

## Service Tax on Commercial Rentals – Both SC And DHC to Adjudicate

## RBI Guidelines For Investment Companies

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## Service Tax on Commercial Rentals – Both SC and DHC to Adjudicate

In an interesting turn of events, both the Supreme Court of India (“SC”) and the Delhi High Court (“DHC”) have decided to hear and adjudicate the matters pending before them concerning levy of service tax on commercial rentals.

Earlier, during the hearing of the service tax writ petitions before the DHC on December 14, 2010, the counsels for the parties had agreed to mention the matter in the SC for final adjudication. No such joint representation was however made before the SC on the three consecutive hearings held in January 2011 of related special leave petitions (“SLPs”).

At the hearing on January 10, 2011, the SC even vacated the interim protection granted to Home Solutions by the Delhi High Court, while on January 24, 2011, the SC granted leave (i.e. formally admitted) in the SLP preferred by the Union of India (“UOI”) against the earlier judgment of the DHC whereby the DHC had effectively struck down the levy. The SC therefore would now hear and dispose off this matter.

On January 25, 2011, the counsel for Home Solutions requested the DHC to take up the writ petitions for final hearing at the earliest. The DHC has also accordingly listed the batch writ petitions for arguments on February 15, 2011. Taking a cue from the order passed by the SC and the discussions before the DHC, the interim protection granted by the DHC to petitioners other than Home Solutions would continue unless the UOI opts to file any application for their vacation.

Resultantly, both the SC and the DHC would now attempt to decide on the petitions/appeal pending before them respectively. While the common key issue in both litigations is “whether service tax, being a value added tax, is at all leviable on commercial rentals”, the writ petition pending before the DHC also includes additional questions of constitutionality of the levy, and the powers of the legislature to give retrospective effect to the levy.

The determination by the SC may technically be limited to the key question before it, i.e. whether the notification and circular of the Ministry of Finance struck down by the DHC by its judgment, were legal. It will however be interesting to see whether SC opts to adjudicate other related issues, such as constitutionality of the levy, to put an end to the litigation which has spread like wild fire across India. As per the submission of the UOI, the stay orders granted by various High Courts are causing huge loss to the exchequer. Owing to the uncertainty, all stakeholders, including the UOI, commercial tenants and landlords of commercial premises seem interested in final and expeditious resolutions of the matter.

## RBI Guidelines for Investment Companies

A revised regulatory framework for core investment companies (“CIC”) has been released by the Reserve Bank of India (“RBI”) on January 5, 2011, the earlier guidelines being released on August 12, 2010. The revised regulatory framework, known as the Core Investment Companies (Reserve Bank) Direc-

tions, 2011 (“Directions”), clarifies the basis for classification of any company as an investment company, or as CIC, or a Systematically Important CIC (called “CIC-ND-SI”).

The Directions define CIC as a non-banking financial company carrying on the business of acquisition of shares and securities and which satisfies the conditions specified thereby, and a CIC-ND-SI as a CIC having total assets of not less than Rs. 100 crore either individually or in aggregate along with other CICs in the group and which raises or holds public funds.

In terms of the Directions, every CIC-ND-SI needs to obtain a certificate of registration from the RBI within 6 months from the date of notification of the Directions, i.e. from January 5, 2011.