

AT A GLANCE

JULY 2016

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

For Private Circulation

I. DIRECT TAXES

Relaxation of PAN requirement for non-residents

Section 206AA of the Income tax Act, 1961 (Act) provides that any person entitled to receive any sum or income on which tax is deductible shall furnish permanent account number (PAN), failing which tax shall be deductible at a prescribed higher rate.

The Central Board of Direct Taxes (CBDT) has notified that the provisions of section 206AA would not be applicable in respect of payments in the nature of interest, royalty, fee for technical services and payments on transfer of any capital asset made to non-residents, provided the non-resident payee furnishes the following details:

- i. name, e-mail id, contact number;
- ii. address in the country of which non-resident is a resident;
- iii. Tax Residency Certificate (TRC) from the Government of that country if the law of that country provides for issuance of such certificate;
- iv. Tax Identification Number (TIN) or any other Unique Identification Number of the non-resident of his residence country.

(Notification no. 53/2016 dated June 24, 2016)

Investment made in "start-ups" at premium exempted from tax

The Central Government has issued a notification to exclude "start-ups" from applicability of section 56(viib)(2) of the Act. Accordingly, investment in start-ups where share subscription exceeds fair market value of shares shall not qualify as income from other sources under section 56(viib) and hence, shall not be taxable in the hands of the start-up. For this purpose, "start-up" shall mean a closely held company which satisfies conditions laid down in notification no G.S.R.I 80(H), dated the 17th February, 2016 issued by the Department of Industrial Policy and Promotion.

(Notification No. 45/2016 dated June 14, 2016)

Revised rules for disallowance of expenditure relating to exempt income u/s 14A

The CBDT has amended Rule 8D for computing disallowance of expenditure incurred in relation to exempt income under section 14A of the Act. As per the amended rule, 1 percent of annual average of monthly average value of investment, income from which is exempt, shall be disallowed, as against 0.5 percent prescribed earlier. The disallowance of interest expense not directly attributable to any particular income or receipt on proportionate basis has been deleted.

(Notification No. 43/2016 dated June 02, 2016)

Extension of due date for deposit of TDS u/s 194-IA

The CBDT has extended the due date for deposit of TDS by a buyer of property u/s 194-IA vide Form 26QB from 7 days to 30 days from the end of the month in which payment has been made.

(Notification No. 39/2016 dated May 31, 2016, applicable from June 01, 2016)

No TDS on payments to securitization Trust

The CBDT has issued a notification providing that no tax shall be deductible on income arising to a securitization trust from the activity of securitization.

(Notification No. 46/2016 dated June 17, 2016)

II. INDIRECT TAXES

Krishi Kalyan Cess exempt on invoice issued on or before 31st May, 2016

The Central Government has exempted Krishi Kalyan Cess (KKC) on services which have been completed and in respect of which invoice has been issued on or before the 31st May, 2016.

(Notification No. 35/2016 dated June 23, 2016)

Amendment in Mega exemption notification (No 25/2012)

The mega exemption notification no. 25/2012 dated June 20, 2012 has been amended to include 'legal services provided by senior advocate to a business entity having turnover upto Rs. 10 lakh in the preceding financial year or any person other than business entity' and exclude 'services provided by a person represented on an arbitral tribunal to an arbitral tribunal'.

(Notification No. 32/2016 dated June 06, 2016)

Reverse charge for Service tax on representational services by Senior Advocates

The Central Government has expanded the definition of person liable for paying service tax on receipt basis u/s 68(2). Further to this amendment, representational services provided by senior advocate to any business entity located in India shall be liable for service tax under reverse charge mechanism.

(Notification No. 33/2016 dated June 06, 2016)

Exemption of service tax on transportation of goods by vessel from outside India on invoice issued on or before 31st May, 2016

The Central Government has exempted service tax on transportation of goods by vessel from outside India upto custom stations in India if invoice and import report is issued on or before May 31, 2016 and such import report is provided by service provider or recipient.

(Notification No. 36/2016 dated June 23, 2016)

Forms notified for implementation of Indirect Tax Dispute Resolution Scheme 2016

The Finance Act, 2016 has introduced the Indirect Tax Dispute Resolution Scheme, 2016 w.e.f. June 1, 2016 to reduce litigation currently lying before Commissioner (Appeals). The Government has now notified the forms for implementation of the Scheme:

- The party in appeal as on 1st March 2016 before the Commissioner (Appeals) shall file a declaration (in Form 1) before the Designated Authority for the purpose of availing the benefit of the scheme.
- The Designated Authority shall give the acknowledgement for receipt of declaration (in Form 2) within 7 days.
- On receipt of acknowledgment:
 - Appellant to furnish a copy of declaration in Form 1 and acknowledgment thereof in Form 2 to Commissioner (Appeals) within 15 days.
 - Appellant to pay the amount of tax in dispute along with applicable interest and 25 percent penalty within 15 days and notify such deposit to Designated Authority (in Form 3) within 7 days of deposit .
- On receipt of Form 3, the Designated Authority shall pass an order (in Form 4) of discharge of dues and the Commissioner (Appeals) shall remove the appeal from his pendency as being disposed off and provide immunity to assessee from further prosecution.

(Notification No 29/2016-CE(NT) w.e.f June 01, 2016)

III. COMPANY LAW

Further relaxations brought in Deposits Acceptance Rules

The Ministry of Corporate Affairs (MCA) has notified further amendments in Deposit Acceptance Rules. The key highlights are as under:

- In order to open up investment routes in start-ups, amounts of Rs. 25 lakh or more received by a start-up company by issuing convertible note, convertible to equity or refundable within 5 years, have been excluded from the purview of deposits under the Companies Act.
- Companies can now accept deposits from members (including other outstanding deposits) upto 25 percent of their paid up capital and free reserves as against the earlier limit of 35 percent. For Private Companies the limit has been increased to 100 percent.
- Companies are now required to make following disclosures, by way of notes, in their financial statements:
 - *Private Companies:* Money received from directors or their relatives
 - *Public Companies:* Money received from directors

(Companies (Acceptance of Deposits) Amendment Rules 2016 dated June 29, 2016)

Listing of the matters before the NCLT, Principal Bench and NCLT, New Delhi Bench

In continuance of the constitution of National Company Law Tribunal (NCLT), the Government of India has laid down the following criteria for listing of Company Law matters before the NCLT, Principal Bench and New Delhi Bench w.e.f. July 01, 2016:

Bench	Matters
Principal Bench	Pertaining to: 1. Companies having paid up capital more than Rs. 50 lakh 2. As per special order of President, NCLT
New Delhi Bench	Pertaining to Companies having paid up capital upto Rs. 50 lakh

(Order No. 25/1/2016-NCLT dated June 29, 2016)

Clarification regarding rotation of auditors

The MCA has clarified that existing companies shall comply with the provisions regarding rotation of auditors latest by the date of the annual general meeting of the company which is held after 3 years from the date of commencement of the Act i.e. by September 30, 2017.

(Companies (Removal of Difficulties) Third Order, 2016 dated June 30, 2016)

MR 1 no more required to be filed in case of CEO, CFO and Company Secretary

The requirement of filing Return of appointment in Form MR 1 has been done away with in case of appointment of Chief Executive Officer (CEO), Chief Financial Officer (CFO) or Company Secretary in any company. The said form is required to be filed only on appointment of a Managing Director or a Whole time Director.

(Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2016 dated June 30, 2016)

IV. DIPP/FEMA/RBI/SEBI

Registration process of NBFCs simplified

In order to facilitate faster registration of Non-Banking Financial Companies (NBFCs), the Reserve Bank of India (RBI) has simplified the registration process. The applicant companies are now required to submit only 7-8 documents as against the set of 48 documents required earlier. Further, NBFCs have been classified into Type-1 (non-deposit accepting without customer interface) and Type-2 (deposit accepting with customer interface). Registration process of Type-1 NBFC would be on fast track basis.

(Press Release: 2015-2016/2935 dated June 17, 2016)

Uniform Format for certificate by statutory auditor of NBFCs prescribed

In order to provide consistency in the manner in which annual certificate of continuance of business of a Non-Banking Financial Institution is submitted by Statutory Auditors of every NBFC, the RBI has issued a *uniform* format in which the said certificate is to be given and uploaded on COSMOS portal.

(Notification No. DNBS (PPD) CC.No./04/ 66.14.001/2015-16 dated June 23, 2016)

V. DVAT

Revision in time limit for furnishing commodity descriptions/code in Sales Tax returns

The Department of Trade and Taxes through its notification dated 12.04.2016 had mandated furnishing of item-wise details of sales and purchases including their descriptions/code in sales tax return for Quarter 4 of financial year 2015-16. Due to technical difficulties faced by taxpayers, the department has decided to make this new provision optional for Quarter 4 of financial year 2015-16. However, this requirement would be mandatory beginning Quarter 1 of financial year 2016-17.

(Circular No.F.3 (670)/VAT/Policy/2016/343-348 dated June 06, 2016)

VI. Recent Case Laws

ICAI coaching activities would fall within meaning of charitable purpose under section 2(15) and entitled to exemption under section 11

The assessee, the Institute of Chartered Accountants of India (ICAI) established by an Act of Parliament and registered under section 12A of the Act, had claimed exemption under section 11.

The Assessing Officer (AO) denied exemption on the ground that ICAI was involved in commercial activities as it received coaching fees from its students. It was further held that the assessee's activities fell under the category of General Public Utility and therefore, excluded from the definition of "charitable purpose" as per proviso to section 2(15). Accordingly, the AO computed income of the ICAI as any normal association of person (AOP).

On appeal, the Commissioner of Income tax (Appeals) [CIT(A)] held that the income of coaching classes of the appellant Institute is not an activity of business as alleged by the AO, rather the said income has arisen from an activity ancillary to the main objects for which it has been established by the Parliament and further accepted as such by the CBDT year to year, while notifying it for the purpose of Section 10(23C)(iv) of the Act. Thus, it was held that ICAI is an educational institute and hence, its income will be exempt under section 11 as education falls within meaning of "charitable purpose" under section 2(15).

Dy. Director of Income Tax (E) vs. ICAI (2016, 70 taxmann.com 54) (Delhi Tribunal)

Disallowance under section 14A cannot be made in respect of shares held as stock-in-trade

The assessee-company was dealing in shares and maintained shares as stock-in-trade and not as investment. The AO, however, made a disallowance under section 14A of the Act. The assessee claimed that the intention was never to earn dividend income out of such shares, rather was to earn profit on sale and purchases of these shares. The dividend income earned was incidental to the income from trading from shares which was taxable. It was further submitted that no expense was incurred for earning the dividend income and therefore, provisions of section 14A read with Rule 8D could not have been invoked in respect of shares held as stock-in-trade.

In light of the above, the Mumbai ITAT held that the disallowance under section 14A cannot be made in respect of dividend income earned on shares held as stock-in-trade.

Fiduciary Shares & Stock (P.) Ltd.vs. ACIT [2016] 70 taxmann.com 23 (Mumbai - Trib.)

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