

AT A GLANCE

JUNE 2016

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

For Private Circulation

I. DIRECT TAXES

Income Declaration Scheme, 2016 introduced under Finance Act, 2016 effective from 1st June 2016

A limited period income declaration window has been introduced to offer a one-time opportunity to all persons who have not declared income in early years, to come forward and declare such undisclosed income. The 4-month window opens on June 1, 2016 and continues till September 30, 2016. The last day by which the tax, surcharge and penalty shall be paid is November 30, 2016. The scheme was announced by the Finance Minister Arun Jaitley in the 2016 Budget with an aim to clear the menace of black money from the domestic economy.

Under the scheme, a total of 45 per cent of declared income would be payable by way of tax, surcharge and penalty.

This scheme applies to undisclosed income or income in form of investment in assets or otherwise pertaining to financial year 2015-16 or earlier. Where the declaration is in the form of investment in assets, the fair market value of such asset as on June 01, 2016 shall be deemed to be the undisclosed income under the Scheme.

Where a valid declaration as detailed above has been made, the following consequences will follow:

- a) The amount of undisclosed income declared shall not be included in the total income of the declarant;
- b) Declarations made under the scheme will remain confidential and no penalty or prosecution proceedings under the Income-tax Act and the Wealth Tax Act;
- c) The value of asset declared shall not be chargeable to Wealth-tax;
- d) Immunity from Benami Transactions (Prohibition) Act, 1988 subject to transfer of asset to actual owner

(Circular No. 16/2016 dated May 20, 2016)

Extension of time limit for submission of ITR-V for electronically filed returns till August 31, 2016

The Central Board of Direct Taxes (CBDT) has given a final opportunity to taxpayers to regularize their pending ITR-V for assessment years 2009-10 to 2014-15 which were filed electronically within due dates but have not been verified due to non-submission of ITR-V to

CPC, Bengaluru. Verification has been permitted through Electronic Verification Code (EVC) to be completed by 31st August, 2016.

(Circular No. 13/2016 dated May 09, 2016)

Additional depreciation u/s 32 (iia) also allowed for assessee engaged in the business of printing or printing and publishing.

The CBDT has recently clarified that the business printing or printing and publishing would amount to manufacture that or production of article or thing and thereby, would be eligible for addition depreciation under the income tax law. The clarification has been issued in light of the existing High Court judgements allowing additional depreciation to reduce further the litigation on this subject.

(Circular No. 15/2016 dated May 19, 2016)

TCS (Tax collected at source) on cash sale of goods and services

Any cash payment received for sale of goods or provision of service worth more than Rs. 2 Lakh cash shall attract TCS @ 1 percent w.e.f. June 1, 2016. If the seller / service provider is required to collect tax at source @1 percent of total consideration, if amount of (single) bill is more than Rs. 2 lakh and consideration (or any part of it) is received in cash. It is applicable only if seller / service provider is subject to tax audit under section 44AB of the Income Tax Act. Further, no tax shall be collected at source on any amount on which tax has been deducted by the payer.

(Finance Act 2016, Effective from June 01, 2016)

II. TRANSFER PRICING/INTERNATIONAL TAXATION

India to tax capital gains under India Mauritius Tax Treaty

The Government of India has signed a protocol with the Government of Mauritius pursuant to which India will be eligible to tax all capital gains resulting from alienation of shares held in an Indian Company by a person resident in Mauritius with effect from April 1, 2017. The capital gain tax will be charged on alienation of shares on or after April 1, 2017.

Protocol also adds a Limitation of Benefit clause for providing beneficial tax rate of 50% of domestic tax rate for transactions between April 1, 2017 and March 31, 2019.

(Government of India Press Note dated May 10, 2016)

Levy of Equalisation Tax @ 6 percent and introduction of Equalisation Levy Rules

Equalisation levy was introduced in the Finance Act, 2016 for taxation of payments made for international digital services by India. With effect from June 01, 2016, an Equalisation Levy of 6 percent shall be deducted by a business entity in India on payments of more than Rs. 1 lakh in aggregate in a financial year to a non-resident service provider not having permanent establishment (PE) in India for specified services. Specified services include online advertisement, provision for digital advertising space or any other facility or service for the purpose of online advertisement etc.

With the introduction of the new levy, the CBDT has also introduced Equalisation Levy Rules, 2016 as highlighted below:

- a. The amount deducted as Equalisation Levy shall be deposited with the notified banks vide the prescribed challan by 7th day of the following month.
- b. Statement of specified services to be furnished electronically on or before June 30th of the immediately succeeding financial year
- c. Where the taxpayer fails to file the aforesaid statement, the Assessing Officer may issue a notice to furnish the same within 30 days
- d. Form and manner of Statement of specified services, notice of demand, form of appeals are notified.

(Notification 37/2016 and 38/2016 dated May 27, 2016)

III. INDIRECT TAXES

Levy of Krishi Kalyan Cess @ 0.5 percent on all taxable services

For development of agriculture sector and welfare of farmers, Budget 2016 introduced a new levy under service tax, named "Krishi Kaliyan Cess" (KKC) with effect from June 01, 2016. KKC would be charged @ 0.5 percent on the taxable service on all payments received on or after 01-06-2016. The Central Board of Excise and Customs (CBEC) has notified the following amendments to the existing notification:-

- a. CENVAT credit in respect of KKC on taxable services shall be utilised only towards payment of KKC.
- b. KKC shall be applicable to all services covered under Reverse Charge Mechanism.
- c. It shall be exempt for services which are already exempted by way of earlier notifications issued by the CBEC.
- d. It shall be levied on abated values over the services for which abatement is available and abatement was claimed by the service provider.
- e. Refund can be claimed over KKC which was paid over the services used for export of services from India.
- f. SEZ unit or Developer shall be eligible to claim refund of KKC paid over the authorized operations in SEZ.

With the introduction of Krishi Kalyan Cess, the effective rate of service tax shall be 15 percent.

(Notification No. 27/2016, 28/2016, 29/2016 and 30/2016 dated May 26, 2016)

Introduction of One Time Lock on containers at Custom Station

In order to enhance the security of goods-in-transit, the CBEC has introduced the requirement of One Time Lock (OTL). The Competent Authority at customs station shall affix OTL on containers or closed trucks while removing goods from custom station for deposit. OTL number along with the date/time shall be endorsed on the bill of entry and transport documents. All customs stations are required to maintain records incorporating the number of the one-time lock (OTL), bill of entry, truck number, container number, date and time of affixing the OTL and related information.

(Circular No 17/2016 -Custom-May 14, 2016)

IV. COMPANY LAW/LLP

Constitution of National Company Law Tribunal and National Company Law Appellate Tribunal

The Ministry of Corporate Affairs (MCA) has issued a notification for Constitution of the National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) with effect from June 01, 2016. The NCLT has been set up with eleven benches including one principal bench at New Delhi.

With the constitution of the NCLT, the Company Law Board constituted under the Companies Act, 1956 and the Board for Industrial and Financial Reconstruction stand dissolved. The NCLT would also deal with various matters, which were earlier under the jurisdiction of High Court such as winding up, mergers and amalgamations.

(Notifications S.O. 1933(E) and S.O. 1935(E) dated June 01, 2016)

Clarification regarding undertaking Corporate Social Responsibility activities

The MCA has clarified that while undertaking Corporate Social Responsibility (CSR) activities, the companies shall not contravene the provisions of any other laws in India including Cigarettes and Other Tobacco Products Act (COTPA), 2003, an Act which provides for prohibition of advertisements, pictorial warnings and other matters in respect of tobacco products.

Further, the companies are now also allowed to undertake their CSR activities through a Section 8 company, registered trust or society which have been established by the **Central/State Government**. Earlier CSR activities through such companies/trust/ societies established by the company itself were allowed. The requirement of minimum track record for three years shall not be applicable on these agencies established by the government.

(General Circular No. 05/2016 dated May 16, 2016 and Companies (Corporate Social Responsibility Policy) Amendment Rules, 2016 dated May 23, 2016)

Designation of Special Courts for speedy trial of offences under the Companies Act, 2013

The provisions under the Companies Act 2013 relating to set-up of Special Courts have been enforced w.e.f. May 18, 2016. As per these provisions, Special Courts were to be set-up for providing speedy trial of offences punishable with imprisonment of two years or more. For this purpose, the MCA has designated the existing courts which will perform the functions of these Special Courts.

(Notifications S.O. 1795 (E) and S.O. 1796 (E) dated^h May 18, 2016)

Relaxation of additional fee for filing various forms under Companies Act & LLP Act

Difficulties were faced by various stakeholders, to access and use the new interface of MCA portal. In view of above, MCA has relaxed additional filing fee and extended the last date for filing of various e-forms upto July 10, 2016. The exemption from additional filing fee is applicable only in respect of forms due for filing between March 25, 2016 to May 10, 2016. In addition to above, the due date of filing Form LLP 11 has been extended from May 31, 2016 to July 30, 2016.

(General Circular No. 07/2016 dated May 31, 2016)

V. DVAT

Notified dealers to submit their return using digital signature

The Department of Trade and Taxes (DT&T) has notified that registered dealers whose gross turnover exceeds Rs. 50 Lakh in the preceding year are required to furnish their return with digital signature in respect of tax period commencing from April 1, 2016.

(Notification no.F3(643)/Policy/VAT/2016/157-169 dated May 03, 2016)

Display of Certificate of Registration and TIN of Dealers

The DT&T has mandated all registered dealers to display of Certificate of Registration along with TIN at their principal place of business and a certified copy of the certificate at all other places of business in Delhi.

(Circular no.F.3(668)/Policy/VAT/2016/145-151 dated May 10, 2016)

Registration in one day under DVAT & CST through DVAT Msewa App

The DT&T has introduced a mobile application, DVAT Msewa, to provide various services to registered dealers. The request for registration can be filed through this application and the registration number / TIN will be received within a working day.

(Circular no.F.3(521)/Policy/VAT/2015/221-26 dated May 17, 2016)

VI. Recent Case Laws

A. Direct Taxes

Foreign exchange fluctuation to remain as an operating item till the date of notification of Safe Harbour rules

The Hon'ble High Court of Delhi has upheld the order of the ITAT, holding that Foreign Exchange fluctuation will continue to be considered as operating item for AY 2010-11. The Court held that the TPO's reliance on the provisions of Safe Harbour rules, i.e., excluding foreign exchange fluctuation from operating items, cannot be upheld as the Safe Harbour Rules were on 18th September, 2013 whereas the assessee's case pertains to AY 2010-11.

[Pr. CIT v. Cashedge India Pvt. Ltd. (Delhi High Court)]

No extension to the deadline of Special Audit can be given on the auditor's request, prior to the amendment brought in Section 142(2A) in 2008

In the present case, the High Court held that the assessment under Section 153A would be barred by limitation on account of delay in furnishing of special audit report u/s 142 (2C) of the Act. As per the facts of the case, the AO had granted a *suo motu* extension in the time limit for furnishing of audit report under Section 142(2C) upon the request made by the nominated Auditor. The High Court held that as per the proviso to section 142(2C), there was no *suo motu* power with the AO to extend the time limit prior to amendment introduced by Finance Act, 2008 w.e.f. April 1, 2008 and therefore, the extension provided by the AO in the present case would not uphold.

[Pr. CIT v. NilkanthConcast Pvt. Ltd. (Delhi High Court)]

Deemed dividend provisions cannot be invoked on transactions of payment and repayment between a company and its sister concerns

In this case, certain payments were made by the Company, in which the assessee was shareholder, to the partnership firm, wherein the assessee was a partner. Addition was made by the AO under section 2(22)(e), stating that these loans given by the Company to the firms represent deemed dividend in the hands of the assessee. The ITAT, however deleted the addition holding that the AO had not ascertained whether the payments received and payments made were by way of loans or advances. The ITAT, following the decision of jurisdictional High Court in the case of SchutzDishman Bio-tech Pvt Ltd held that simply because there were transactions of cheques received and cheques paid in the mutual, open, current, running account with the sister concerns, the same cannot be considered as payment by way of loans or advances so as to attract provisions of section 2(22)(e).

[Sh. Dinesh Jain and Smt. Kavita D. Jain v. DCIT (AhmedabadITAT)]

B. Transfer Pricing

ITAT observes "KUCK MEETHA HO JAYE" tagline related AMP expense benefitted Indian business and does not constitute an international transaction

The Mumbai tribunal rules that AMP expenditure incurred locally by Cadbury India does not tantamount to an international transaction in the absence of specific sharing agreement with the associated enterprise. Further, the Tribunal observes that the assessee's 'KUCH MEETHA HO JAYE' campaign proves local marketing strategy and that assessee had incurred AMP expenditure for creating product awareness for local market and to recall the value of existing products, also that assessee's commercial wisdom would compel it to be innovative and spend reasonable expenditure for maintaining its market position. The ITAT also lays down that "a perceived/notional indirect benefit to the AE due to incurring of certain expenditure by an assessee in India, is not covered by the TP provisions".

The ITAT further noted the fundamental distinction between provisions of Section 37 (which is expense oriented) & Section 92 (which is pricing oriented), and states that CIT(A), by questioning 'higher expenditure' and 'justification' of AMP expenditure, had attempted to incorporate the ingredients of Sec 37 while dealing with TP adjustments, which was incorrect and against the basic philosophy of TP provisions.

(Mondelez India Foods Private Limited Vs. Addl. CIT [ITA No. 5470/Mum/2012])

Disclaimer

This publication has been carefully prepared, but it has been written in general terms and should be seen as broad guidance only. The publication cannot be relied upon to cover specific situations and you should not act, or refrain from acting, upon the information contained therein without obtaining specific professional advice. Please contact VJA member firm to discuss these matters in the context of your particular circumstances



100, Babar Road, Opposite Hotel Lalit, New Delhi – 110001

Phone: 011-23354546, 23354547

Mail: mail@vedjainassociates.com

www.vedjainassociates.com