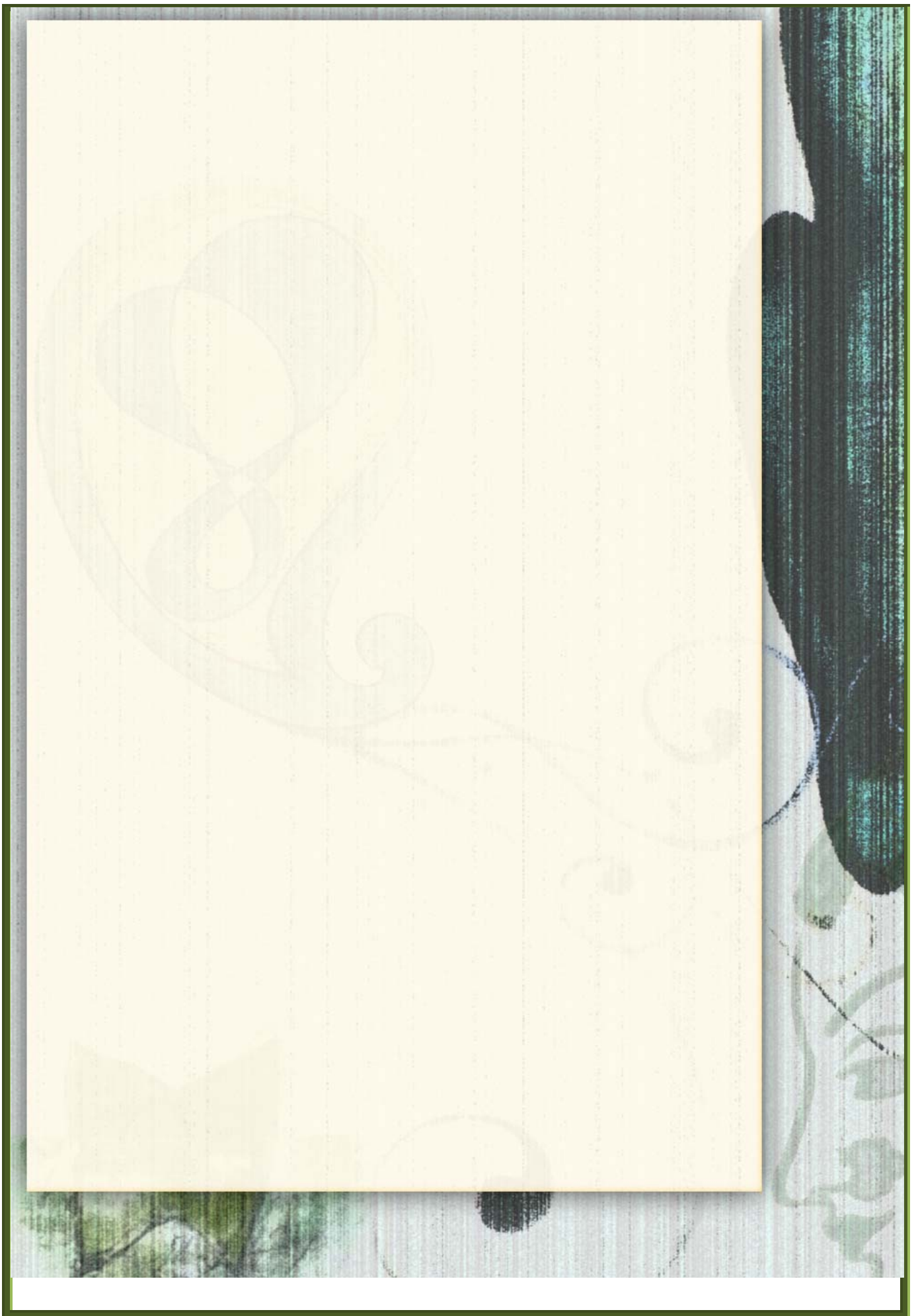




POC Connect

Updates

October, 2012 Edition



New norms for converting co-op society into Producer Company

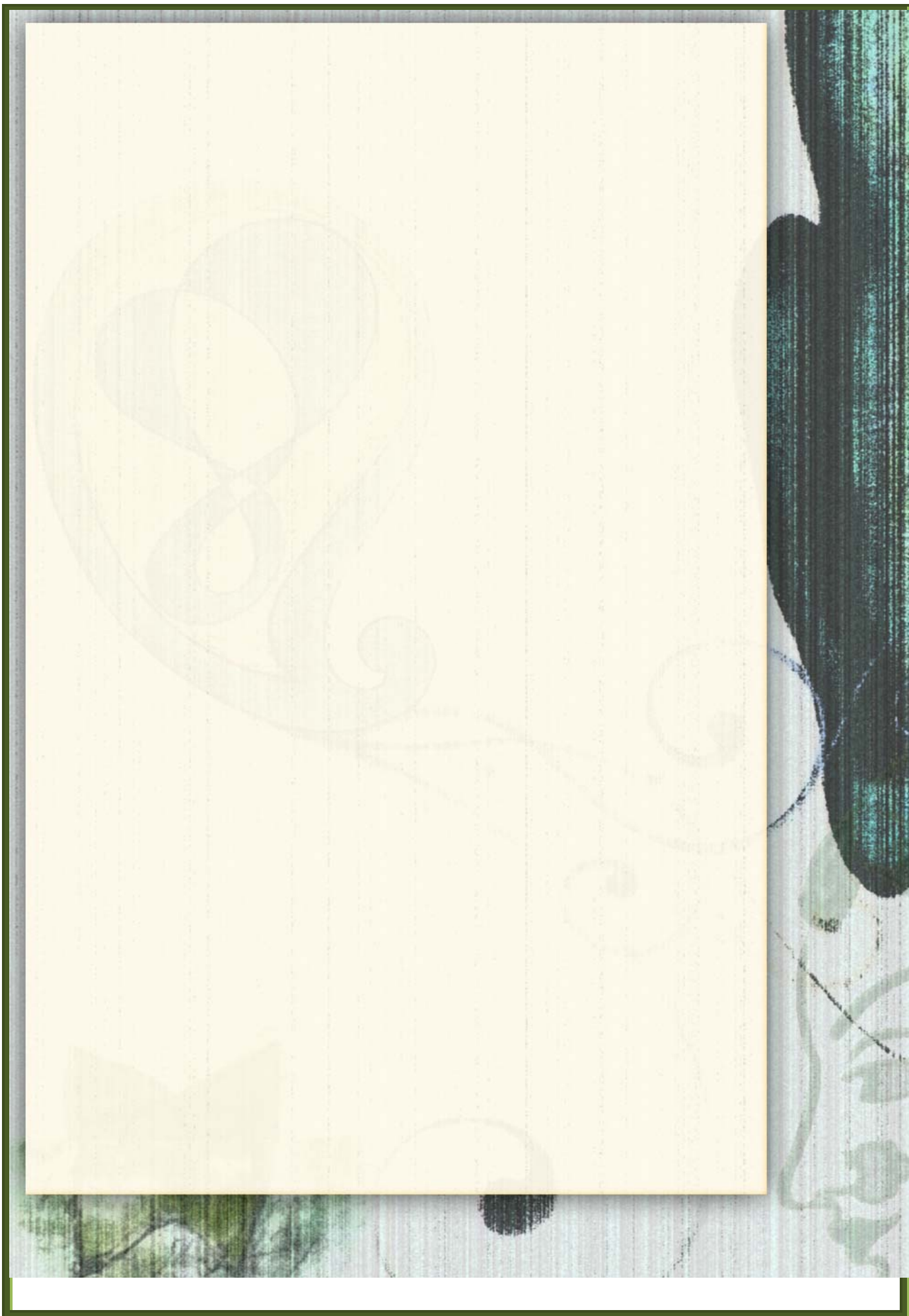
The Ministry of Corporate Affairs has decided to impose conditions for conversion of ordinary society into producer company. In a circular on Wednesday, the Ministry said that if a co-operative society is seeking conversion into a producer company, the Registrar of Companies (ROCs) will seek a written consent from the local co-operative department of the State concerned, certifying the Society seeking to convert itself into a Producer Company under the Companies Act, 1956.

Bharti Infratel files for \$1 bn IPO

Bharti Infratel, the telecom mast arm of mobile major Bharti Airtel, today filed for a USD 1 billion initial public offer (IPO) to divest 10 per cent stake by the year-end. However, Bharti Airtel, which owns around 86 per cent stake in the tower unit, said in a filing to the BSE earlier in the day that it has decided against participating in the share sale process.

Mutual funds to discontinue multiple-plan schemes from today

Mutual funds will stop accepting fresh investments in over 100 schemes with SIP (Systematic Investment Plan) option, as the market regulator SEBI has asked fund houses to move to the 'one plan, one scheme' structure. According to the Securities and Exchange Board of India's guidelines, the single plan structure would apply to all new schemes with effect from 01/10/2012.



Transfer of PAN of Non-Resident Assesseees

Jurisdiction over non-resident assessee lies with the AOs under administrative control of DGIT (Intl. Tax). It has been observed by DGIT (Intl. Tax.) that PAN of many non-resident assesseees are lying with the AOs who do not have jurisdiction over them.

TDS on service tax kept in abeyance

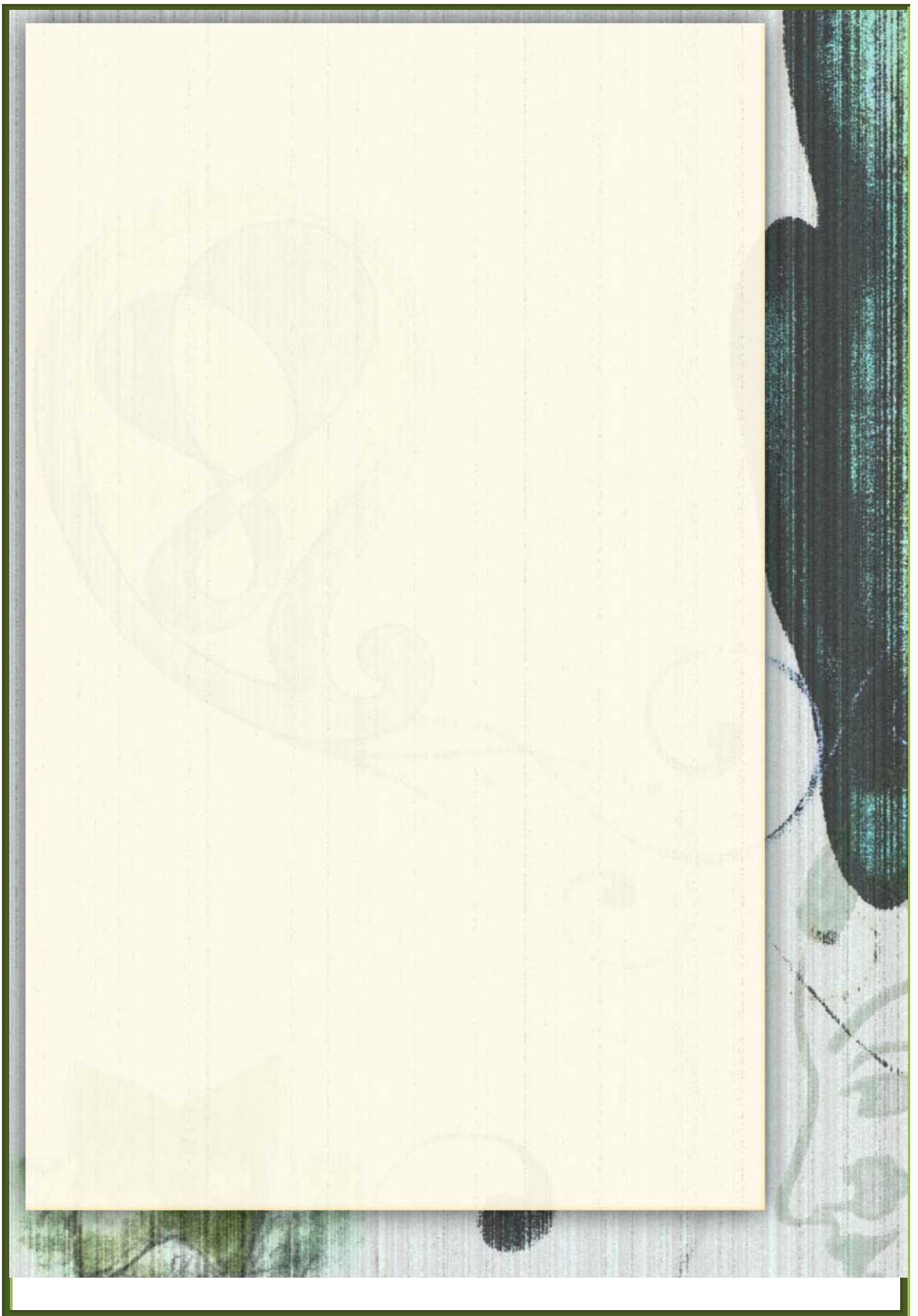
A proposal to introduce the tax deducted at source mechanism for service tax on the lines of income tax has been put on the back burner. The finance ministry is instead thinking of expanding the list of services on which the tax would be levied under the reverse charge mechanism.

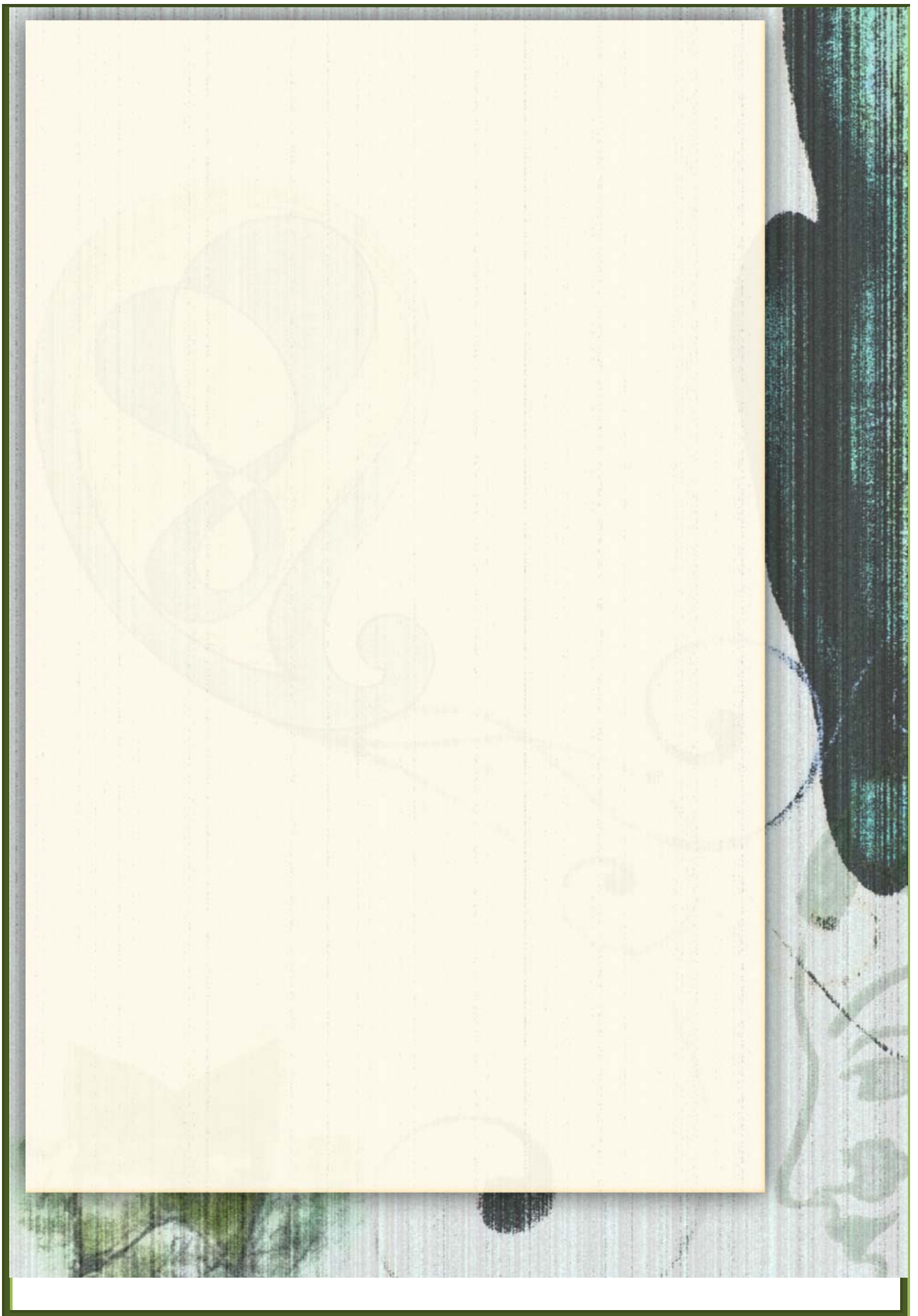
Service tax on rail freight from Oct

The finance ministry is set to apply the 3.7% service tax on rail freight and passengers travelling in first class and AC coaches from October. Service tax on rail freight was announced in the 2009-10 Union Budget, but protests from the TC which held the portfolio scuttled its implementation.

Govt detects Rs 5,995 cr central excise, service tax evasions

The government today said it has detected alleged central excise and service tax evasions of about Rs 5,995 crore during 2011-12. A total of 450 cases of service tax evasion involving Rs 5,012.90 crore and 350 cases of central excise evasion involving Rs 982.80 crore were registered in the last fiscal, Minister of State for Finance S S Palanimanickam told Lok Sabha in a written reply.





Objections raised by the Objector as a share holder :

- The main objection of the Objector was that the Scheme is propounded to avoid capital gains tax that would have arisen if the Transferor Companies would have directly transferred their shares to the Promoters.
- Another grievance was that the shares of the Transferee Company held by the Transferor Companies which are purely tradable and transferable without any restrictions cannot be transferred through the present Scheme of Arrangement.

Decision:

The Scheme was sanctioned since :

- Promoters are not looking for an exit from the Transferee Company through divestment and have adopted one of the available methods for reorganizing their shareholding.
- The object of the Scheme was not to avoid any tax. The shares are owned by the same Promoter albeit through the Transferor Companies. Under the Scheme the only difference is that the Promoter will now hold shares directly in the Transferee Company.



The fact that the Tax Audit Report was filed along with the return and that it unequivocally stated that the provision for payment was not allowable u/s 40A(7) indicates that the assessee made a computation error in its return of income. Apart from the assessee, even the AO who framed the original assessment order made a mistake in overlooking the contents of the Tax Audit Report. The contents of the Tax Audit Report suggest that there is no question of the assessee concealing its income. There is also no question of the assessee furnishing any inaccurate particulars. All that happened in the present case is that through a bona fide and inadvertent error failed to add the provision for gratuity to its total income. This can only be described as a human error which we are all prone to make. The calibre and expertise of the assessee has little or nothing to do with the inadvertent error.

CIT vs. P.R. Ganapathy (Supreme Court) CIVIL APPEAL NOS. 4653-4655 of 2007

S. 68: Burden on assessee to show that donors have financial capacity to give gifts

BRIEF FACTS:-

Assessee claims to have received purported gift from two NRIs in the sum of Singapore Dollars an important query was raised by the Department as to whether these two donors had the financial capacity to make the gift(s) in favour of the assessee herein. The ITAT merely states that the two donors were assessed to tax at Singapore. Being assessed at Singapore, does not answer the query raised by the Department

HELD:

Appeals filed by the Department are allowed. Since the burden is on the assessee to show that the amount received by purported gift(s) from the donors is a "gift" in the legal sense. The assessee has to show whether the donors have the financial capacity to make the gift(s) in favour of the assessee. The fact that the two are assessed to tax at Singapore does not answer the question. The assessee has to lead evidence to show that the alleged donors had adequate funds in their respective accounts to make the purported gift(s) in accordance with CIT vs. P. Mohanakala 2007 (6) SCC 21.

