasa Corporation Ltd., a subsidiary of infrastructure major Hindustan Construction Company (HCC) is gearing up to offer the country its space-themed park, complete with a space camp, an aviation camp, fun rides demonstrating weightlessness, robotics, rocketry and even scuba diving near Pune.

Direct Tax

- Tax payer obliged to pay fringe benefit tax in respect of employees working in its Indian liaison offices. *Singapore Tourism board, In re (AAR)*
- Payment made for availing certain flying hours annually on charter hire basis of Jet aircraft for use by its Directors, executives and hotel guests is tax deductible under section 37(1) even if assessee fails to utilize the services. *United Hotels Ltd. (Del.)*
- Commission paid to non-resident agents for booking hotels for assessee's customers outside India not taxable in India in the absence of such agents having a business connection in India. Further, in the absence of any liability to withhold tax, expenditure is tax deductible. *A. B. Hotel Ltd. (Radisson Hotel)*

v. DCIT (Delhi Tribunal).

- The assessee acquired a catering business which had an existing contract with a corporate entity for providing canteen services. The assessee recorded 25 per cent of the total consideration paid as goodwill and claimed depreciation in computing taxable income. It was held that the assessee as part of acquiring catering business, acquired rights under the catering contract, apart from acquiring articles and other paraphernalia. The rights so acquired would qualify as intangible assets and the assessee would be entitled to depreciation. *Skyline Caterers P. Ltd. v. ITO (Mum. Tribunal)*
- Providing commercial information and marketing advisory cannot be treated as technical services which are strictly meant for transfer of technological knowhow or other types of included services. Payments made for marketing related services and use of trademark, etc. incidental to the main objective cannot be categorised as “royalty” or “fees for technical services” either under the Section 9(1) of the Income-tax Act or the tax treaty. Such payments are business income but since the assessee has no PE under Article 7 of the tax treaty, it cannot be taxed in India. *DIT v. Sheraton International Inc. (Del.)*

Indirect Tax

Taxability - If a person is merely holding the contract carriage permit and does not fulfill the requirement as mentioned in Central Motor Vehicle Rules.

- The CESTAT has held that unless the vehicle of the contract carriage permit holder fulfils the requirement as mentioned in Central Motor Vehicle Rules of a “tourist vehicle”, merely because he is holding the contract carriage permit, he does not become liable to tax under the category of Tour Operator services. CESTAT relied on the decision in the case of Madras HC decision in Secretary, Federation of Bus Operators Association of Tamilnadu v. UOI (2003-TIOL-33-HC-MAD-ST) and rejected the appeal filed by the Revenue. *M/s.Ghansyam Travels Vs. Commissioner of Central Excise, Vadodara – (2009-TIOL-89-CESTAT-DEL)*

Taxability - If vehicle is registered under the category of private bus under Sec.76 of Motor Vehicles Act.

- The CESTAT upheld the order of Commissioner (Appeals) in the matter of the assessee who transports employees of a company holding that the assessee’s vehicle is registered under the category of private bus under Section 76 of Motor Vehicles Act does not amount to Tour Operator services. *M/s.Gayatri Enterprises Vs. Commissioner of Central Excise, Indore – (2008-TIOL-2063-CESTAT-AHM)*

'High Tea' – whether to treat as taxable service or not ?

- CESTAT held that 'high tea' is 'substantial and satisfying meal' – high tea is a concept associated with the early evening meal, as contended by the appellant. It is not providing of simple tea or coffee, but the adjective 'high' is used, when the same indicates that high tea is in the social context, replacement of dinner. Each and every invoice disclosing as to whether the supplied item was only tea or coffee or the same was inclusive of how many number of snacks etc. so as to fulfil the meaning of 'substantial and satisfying meal' is not required to be gone through. It is sufficient if, as a mandap keeper, the assessee is providing catering services and the invoices so raised by him show that the same were inclusive of charges for catering services. Even if such high tea is as per the fixed menu agreed upon between service provider and their client and is not unlimited like break-fast, the same has to be held as 'substantial and satisfying meal'.

CESTAT also held that tax has to be paid under the correct heading and assessee cannot choose to pay the tax under any heading. Rejecting the appellants' contention that they can choose to pay tax under either of the services, CESTAT upheld the Commissioner's order that the appellants should have classified the service each time either as convention or mandap keeper and should have discharged service tax appropriately. *M/s. Welcome Hotel Vs CCE, Vadodara - (2009-TIOL-35-CESTAT-AHM)*

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