

AT A GLANCE

FEBRUARY 2016

(KEY UPDATES FROM THE WORLD OF TAX, FINANCE AND CORPORATE LAWS)

For Private Circulation

I. DIRECT TAXES

Start-up India action plan launched

To take the Indian start-up story further, India has launched a "StartUp India" mission with a fund allocation of Rs.10,000 crore to finance domestic venture funds, innovators and entrepreneurs. The fund will enlist the assistance of World Bank and other financial institutions to support start-up programmes. The mission was inaugurated by the Indian Prime Minister, Mr. Narendra Modi at the "Startup India" event held in Delhi on 16th of January, 2016.

The government has proposed to bring the following changes in the upcoming Finance Bill (due in February 2016) to incentivize startups in India:

- ❖ Reduction in procedural compliances for start-up ventures
- ❖ Exemption from paying income tax on their profit for the first 3 years
- ❖ Fast-tracking of Start-up patent applications with 80 percent exemption in patent fee
- ❖ Resolution of the capital gains tax issue to attract investors
- ❖ In line with the exemption available to venture capital funds to invest in startups above fair market value (FMV), investments made by incubators above FMV also to be exempted

(Department Of Industrial Policy and Promotion- Start up India – Action plan)

Permanent Account number (PAN) to be mandatorily quoted on all documents

The Income-tax Rules now require quoting of Permanent Account Number (PAN) where the transactions exceed a specified limit. The government has issued new guidelines in order to curb circulation of black money and widening of tax base, for which quoting PAN is necessary. As per new guidelines, quoting of PAN is applicable from **January 01, 2016**.

- ❖ The existing limit of quoting of PAN in case of sale/purchase of property has increased from Rs. 5 lacs to Rs.10 lacs.
- ❖ All new bank accounts other than time deposits, are excluded for mandatorily quoting of PAN.
- ❖ ***Sale or purchase, by any person, of goods or services of any nature exceeding Rs. 2 lacs per transaction etc.***

Any person not having PAN has to make a declaration in Form 60 giving therein the particulars of such transaction. All declaration received are to be reported by the recipient

with the prescribed authority semi-annually and such forms are to be retained for a period of 6 years.

Furnishing of statement of financial transaction mandatory w.e.f April 01, 2016

CBDT has enhanced the scope of transaction required to be reported annually Annual Information return now known as Statement of financial transaction. Key additional transaction required to be reported are:

Reporting person	Nature of Transaction
Any person covered for Tax Audit U/s 44 AB	Receipt of cash payment exceeding Rs. 2 Lacs for sale of goods or services
Any company issuing shares/ A company or institution issuing bonds or debentures	Receipt of Rs. 10 Lacs or more in a financial year
Non-banking financial company	One or more time deposits of a person aggregating to Rs. 10 Lacs or more in a financial year

(Notification 95/2015 dated December 30, 2015)

Additional Mode to generate Electronic Verification Code (EVC) for e-filed Income Tax Return (ITR)

At present, Income Tax Returns (ITRs) can be e-verified using Internet Banking, Email or Aadhaar number- generated One Time Password (OTP). Now, the Central Board of Direct Taxes (CBDT) has introduced 2 additional modes to generate EVC for e-verification of ITRs - by furnishing bank account details and DEMAT account details, for notified banks and depositories.

Taxpayers can now generate EVC by providing bank account number/DEMAT account number, IFSC code, email id and mobile number at income tax portal which would be validated against the details of taxpayer registered with the bank/depository. Post validation, EVC would be sent by income tax portal to taxpayer's email id and or mobile number verified from bank/depository.

List of participating banks/depositories will be provided at the income tax portal.

(Notification No. 01/2016 dated January 19, 2016)

Introduction of Form 9A and Form 10 required to be filed by a Trust

As per Rule 17 of Income tax Rules, a Charitable Trust registered under Income Tax Act was required to notify prescribed authority the amount of un-utilized income accumulated during the financial year in prescribed Form 10. The CBDT has now amended this rule to introduce a new Form 9A and amending Form 10. As per the amended rule, Form 9A shall be filed for furnishing reasons for shortfall in application of income and Form 10 shall be filed to notify amount accumulated / set apart along with purpose and period of accumulation/ setting apart. The statements shall be furnished electronically on or before the due date of filing of income tax return w.e.f. Assessment Year 2016-17.

(Notification No. 03/2016 dated January 14, 2016)

II. TRANSFER PRICING

India signs bilateral Advance Pricing Agreements (APA's) with UK

The CBDT has signed bilateral APAs with two UK firms to reduce transfer pricing disputes regarding intra-group transactions. The APAs cover the period 2013-14 to 2017-18 and also have a rollback provision for two years (2011-12 and 2012-13). With this the CBDT has signed 41 APAs till date of which 38 are unilateral and 3 bilateral.

(Source: Economic Times on February 02, 2016)

India and US decide to resolve long pending transfer pricing cases

India and US has agreed to clear 200 transfer pricing cases by way of entering into Mutual Agreement procedure (MAP) under the India-US Double Taxation Avoidance Convention in the field of ITS and ITeS sector. The move is likely to boost the morale of the foreign investors in the Indian economy.

(Source: The Hindu on January 29, 2016)

III. INDIRECT TAX

Implementation of e-payment of refund / rebate under excise

The Central Board of Excise and Customs (CBEC) has laid down and issued guidelines for implementation of e-payment of refund/ rebate under excise which was earlier issued through manual handing over/ dispatch of cheques. The applicant would need to provide one-time authorization certified by beneficiary bank to the competent authority in duplicate to receive refund/ rebate directly through electronic mode.

(Circular No. 1013/1/2016- CX dated January 12, 2016)

Application for IEC code now simplified; e-filing mandatory

With effect from April 1, 2016 application for IEC (Import Export code)/ modification in IEC shall be filed electronically using digital signatures directly by the applicant. Further, DGFT has reduced the number of documents required for registration to the following:

- ❖ Digital photograph of the signatory applicants;
- ❖ Copy of PAN card of the business entity in whose name import/export would be done (applicant individual in case of proprietorship firms);
- ❖ Cancelled cheque bearing entity's pre-printed name or bank certificate in prescribed format ANF-2A

(Directorate General Of Foreign Trade Notification No. 34/2015-2020 dated January 29, 2016)

IV. COMPANY LAW/LLP

Additional opportunity to remove deficiencies/ defects under Integrated Process of company incorporation

Incorporation of companies made through Integrated Process (single-form incorporation) shall now have three opportunities instead of two opportunities to remove the defects or

deficiencies in the documents or form. However the total period for re-submission of documents shall not exceed 30 days. (Applicable w.e.f. 26th January, 2016)
(Companies (Incorporation) Amendment Rules, 2016 dated January 22, 2016)

Centralization of name approval / rejection for companies under incorporation

An application for reservation of name shall be approved or rejected, as the case may be, by the Registrar, Central Registration Centre instead of Jurisdictional registrar under whose jurisdiction the registered office of the proposed company is situated. (Applicable w.e.f. 26th January, 2016)
(Companies (Incorporation) Amendment Rules, 2016 dated January 22, 2016)

Issuance of frequency asked questions for effective implementation of Corporate Social Responsibility (CSR)

The Ministry of Corporate Affairs (MCA) has recently issued a comprehensive set of FAQs with a view to clarify the queries received from various stakeholders relating to CSR provisions of the Companies Act, 2013. The FAQs include clarification several additional issues such as computation of average net profit, application of CSR funds to government schemes, contribution of CSR funds to trusts/ societies/ Section 8 companies, and activities falling outside the purview of CSR provisions.
(General Circular No. 01/2016 dated January 12, 2016)

Hindu Undivided Family (HUF) or its Karta cannot become Partner/Designated Partner in LLP

Based on General circular 13/2013, MCA had clarified that only an individual or body corporate can become a partner in a limited liability partnership. A HUF cannot be treated as a body corporate, Therefore, a HUF or its Karta cannot become designated partner in LLP. MCA has further clarified that the above circular inadvertently did not mention 'partner' and the condition extended to a partner in LLP. Therefore, an HUF or its Karta can neither become 'partner' nor 'designated partner' in LLP.
(General Circular No. 02/2016 dated January 15, 2016)

V. DVAT

New conditions specified for auto-downloading the central statutory forms online.

Department of Trade and Taxes has laid down the following conditions for auto-downloading the central statutory forms:

- ❖ The ratio of sales to purchase should not fall below 45 percent for the tax period for which forms are to be issued. In case it falls short, then forms shall be allowed to be downloaded on the basis of sales to purchase ratio of cumulative tax periods till the threshold of 45 percent is met.
- ❖ Items should be mentioned in Registration Certificate with no adverse record.
- ❖ Form cannot be issued to the cancelled dealer.

(Notification No.F.3(556)/Policy/VAT/2015/1271-82 dated January 08, 2016)

Department Of Trade And Taxes mandates copy of Delhi Sugam-2 (DS-2)

Department of Trade & Taxes has notified that a person bringing goods in Delhi shall be required to carry a copy of Delhi Sugam-2 (DS-2) in electronic form or hard copy to produce at check post or barrier before any officer as empowered by the commissioner.

(Notification No.F.7(433)/Policy-II/VAT/2012/PF/1259-70 dated January 08, 2016)

Extension of filing of Reconciliation Return for the year 2014-15

Department of Trade & Taxes has extended the last date of filing of online return in Form 9 for the year 2014-15 to February 29, 2016 from January 15, 2016. Form 9 is to be filed by dealers who have made interstate sales at concessional rates and against different CST Forms.

(Notification No.F.7(420)/VAT/Policy/2011/PF/1380-85 dated January 28, 2016)

VI. Recent Case Laws

Settlement Commission does not have the power to direct a Special Audit u/s 142(2A)

The Delhi High Court in a recent judgment has held that assessment contemplated under section 143(3) is outside the purview of settlement proceedings. The Court distinguished the powers of a Settlement commission, stating that orders made by the Settlement commission under section 245D(4) are not in the nature of an assessment but by way of a settlement. Accordingly, special audit under section 142(2A), which is in aid of assessment, would also be beyond the scope of settlement proceedings. Hence, settlement commission cannot order directions for special audit u/s 142(2A).

(Agson Global Pvt Ltd & Others Versus Income Tax Settlement Commission And Others) (Delhi High Court)

Supply management services rendered by a UK Company to an Indian Company, is not taxable as “fees for technical services” under Article 13 of India-UK DTAA if it does not “make available” any skill, technical know-how

In the instant case, the appellant, a UK based Company, was engaged in providing supply management services to an Indian company engaged in manufacture and sale. The appellant’s responsibilities included facilitation of market- competitive pricing of products from suppliers, ensuring time delivery and adherence to standards and procedures.

On determining the taxability of such services under India-UK DTAA, the Authority for Advance Ruling held that to fit into the terminology ‘make available’, the technical knowledge or skills of the provider should be imparted to and absorbed by the receiver so that the receiver can deploy similar technology or techniques in future without depending on the provider even after the particular contract comes to an end.

In the present case, it was observed that the appellant was not imparting its technical knowledge and expertise to the Indian company based on which the Indian company will acquire such skills and will be able to make use of it in future. Accordingly, the AAR upheld that the supply management services do not satisfy the ‘make available’ clause and therefore, fees received by the applicant is not in the nature of FTS under India-UK DTAA.

(Re : Cummins Limited) (AAR, New Delhi)

Determining arm’s length adjustment in respect of interest free loan given to its wholly owned subsidiaries

The assessee has given advance to 100% wholly owned foreign subsidiaries on which no interest has been charged. Since the advance was given to its Associated Enterprise without charging interest, the transaction comes under the purview of international transaction requiring adjustment on account of arm’s length price. Tribunal relied upon the decisions of jurisdictional High Court and directed the Assessing Officer to make arm’s length adjustment by applying the LIBOR rate of interest.

(M/s Shrenuj & Co. Ltd. Versus Addl. Commissioner of Income Tax)(Mumbai ITAT)

Tribunal allows for the use of Profit split when all probable costs have been considered by the assessee

The Mumbai tribunal has held that, if the assessee has suo moto considered the adjustment towards the non-deduction of withholding tax on payments made to third parties on account of hire of transponders and up linking/maintaining of equipments, the assessing officer (‘AO’) cannot disallow the same expenses again. In the instant case, the assessee used the combined profit split method (‘PSM’) to distribute the profits between its associated enterprises and third parties, since the activities were closely integrated. Though the selection of PSM was not disputed either by the AO or the Dispute Resolution Panel (‘DRP’), the computation of profits allocable to the non-AE was disputed by the AO as well as the DRP.

The assessee had offered its income in India and abroad (towards hiring of transponders, up-linking, post production activities like insertion of advertisement materials into the channels etc.), though carried outside India to be taxed in India. Further, the assessee had increased the net profits to accommodate possible disallowance u/s 40(a)(i), interest expense incurred in respect of payment of Indian taxes.

The tribunal held that, when the assessee has factored all the possible expenditure while computing its profitability, the AO cannot disallow the expense to enhance the profitability of the assessee. Further, the function, asset and risk profile submitted by the assessee provides that the businesses of the assessee with its associated enterprise and third parties are closely linked, the profitability to the third parties to be computed at a higher rate is untenable especially after accepting the net profit rate determined by the assessee.

(Satellite Television Asian Region Limited Vs DDIT)

Tribunal upheld the assessee selection of loss making comparable

The Mumbai Tribunal, disregarded the revenue's move of rejecting comparables for being loss making, where the assessee has selected them as a result of the valuation report from a chartered engineer. Held, if CUP has been selected as the most appropriate method, comparables cannot be disregard on loss making grounds.

(Perma Pipe India (P.) Ltd. Vs DDIT)

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