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MCA grants general exemption under section 212 and 211

Exemption enacts usual approval conditions

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Notification no. 2/2011 dated 8th February, 2011 issued by the Ministry of Corporate Affairs has granted general exemption to companies from sec 212 and sec 211

The general exemption comes at quite a handy time as the financial year is coming to a close. This is the time companies used to make application to Central Govt. In case of sec 212 (not attaching the accounts of subsidiaries), applications were going to the Central Government in hordes. The general exemption would considerably reduce, in case of sec. 212, almost neutralize the exemption applications going to the Central Government.

The Note below discusses the content and impact of the Notification.

Exemption under section 212

Section 212 of the Companies Act, 1956 requires holding companies to attach with their balance sheet a copy of the balance sheet, profit and loss account etc of each of its subsidiaries. Since it is commonplace practice with companies to have several subsidiaries, some in India and some overseas, it was quite a costly exercise for companies to prepare stand-alone accounts, consolidated accounts, and at the same time, attach the accounts of their subsidiaries. It had become almost a common practice for companies to make applications for exemption to Central Govt., for which powers exist under sub-section (8) of sec 212.

The MCA notification says as follows: "It has been noticed that a large number of companies are approaching the Ministry for exemption under Section 212(8) of the Companies Act, 1956. The matter was examined in the context of the globalizing Indian economy, the increased number of subsidiaries, and the introduction of accounting standards on consolidated financial statements. It has been decided to grant a general exemption provided certain conditions are fulfilled.

The Central Government hereby directs that provisions of Section 212 shall not apply in relation to subsidiaries of those companies which fulfil the following conditions:-

- (i) The Board of Directors of the Company has by resolution given consent for not attaching the balance sheet of the subsidiary concerned;

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(ii) The company shall present in the annual report, the consolidated financial statements of holding company and all subsidiaries duly audited by its statutory auditors;

(iii) The consolidated financial statement shall be prepared in strict compliance with applicable Accounting Standards and, where applicable, Listing Agreement as prescribed by the Security and Exchange Board of India;

(iv) The company shall disclose in the consolidated balance sheet the following information in aggregate for each subsidiary including subsidiaries of subsidiaries: - (a) capital (b) reserves (c) total assets (d) total liabilities (e) details of investment (except in case of investment in the subsidiaries) (f) turnover (g) profit before taxation (h) provision for taxation (i) profit after taxation (j) proposed dividend;

(v) The holding company shall undertake in its annual report that annual accounts of the subsidiary companies and the related detailed information shall be made available to shareholders of the holding and subsidiary companies seeking such information at any point of time. The annual accounts of the subsidiary companies shall also be kept for inspection by any shareholders in the head office of the holding company and of the subsidiary companies concerned and a note to the above effect will be included in the annual report of the holding company. The holding company shall furnish a hard copy of details of accounts of subsidiaries to any shareholder on demand;

(vi) The holding as well as subsidiary companies in question shall regularly file such data to the various regulatory and Government authorities as may be required by them;

(vii) The company shall give Indian rupee equivalent of the figures given in foreign currency appearing in the accounts of the subsidiary companies along with exchange rate as on closing day of the financial year.”

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The above general exemption is in the interest of the Companies.

Note that the conditions put above were generally being put in the exemptions granted by the Central government. In other words, the general exemption only prescribes what the Central Government was anyway laying down as conditions while granting specific case-by-case approvals.

It would be an interesting question to probe whether general exemption under sec 212 (8) would imply exemption from the requirements of sub-section (3) and sub-section (5) of section 212 as well, that is, would it not be necessary to disclose the holding company's interest in the subsidiary and any change between the end of financial year or of the last financial years of the subsidiary and the end of holding company's financial year?

Note that accounting consolidation rules require consolidation of accounts and that requirement is not done away with by sec 212.

Further, the department has clarified vide **General Circular No. 5/12/2007-CL-III** dated 21st February, 2011 that the exemption provided for shall be effective in respect of balance sheet and profit and loss accounts prepared for the financial year ending on or after 31st March, 2011. Hence, the above exemption can be availed by the companies from the current year itself without waiting any further and without any delay.

General Exemption under Section 211 of the Companies Act 1956

The Ministry of Corporate Affairs has also issued a notification through Press Note 2/2011 dated 08.02.11 on General Exemption under Section 211 of the Companies Act 1956.

Section 211 of the Companies Act, 1956 requires that the balance sheet and profit and loss account of a company shall be in the form set out in Part I & II of Schedule VI or in such other form as may be approved by the Central Government either generally or in any particular case. Provisions of Part II required the detailed disclosure in respect of aggregate amount of sales effected by the Company, class wise and item-wise break up of raw materials consumed, which was a tedious process for the companies.

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The Ministry has been regularly receiving requests for exemption from various classes of companies from the disclosure of certain quantitative details required under Schedule VI. So far, these exemptions were being given on a case-by-case basis with certain conditions.

Accordingly, the Central Government has, by notification, issued a general exemption whereby the categories of companies in column (2) of the Table below will be exempted from the disclosures given in column 3:-

S.No	Class of Companies	Exemptions under para(s) of Part II of Schedule VI
1	Companies producing Defence Equipments including Space Research;	para 3(i) (a), 3(ii)(a), 3(ii)(d), 4-C, 4-D (a) to (e) except (d).
2	Export Oriented company (whose export is more than 20% of the turnover);	para 3(i)(a) 3(ii)(a), 3(ii)(b), 3(ii)(d).
3	Shipping companies (Including Airlines);	para 4-D (a) to (e) except (d).
4	Hotel companies (including Restaurants);	para 3(i)(a) and 3(ii)(d)
5	Manufacturing companies/multi-product companies;	para 3(i) (a) and 3(ii)(a).
6	Trading companies;	para 3(i) (a) and 3(ii)(b).

However, we would like to comment on the compliances by manufacturing and trading companies with respect to para 3 (i) (a) and 3 (i) (b) of Part II of Schedule VI, whereby the companies had to disclose the information in respect of turnover and raw materials. The details required amount of sales in respect of each class of goods and their quantities separately, along with details of item wise break-up and quantities of raw materials. The purpose behind such disclosures was monitoring the quantitative aspects of production.

This was however, a cumbersome procedure for the companies and it a burden on the companies to comply with the requirements, keeping in mind even the minutest of detail. Lot of show cause notices were issued where a company failed to mention even a single item, inadvertently. Thus, the companies had no other remedy, but to

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go for compounding even if a meager detail was overlooked. This further added to the efforts and cost of the companies.

Hence, the above general exemption surely comes as a boon and relieves the companies from the tedious exercise of preparing such detailed reports and the effects of non-compliances due to negligence, thereof. Further, there are also no pre-conditions to the exemption being granted.