

AT A GLANCE

AUGUST 2016

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

For Private Circulation

I. DIRECT TAXES

Clarifications on Income Declaration Scheme, 2016

The Central Board of Direct Taxes (CBDT) has issued a number of clarifications and FAQs on Income Declaration Scheme, 2016 (IDS) which is in force till September 30, 2016.

A. Tax, surcharge and penalty on undisclosed income payable in installments on different dates

Penalty, surcharge and tax on undisclosed income shall be paid as follows:

- Amount not less than 25% - by November 30, 2016
- Amount not less than 50% (as reduced by earlier paid) - by March 31, 2017
- Balance amount payable - by September 30, 2017

(Notification No.59/2016 [F.No.142/8/2016-TPL] /SO 2476(E) dated July 20, 2016)

B. Information provided in IDS to be confidential

Public servant should not produce any document / information / record / data, etc. which comes into his possession regarding a valid declaration made under Income declaration scheme before any person / authority.

(Notification No. 56 /2016 [F.No.142/8/2016-TPL] / S.O.2322 (E) dated July 06, 2016)

C. Clarifications given in FAQs:

- Declaration can be revised before closure of the scheme if income as per revised declaration is not less than the income declared in declaration already filed.
- Declarant shall not be selected for scrutiny under CASS on account of increase in capital in balance sheet as a result of declaration.
- Time limit for filing Form-3 (for intimation of payment of tax, surcharge & penalty) is same as the time limit prescribed for payment of tax, surcharge and penalty under the scheme.
- Partners / directors shall be immune from prosecution in respect of undisclosed income declared by the partnership firm / company.
- Tax is also to be deposited from the undisclosed income declared in IDS; effective effective tax rate remains 45 percent, and not 31 percent
- Any undisclosed income in form of asset or otherwise found after expiry of IDS & not disclosed in IDS will be added in the income of the year in which notice for assessment / reassessment is being issued.

(Circular No. 27/2016 dated July 14, 2016)

No TDS to be deducted for an IFSC banking unit set up in a SEZ

The CBDT has clarified that IFSC banking units (IBUs) set up in a Special Economic Zone fulfill the criteria for being considered as Offshore Banking Units under section of 197A(1D) of the Income Tax Act, 1961 (Act). Accordingly, IBUs are not required to deduct TDS on interest paid to a non-resident or a person who is not ordinarily resident in India on deposits made on or after April 1, 2005.

(Circular No. 26/2016 dated July 04, 2016)

II. TRANSFER PRICING/INTERNATIONAL TAXATION

CBDT notifies tolerance range for AY 2016-17

The CBDT has notified the below tolerance range for difference in the arm's length price as computed under section 92C of the Act and the prices at which the international transactions and/or specified domestic transactions have been undertaken during Assessment Year 2016-17:

- 1 percent in case of wholesale trading business
- 3 percent for all other transactions.

For this purpose, 'wholesale trading' shall mean trading of goods where:

- i. Purchase cost of finished goods is 80 percent or more of the total cost pertaining to such trading activity; and
- ii. Average monthly closing inventory of such goods is 10 percent or less pertaining to such trading activity.

(Notification no. 57/2016/F.No.500/1/2014-APA-II dated July 14, 2016)

III. INDIRECT TAXES

Attachment of property by Commissioner of Central Excise

The Central Board of Excise and Customs (CBEC) has recently clarified that the legal procedure for attachment of property by Commissioner of Central excise has to be strictly adhered to. The clarification was based on a recent case where the Hon'ble Allahabad High Court observed that an assessee's bank accounts were ordered to be attached by the Deputy Commissioner without giving any opportunity to them and had considered the action of the department as gross violation of Rule 3 of Service tax (Provisional attachment of property) Rules, 2008. The CBEC has emphasized that all officers should exercise such power with utmost care and caution and non-compliance with legal provisions will leave no defence with the concerned officer.

(Circular No. 196/06/2016 dated July 27, 2016)

Recovery of confirmed demands during the pendency of stay application

The Central Board of Excise and Customs (CBEC) has revised the guidelines for recovery of confirmed demand¹ of tax during the pendency of stay application, in light of the judicial precedents on this subject:

1. Where stay application is pending before Commissioner (Appeals) or CESTAT for periods prior to August 6, 2014, no recovery shall be made during the pendency of the stay application. For subsequent period, the law on the issue was amended on August 6, 2014, which mandates payment of 7.5 / 10 percent of tax demand after filing of appeal, depending on stage of appeal, obviating the need for appellate authority to hear any stay application.
2. Where demand is confirmed by the CESTAT or High Court, recovery proceeding may be initiated after a period of 60 days from the date of the order provided that no stay is in operation.

(Circular No. 1035/23/2016-CX dated July 04, 2016)

Manual signatures on digitally signed invoices

The CBEC has clarified that a manufacturer / service provider who opts to issue invoices authenticated by digital signature may print a copy of such invoice, sign them manually and forward them to such customers who are unable to accept or receive the digitally signed invoices. Such invoices in effect would be authenticated by two signatures, digital as well as manual to be in conformity with the existing Central Excise Rules.

(Circular No. 1038/26/2016-CX dated July 19, 2016)

IV. COMPANY LAW

Amendments in Cost Records and Audit Rules

Pursuant to amendments brought in Companies (Cost Records and Audit) Rules, Cost Auditors will now be required to submit an eligibility certificate to the company before being appointed as Cost Auditor. Further, companies have been empowered to remove a Cost Auditor before expiry of his term by way of Board Resolution after giving him a reasonable opportunity of being heard and recording the reasons for such removal in writing. No separate form has been prescribed for intimating removal of cost auditor. The Board resolution for removal shall be enclosed in Form CRA-2 filed for appointment of another Cost Auditor.

(Companies (Cost Records and Audit) Amendment Rules, 2016 dated July 14, 2016)

¹ Confirmed demand of tax arises, when after examining the submissions of a tax payer, an order is issued confirming demand of tax

Relaxation to foreign airline companies in preparing financial statements

The Ministry of Corporate Affairs (MCA) has clarified that in respect of the period ending on or after March 31, 2016, a foreign company which is an 'airlines company' having a share capital need to submit following documents with the Registrar of Companies (ROC):

1. Copies of latest consolidated financial statements of foreign parent company, as submitted by it to the prescribed authority in the country of its incorporation
2. In respect of its Indian business operations, a statement of receipts and payments for the financial year, duly authenticated by a chartered accountant in India.
3. All documents required to be filed under Rule 4(2) of Companies (Registration of Foreign Companies) Rules, 2014.

Such foreign airlines companies need not follow Schedule III in preparing its financial statements or annex documents as per Chapter IX of the Companies Act, 2013 (Co's Act).

(Notification No. S.O. 2463(E) dated July 19, 2016)

Major amendments made in Share Capital rules

The MCA has brought a number of relaxations in Share Capital and Debentures Rules. The key amendments are:

1. Companies issuing debentures may now secure the same by creating charge on the assets of its subsidiaries, holding or associate companies in addition to its own assets.
2. In case of issue of optionally convertible securities on preferential basis, rather than determining the price of resultant shares upfront at the time of the offer, companies now also have the option of determining their price upto 30 days before the date the option becomes exercisable.
3. The cap on issue of sweat equity shares for Start-up companies has been raised two fold upto 50 percent of its paid-up capital for upto 5 years from date of incorporation.

(Companies (Share Capital and Debentures) Third Amendment Rules, 2016 dated July 19, 2016)

NCLT and NCLAT rules notified

Detailed procedural rules have been notified for National Company Law Tribunal and National Company Law Appellate Tribunal (the Tribunals). These rules lay out the process of Tribunals including, *inter alia*, procedure for proceedings, forms to be filed, appearances of authorized representatives, schedule of fees, functions of President, Registrar and Secretary.

It has also been clarified in the said rules that all cases pending before the Company Law Board shall stand transferred to the respective NCLT exercising corresponding territorial jurisdiction.

(National Company Law Tribunal Rules, 2016 and National Company Law Appellate Tribunal Rules, 2016 dated July 21, 2016)

Consolidation of accounts by intermediate subsidiary companies

While earlier all intermediate wholly owned subsidiary companies, other than those whose parent company is a foreign company, were required to consolidate their accounts, the MCA by way of amendment in Companies (Accounts) Rules, 2015 has exempted unlisted intermediate subsidiaries from consolidation provided the following conditions are satisfied:

1. All members of the company have been intimated in writing and no objection has been received.
2. Its holding company files consolidated financial statements with the ROC.

Forms AOC 1 (salient features of subsidiaries/associate/joint venture companies) and AOC 4 (form for filing financial statements) have also been amended accordingly.

(Companies (Accounts) Amendment Rules, 2016 dated July 27, 2016)

Provisions introduced for conversion of unlimited company into limited company

The MCA has introduced the procedure for conversion of an unlimited liability company into limited liability company. Companies with unlimited liability may convert itself into a limited liability company by passing a special resolution in its general meeting and filing an application in the now updated Form INC-27 within 45 days from the passing of said resolution. Earlier the conversion was effected by following the general procedure of conversion of already registered companies given in Section 18.

(Companies (Incorporation) Third Amendment Rules, 2016 dated July 27, 2016)

Companies having website required to publish contact details on homepage

Now every company having a website will be required to disclose/publish on its homepage its name, address of its registered office, the CIN, telephone number, fax number if any, email and the name of the person who may be contacted in case of any queries.

(Companies (Incorporation) Third Amendment Rules, 2016 dated July 27, 2016)

Relaxation in additional fee for filing annual forms for financial year 2015-16

In view of recent revisions made in annual forms, the revised versions of which are not available on MCA portal till date, additional filing fee has been relaxed for Forms AOC 4, AOC 4 (XBRL) and MGT 7 filed in respect of financial year 2015-16 till October 29, 2016.

(Companies (Incorporation) Third Amendment Rules, 2016 dated July 27, 2016)

V. SEBI

Relaxations to listed companies in preparing Ind-AS compliant quarterly/annual financial results

In order to facilitate smooth transition during the first year of Ind-AS implementation, the Securities and Exchange Board of India (SEBI) has given following relaxations to the listed entities to which Ind-AS Rules are applicable:

1. Timeline for submitting financial results for quarter ended June 30, 2016 and September 30, 2016 has been extended by 1 month.

2. Submission of Ind-AS compliant financial results for year ended March 31, 2016 is not mandatory
3. Limited review or audit of previous corresponding quarters is not mandatory
4. Balance Sheet for the half-year ending September 30, 2016 shall be as per format prescribed in Schedule III to the Co's Act.

It has also been clarified that for listed entities to which Ind-AS Rules are applicable in subsequent phases, these relaxations shall mutatis-mutandis apply during their corresponding first year of Ind-AS implementation.

(SEBI Circular No. CIR/CFD/FAC/62/2016 dated July 05, 2016)

VI. DVAT

Turnover limit for filing digitally signed return increased

The Department of Trade and Taxes has enhanced the threshold of gross turnover for mandatory filing of DVAT return through DSC from Rs. 50 lakh to Rs. 1 crore with effect from April 1, 2016. Other dealers may optionally file their returns using DSC but once a dealer has started filing his returns using DSC, they shall have to continue the process even if the turnover falls below Rs. 1 crore in future.

(Notification No F.3(643)/Policy/VAT/2016/419-31 dated July 01,2016)

Amendments made in DVAT Act

The Department of Trade and Taxes has recently notified amendments in Delhi Value Added Tax Act, 2004. The important amendments are as follows:

1. Advance payment of taxes at specified rates on import of specified goods to the National Capital Territory of Delhi from a place outside India.
2. Penalty on furnishing false information in return has been reduced from Rs. 10,000 to Rs. 1,000 or tax deficiency whichever is higher.
3. The government may notify a class of dealers required to install software at their own cost for instant communication of sale information to the Commissioner.

The Department has prescribed July 26, 2016 as the date from which these amendments are effective.

(Notification No. F.14(12)/LA-2016/cons2law/7786 dated July 05, 2016; and F.3(4)/Fin.(Rev.-1)/2016-17/DS-VI/238 dated July 25, 2016)

Extension in online filing of DVAT Return for first quarter

The last date of filing of first quarter return in Form DVAT-16, DVAT -17, DVAT-48 for April to June 2016 to August 31, 2016. Tax shall continue to be paid in the usual manner.

(Circular no. 11 of 2016-17 dated July 28, 2016)

VII. Recent Case Laws

Exemption u/s 11 cannot be denied to a charitable institution by invoking the provisions of section 13(3) of Income Tax Act, 1961

The assessee, an education society, had employed persons specified under section 13(3) in their school on various capacities. The Assessing Officer (AO) initiated income escaping assessment u/s 148 of the Act on the grounds that the assessee has wrongly claimed exemption u/s 11 by giving undue benefit to persons specified u/s 13(3). The Commissioner of Income tax [CIT(A)] upheld that the findings of the AO. The Hon'ble Tribunal held that as per the provisions of section 13(2)(c), salary or allowances have to be paid to the persons specified in section 13(3), and the amount paid should be in excess of what may be reasonably paid for such services. The Tribunal further held that it was not the case of the AO that the amount was paid in excess of what may be reasonably paid for such services. Contrary to that, salary was paid in accordance to the pay scale fixed by the Directorate of Education. Therefore, the Tribunal held that the AO has wrongly invoked the provisions of Section 13(3) of the Act and the CIT(A) was not justified in confirming the action of the AO.

[Anand Education Society v. Asstt. Director of Income Tax (E)] (Delhi ITAT)

Employees' and employer's contribution to be treated in the same manner for the purposes of section 43B of the Act

In this case, the AO after considering the fact that the contribution had been made after due date, disallowed the payment of employer's contribution to Employee Provident Fund (EPF) under section 43B and also disallowed the employees' contribution to EPF treating the same as income from other sources as per the provision of section 36(1)(va) of the Act. The CIT(A) allowed the appeal so far as the delayed payment of employer's contribution was concerned. So far as the delayed payment of the employees' contribution is concerned, the addition of the same was confirmed holding that no relief was allowable u/s 43B, as the section does not provide for the exclusion of employees' contribution to any Provident Fund. The Hon'ble Court has held that although a technical reading of section 43B along with section 36(1)(va) and section 36(1) creates an impression that they are in relation to different heads of deduction, but on a broader reading of the amendment made to section 43B, there seems to be sufficient justification for taking the view that the employees' and employers' contribution ought to be treated in the same manner.

(Bihar State Warehousing Corporation Ltd. v. CIT) (Patna High Court)

Initiation of two parallel proceedings on a similar subject matter cannot sustain

In the instant case, the AO reopened the assessment by noticing that the assessee claimed credit for TDS against the current year's income on professional receipts which were not offered for taxation. The assessee argued before the CIT(A) that the AO had issued notice under section 154 and, hence, the initiation of reassessment proceedings by means of notice under section 148 was not valid. The Tribunal noticed that when notice u/s 154 was read along with the reasons for reopening of assessment, it turned out that the subject matter of both notices was similar. The Tribunal further observed that neither any order has been passed u/s 154 nor such proceedings have been dropped. Therefore, it was held that if first proceedings have been validly initiated, then such proceedings must come to an end for

making a way for the initiation of another proceeding on the same subject matter. Unless the earlier proceedings are buried, either by way of an order on merits or by dropping the same, no fresh subsequent proceedings on the same subject matter can be initiated.

(Sushil Kumar Jain v. ACIT) (Delhi ITAT)

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