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March - 2016 Vol . IV | No. 6

FINANCE BILL, 2016

Direct Taxes

Other Laws

International Taxation

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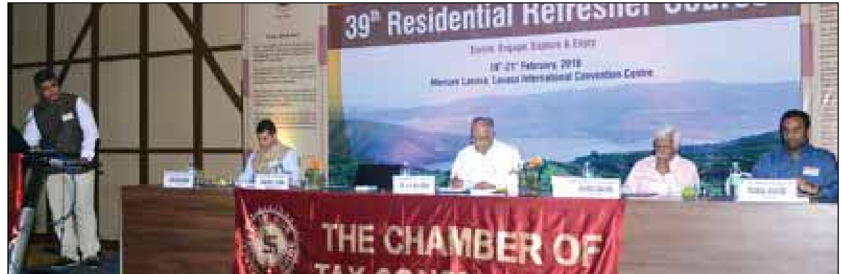
39th Residential Refresher Course held between 18th and 21st February, 2016 at Mercure Lavasa

CA Shailesh Bandi, Chairman welcoming the guests & delegates. Seen from L to R : S/Shri CA Avinash Lalwani, President, Padmabhushan Dr. S. B. Mujumdar, Keynote Speaker, Kishor Vanjara, Advisor & Past President and CA Pranav Jhaveri, Convenor



CA Avinash Lalwani, President delivering the opening speech. Seen from L to R : S/Shri CA Shailesh Bandi, Chairman, Padmabhushan Dr. S. B. Mujumdar, Keynote Speaker, Kishor Vanjara, Advisor & Past President and CA Pranav Jhaveri, Convenor

Padmabhushan Dr. S. B. Mujumdar inaugurating the RRC by lighting the lamp. Seen from L to R : S/Shri CA Ajay Singh, Hon. Jt. Secretary, CA Manoj C. Shah, CA Ajit Rohira, CA Bhavesh Vora & CA Vipin Batavia, Past Presidents, CA Shailesh Bandi, Chairman and Kishor Vanjara, Advisor & Past President

Dignitaries at the 39th RRC Inaugural Session. Seen from L to R : S/Shri CA Hitesh R. Shah, Vice President, CA Manoj C. Shah & CA Bhavesh Vora, Past Presidents, CA Ajay Singh, Hon. Jt. Secretary, CA Ajit Rohira, CA Vipin Batavia, CA Yatin Desai & CA Parimal Parikh, Past Presidents, CA Shailesh Bandi, Chairman, CA Avinash Lalwani, President, Padmabhushan Dr. S. B. Mujumdar, Keynote Speaker, CA Pranav Jhaveri, Convenor, CA Mahendra Sanghvi, Past President, Kishor Vanjara, Advisor & Past President, CA Charu Ved, Vice Chairperson, CA Ashok Manghnani, Hon. Jt. Secretary and CA Mehul Sheth, Convenor

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> Our duty is to encourage every one in his struggle to live up to his own highest idea, and strive at the same time to make the ideal as near as possible to the Truth.
>
> — Swami Vivekananda

Editorial

Hon'ble Finance Minister has given more food for thought to professionals than they expected. I do not intend to further comment on the same as this month's Special Story is on Finance Bill, 2016. We have tried to cover the Finance Bill, 2016 exhaustively. However, due to paucity of time, clauses pertaining to insertion of Section 271A into the Income Tax Act, 1961 could not be covered. We would ensure that these clauses, which could not be covered in this issue are covered in the subsequent issues of the Chamber's Journal.

When people want the system to deliver goods, the political class keeps itself busy in discussing abstract issues which had settled long ago – though not necessarily by a political process. The demographic profile of our country is youth which is an aspirational class. Hence, in the interest of the nation, the political class should work on real issues rather than filibuster – the unfortunate phenomenon which we have adopted from a system which has already overcome it by adopting parliamentary systems to check it.

I share the concerns and views expressed by my friend Shri Jayant Gokhale, in the over view on the Finance Bill, 2016 penned by him. Certain issues could have been further deliberated by the Simplification Committee, especially the provisions pertaining to charitable organisations and provisions pertaining to penalties. The new concept of "under-reporting" and "misreporting" may start a new league of litigation. It will be wise and in the interest of all, if these provisions are deferred for a year and in the meanwhile, the Simplification Committee may be asked to interact with the stake holders and make appropriate recommendations.

I thank all the contributors to this issue of the Chamber's Journal, especially those who have contributed to the Special Story for bringing out the same in time. I thank the Journal Committee in general and specifically the Chairman, Vice Chairperson and Convenors in providing me support.

K. Gopal
Editor

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From the President

Dear Readers

Completed eight months of my term and now 4 months are remaining as President for our Premium Institution "The Chamber of Tax Consultants".

I would like to share Nona Walia's article on "The Art of Asking":– EVERYONE STRUGGLES WITH ASKING – The act of asking makes us vulnerable, even paralyses us. Mostly because of the fear of rejection that comes with it-the fear of appearing as weak. We are made to believe strong, successful people don't need to ask for anything. But as novelist Nora Roberts says, "If you don't ask, the answer is always no. "(1) **ASK THE RIGHT QUESTION** – Frame your thoughts and words well in advance. The answer from the other end often depends on the way the question is framed. Tone is also crucial. (2) **ASK TWICE –** Even if the first time was uncomfortable, ask again, Research at Stanford University shows that people are more likely to say "YES" the second time. Daniel Newark, the lead researcher of the study says, "Having already said 'no' once, it can be more guilt-inducing and uncomfortable to repeat it."The smart ones also know when not to push the envelope and not ask twice. Know when to retreat (3) **BE FEARLESS** – Before asking, embrace the No. This will empower you to ask with fearlessness. Asking is a practiced art. Embrace it. Overcoming fear of asking lies in the connection you make. The closer your connection, the less fearful you be of asking (4) **DON'T LET SHYNESS STOP YOU** – People also shy away from asking for help. Amanda Palmer in her book, "The Art of Asking", talks about how we constantly ask questions like: Will you help me? Can I trust you? But somehow, we shy away from asking about what we really want. The trick is not be attached to the answer – negative or positive. Be Zen-like remember that almost every important human encounter boils down to the act and the art of asking.

Current Issue is on Finance Bill 2016. I must compliment Editor of Journal Mr. K. Gopal and immediate past president CA Paras K. Savla and Vice President Shri Hitesh R. Shah for creating a synopsis to provide excellent coverage to the current subject of Finance Bill 2016. I am sure it will be very useful to our members as a reference material while dealing with matters related to International Taxation.

Committees updates:

RRC and Skill Development Committee : 39th Direct Tax RRC at Lavassa, It was attended by 209 delegates (registration was 221) including delegates from 21 Cities, 86 outstation delegates, 10 States of India and it was attended by 14 Past Presidents of CTC. All the Papers were classic. The delegates were enjoying the study fellowship in a relaxed environment. The XThrill show, Gala dinner with Musical night and Antakshiri were too good. Over all this RRC got a much higher enrollment as compared to last year. Advisor Kishore Vanjara ji TC, Chairman CA Shailesh Bandi, Vice Chairperson CA Charu Ved, Convenor CA Mehul Seth and Pranav Jhaveri, Committee Member CA Bhavesh Joshi, Chetan Shah, Deepak Shah, Dilip Sanghvi, Vijay Bhatt, Kishore Rajeshikre, Ketan

Vikamsey and other committee members have put in efforts day/night for this RRC. Delegates have given excellent rating to this RRC. My special thanks to Mr. Vipul Joshi for suggesting a nearby location & for technical support, Mr. Bhavesh Vora for caring, Parimal Bhai for Food and Mahendra Sanghvi for technical support and yoga session which was conducted jointly by Yatin Desai and Mahendra Sanghvi. Also my sincere thanks to all the committee members of the Technical and Administration committees for their support in organising this EXCELLENT RRC.

Allied Laws Committee under the chairmanship of CA Kamal Danuka has completed a 4 half day Study Series on Internal Audit. Total delegates were 50. The combination of current topics, Practical Case studies and good speakers made this programme successful. Committee had also distributed certificates of participation. Due to the good response by delegates, the venue was shifted from CTC conference hall to IMC. Now days, I am seeing that registration of Non-members in events are increasing. It is a good sign for the growth and visibility of CTC. The second event was a study circle meeting on the MSMED Act, 2006. Due to the fair response and high cost of venue at IMC, SC meeting was shifted to CTC Conference hall. The relevant topics are keeping this Study Circle alive. Detail and in-depth discussion was held for MSMED Act, 2006.

Direct Tax Committee under the Chairmanship of CA Ketan Vajani conducted three events in the month. Firstly an Intensive Study group discussion on the Recent Judgment under Direct Tax. This group discussion gave a good platform to understand and deliver content on the judgment related to Income-tax. In my view, members should come forward to enrol and attend these kinds of events. Second event was full day joint seminar with Corporate committee on LLP. The registration was 94. Registration by youth professionals was high. It seems the subject is very important for upcoming professionals. The Third event was Live Screening of Budget 2016 which was organised jointly with Indirect Tax committee. The CTC Conference hall was full. The seating arrangement was done for 21 and attendance was 20. It was attended by seniors like Mr. Hiro Rai, Mr. Vipul Choksi and young professionals also. All the Office bearers were present in this event. On recommendation of Mr. Vipul Choksi, IPP Paras Savla had implemented this kind of an event in 2015. In a city like Mumbai wherein people stay far from each other and lead very busy lives not to forget the pain of traffic, this kind of an event helps people to come together to discuss, understand and react on the Finance Bill.

Student and IT Connect Committee under the chairmanship of CA Parimal Parikh had organised a Workshop on Office Productivity: Technology Tools and Tips. The programme was designed by Vice-Chairman CA Dinesh Tejwani. His vision and designing of programme is too good. Great vision, dedication, commitment and team work are giving boost to Information technology events in CTC. Convenor CA Mitesh Katira, CA Maitri Savla and committee member CA Adarsh Madrecha and Mr. Uday Shah are doing wonderful work. The Round Table discussion in this event was amazing. Facebook page of "ctcconnect" likes as on today are 1157. A good growth observed in number. Hope it will help us to reach various persons with nil cost.

Indirect Tax Committee under the Chairmanship of CA Rajiv Luthia had organised two events in the last month. First was a study circle meeting on Recent Decision under Service Tax. Once in a year, Indirect tax committee takes study circle on Indirect tax. It was attended by 65 members. Most of the professionals from Indirect tax field were present in this meeting. Second event was Live Screening of Budget 2016 jointly with Direct Tax committee.

Amita Memorial Lecture Meeting: Once in a year CA Pradeep A. Shah in memory of his daughter Amita P Shah organises a joint event of CTC and BCAS under the aegis of Amita Memorial Trust. It was organised on 11-2-2016 at IMC. The Subject was "My Experiments in Universal Love" and the speaker was CA Rashmin Sanghvi. It went very well. Rashmin bhai shared different ways to serve

society and professionals. From his talk I understood that Determination to do something for the society will always keep one happy and satisfied.

CTC Delhi Chapter under the Chairmanship of Advocate, Mr. R. P. Garg had organised a full day seminar on e-Commerce Business Models, Regulatory Aspects, Direct and Indirect Taxes etc. It was attended by 73 delegates. The event went very well. A concept of doing something unique is giving success to CTC Delhi Team. A thought of giving a high standard and relevant seminar on an upcoming topic was the key to the success of the seminar on e-Commerce. I must congratulate Vice Chairman CA Suhit Agarwal and Hon. Joint Secretary CA Vijay Gupta under the chairmanship of Mr. R. P. Garg for organising this successful event.

The ***Membership and Public relations Committee*** under the chairmanship of CA Hemant Parab had organized two events. Firstly a full day Joint seminar with Income tax Bar Association and Tax Practitioners Association Kolhapur. The registration was 159 people which led to a houseful show. It was an excellent seminar in terms of education, fellowship and attendance. I must acknowledge the support of our Past President and Editor of Journal Advocate, Mr. K. Gopal for accepting our invitation as a Speaker. The Second Event was organised at CTC. A Free Health Check-up Camp for Members, Staff and Family. 126 persons have taken benefit from this camp.

The ***Study Circle & Study Group Committee*** under the Chairmanship of CA Ashok Sharma is organising fantastic meetings. During the last month, he had organized 1 SG on Recent Judgments under Direct tax by CA Pradip Kapasi. The Speech of Pradip Bhai was superb. A speech containing Case laws, contents and judgments, etc. given without referring to any notes is amazing. I must recommend all of us to try to learn to deliver speeches like Pradip bhai. I must say that he is one of the Role Models for professionals. The Second event which is a SC meeting on International Tax-On understanding the concepts of POEM has been shifted to 1-3-2016.

International Taxation Committee under the Chairmanship of CA Naresh Ajwani organised two FEMA study circle meetings, one ISG study circle meeting and one Transfer Pricing study circle meeting. In one of the FEMA study circle meetings jointly organised with other study circles, from RBI Mr. A. O. Basheer and Mr. Adarsh Kumar addressed the delegates. They shared their thoughts freely with the members and answered all the questions. It was very much appreciated by the members. The meeting went well beyond the scheduled time.

Corporate Committee under the chairmanship of CA Paras Savla had organised a Joint Full day seminar on Limited Liability Partnership. I must appreciate the working of IPP Paras Savla. The vision that seminars on recent and current topics brings more delegates to the seminar is very well there in Parasbhai. I must appreciate his team's efforts including Vice Chairman CA Hasmukh Dedhia and Convenors CA Neha Gada and CA Vitang Shah for supporting this event. In my view, the talented team of the Corporate Committee has surely explored the potential of doing seminars on current subjects which has led to increase in the memberships of Corporates to CTC. They are working very hard and have given a great impetus to the growth of the Corporates in CTC.

Law and Representation Committee under the Chairmanship of Advocate, Mr.Vipul Joshi has sent a representation to MCA. The representation was made on recommendation report of the Company Law Committee, Companies Act, 2013 and the Companies Act, 2014.

The Chamber had organized the ***4th Dastur's Essay Competition*** for the Students pursuing Law and Accountancy in their curriculum. Till today 155 registrations have been received from different parts of the country.

The Budget 2016-17 had come on 29-2-2016. If what one saw this time, is an indication of their progressive and reformist thinking, the Finance Minister and his team deserve the nation's

compliments for launching yet another major path breaking reforms initiative. The Chamber has come out with an e-book on the budget. I request you to download the same from www.ctconline.org.

For good team building I would like to share Seema Burman's article on "Anger – The Fire Brigade, Us and Them":-

"During a fire demo in our office, the fire officer informed us that water is not the all-purpose solution. Water can give a shock in an electrical fire, it turns a cooking-fire into a flaming ball, it causes fuel to scatter, spreading the flames in gas fires and it worsens metal fires. Only Class A fire of wood, paper, fabric is doused by water." Class B fire of oil, gas or flammable liquids is quenched by a dry chemical extinguisher and smothering. Class C fire of electricity cables is doused by disconnecting the main circuit and spraying a non-conductive extinguishing agent. Class D fire of metal is doused by a dry powdered extinguishing agent that absorbs heat. Class K fire of cooking oils is put off by specific extinguishers.

If we understand anger in Fire Brigade terms, one can draw the following conclusions:– A third person is needed to sprinkle water, smother our anger by talking to us, disconnect the main circuit by taking us away from the scene, using an extinguisher by giving a stern warning, removing oxygen supply by giving impartial judgment or wrap us in a blanket by cautioning about the consequences of anger. The method deployed depends on the nature of anger expressed or felt.

Krishna absorbed a hundred abuses of Shishupal before destroying him while Duryodhana was ready to kill anyone who dared to disobey him. Anger is like carrying a live bomb and hoping others die in its explosion. Krishna says, "Mind can be controlled by practice and detachment so elevate yourself through the power of your mind and not degrade yourself, for the mind can be both friend and enemy of the self." (Gita 6.5)

Acharyas who studied the mind through austerities gave two schools of thoughts to elevate the mind. One is through acquiring wisdom and the other is by cultivating devotion. Adi Shankaracharya talked of the importance of gyaan or wisdom-knowledge: "Brahma Satyam Jagan Mithya/Jivo Brahmavia Na Aparah"-"Brahma alone is real, the world is unreal, jiva or individual soul is non-different from Brahma." One who understands that all in unreal will remain calm no matter what. Later Acharya's followers explained the dvaita philosophy to make it simpler. "That the universe is real and belongs to God. All living creatures originate from God but are separated by Him. Through Bhakti one can unite with Him again. By believing that the universe belongs to God, one is constantly connected to its real owner, the supreme and elevates the mind by calmly accepting sufferings and pleasures as His prasada."

I would like to end my communication with this beautiful thought

An imbalanced mind unleashes its uncontrolled thoughts all around and creates arguments, lies, attacks, revenge and hatred. A cunning mind pretends of hatred and attachment and unleashes harmful "bacteria" everywhere. A trained mind dwelling on the reality of this universe, rests assures that it should accept all, love all.

Swami Vivekananda tried to bridge "them and us" when he said, "Let the Vedas, the Quran, the Puranas and all scriptural lumber rest now for some time. Let there be worship of a visible God of Love and Compassion in the country. All idea of separation is bondage and that of non-differentiation is Mukti. Teach only the universal side of religion.

Jai Hind

With Personal Regards

Place : Mumbai
Date : 29-2-2016

Avinash Lalwani
President

Chairman's Communication

Dear Readers,

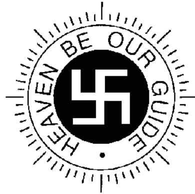
The Budget expectation is an exciting topic for discussion particularly in the last week of February for every professional, economist and businessman. The expectations of taxpayer are generally divided over what kind of Budget they want. Most tax payers want a balanced budget that broadens the tax net without raising taxes while some are looking forward to a growth Budget while others want a taxpayer friendly Budget.

The Hon'ble Finance Minister, Mr. Arun Jaitley presented his third Union Budget and his one of the longest Budget in the recent past. There are more than 200 amendments proposed in direct and indirect taxes. The Finance Minister maintains his promise of not introducing any retrospective amendments.

The Budget provides measures for additional resources mobilization, widening tax base, anti-abuse, phasing out of deductions, ease of doing business and dispute resolution. It also introduces various rationalisation measures concerning TDS, penalties, assessment procedures, etc. On the indirect tax front, the Budget proposes amendments in Finance, Banking and Insurance sector. It provides for measures to boost construction sector and promote affordable housing. It also aims at incentivizing domestic value addition under the 'Make in India' initiative. The Finance Minister, surprisingly, in his budget speech has not uttered a single word on GST.

The special story for this month deals with the various aspects of the proposals made in the Finance Bill for direct and indirect taxes at length. I thank the editor of Journal Mr. K. Gopal, immediate Past President Mr. Paras K. Savla and Vice President Mr. Hitesh Shah for giving their valuable inputs in designing the special story for this issue. I am thankful to all the authors for their valuable contribution on the respective topics allotted to them and for providing detailed analysis in a week's time immediately after the presentation of Budget.

CA Haresh Kenia
Chairman – Journal Committee



The Chamber of Tax Consultants

Vision Statement

The Chamber of Tax Consultants (The Chamber) shall be a powerhouse of knowledge in the field of fiscal laws in the global economy.

The Chamber shall contribute to the development of law and the profession through research, analysis and dissemination of knowledge.

The Chamber shall be a voice which is heard and recognised by all Government and Regulatory agencies through effective representations.

The Chamber shall be pre–eminent in laying down and upholding, among the professionals, the tradition of excellence in service, principled conduct and social responsibility.

CA Jayant Gokhale

Overview of the Finance Bill 2016 A Jekyll and Hyde Finance Bill

A commendable Budget on the right track

The Budget presented on 29th February 2016, has been followed by a continuous increase in the stock market indices – which would indicate that the budget is considered positive and favourable. Indeed, if one looks at the overall economic scenario and the budget presented by Shri Arun Jaitley, one would have to say that the Budget is indeed commendable. Its main merit is that it prudently sticks to the basics of focusing on economic growth with a statesmanlike long-term vision. It is well conceptualised, having a clear rationale and prioritisation and seeks to address the core areas which are of priority to the Government (as listed out in paragraph 13 of the Finance Minister's (FM's) Budget speech.

The Finance Bill 2016 – Excellent reforms marred by overreach

The large hearted compliment for the Budget (which deals with numerous economic issues apart from taxes) does not however hold equally good for the Finance Bill 2016 (with the tax proposals of the FM). There are numerous excellent changes that are proposed in the tax laws. Indeed the FM has presented a Finance Bill which contains more changes in the existing tax laws than any other Finance Bill in recent history. And yet in making such sweeping changes, the FM deserves credit for not abandoning or conveniently ignoring some of the guiding principles that he himself had enunciated in the preceding year. Thus the Finance Bill has many positive features such as :

- Scrupulously refrains from retrospectivity in creating tax obligation (except for one glaring and ill thought out provision which I will mention later),
- Does not increase corporate tax rates - although the promise to gradually reduce the rates of taxes is adhered to more in letter rather than in spirit,
- Makes a genuine attempt, however limited and feeble it may be; to introduce some form of accountability and
- Brings some much needed restraint and rationale to the process of arbitrary tax demands, enforced on the hapless assessee as if there was no tomorrow.

The numerous positive aspects of the Finance Bill are however marred by some extremely negative and obnoxious provisions. It is important to note that most of these will not come to the notice of the common taxpayer at the moment. This has led to the initiate feel-good factor. However, these changes will have a significant negative impact in the years to come (if indeed these changes are given effect to). It is this feature of the Finance Bill that reminded me of the well-known story of Dr. Jekyll[1] and Mr. Hyde. The provisions of the Finance Bill that prompt me to say so could very well have been entirely avoided as they are not central to the tax reforms that the FM is bringing in. And yet the FM has erred in trying to do too much in the space of too little time. In the process, has negated the very objective of reduction of litigation that he is seeking to achieve.

1 Written by Robert Louis Stevenson - in which he deals with the split personality of a very well-meaning cultured and educated Dr. Jekyll who occasionally succumbs to the darker side of his personality and transforms into a vile and murderous creature who cares little about the consequences of his actions.

More importantly, for the avowed objective of simplification and reduction of litigation, the FM has sacrificed well-settled rules of equity and upset a whole lot of established precedents. I do not for a moment question the very honourable objectives which are evidenced by the numerous positive steps taken. The FM may however pay heed to the quote that "the pathway to hell is paved with good intentions". The intentions of the Government will not matter if the legacy that they leave behind in terms of tax laws is a plethora of complex provisions and rules, a spate of litigation and a sense of injustice to the honest taxpayer.

It would be very simple to blame the bureaucracy for this overreach. However, from a FM who is an accomplished and experienced lawyer, one is surely justified in expecting more. Therefore, I am left with the uneasy feeling that while the intention of Mr. Jaitley as Dr. Jekyll has led to the numerous positive aspects of Finance Bill, somewhere along the line his ambition of doing much more has given rise to the Mr. Hyde in him and let him to propose changes in areas that were best left untouched.

The numerous positive features

As mentioned earlier, one must recognise that the FM's job of raising revenues is never easy. The external and overall economic environment does not make the job easier. It is extremely easy to succumb to the temptation of playing to the gallery (by introducing gimmicky tax reforms - which have a net negative impact) or to accommodate political compulsions. It is to the FM's credit, that he has in the last Budget charted a course that he intends to steer, and he has largely stuck to that approach. More importantly, in doing so he has continued to stay within the permissible fiscal deficit norms. This by itself inspires confidence in the international investing community that he means business. Recognising the importance of facilitating operations in India the FM has

- Deferred the applicability of the complex provisions relating to Place Of Effective Management (POEM) by one year.
- Granted genuine pass through status to Real Estate Investment Trusts REITs
- Facilitated management of offshore trusts from India and facilitated International Financial Services Centre IFSCs by granting certain tax concessions which will encourage their operation from locations in India.

These and other provisions will boost the confidence of the investor community and FIIs and have been dealt with in an article 'Proposals Aimed At Facilitating Business In India'.

Numerous other positives that can be mentioned are:

- Rationalisation in regard to deductions from house property income,
- Allowing deduction of interest on loans for acquisition of house property over a period of 5 years instead of 3 years
- Rationalisation of TDS provisions
- Despite some persons quibbling over introduction of TCS on purchase of vehicles, and cash purchases in excess of ` 2 lakh, one must recognise that from a revenue perspective, these proposals do have their own logic to support them.

Similarly, the proposal for the levy of tax on dividend in the hands of the recipient (who receives dividend in excess of ` 10 lakh), really does not pinch the common man and yet increases revenue collection quite painlessly. These must therefore be considered as a positive. In fact, I would look at this provision as a positive in a broader context, because I believe that the statements made by the FM would help to put to rest the controversy as to whether income by way of dividend is subject to the rigours of S.14A applicability. In my view, this can be the biggest dividend arising to taxpayers and corporates in all categories, because once it is accepted (as stated on the floor of the house by the FM), that dividend is a tax which though collected at the level of the dividend paying company, is essentially a tax on the dividend recipient, the question of applying S.14A would not survive .

Another major positive is the enhancement of presumptive taxation to professionals. I would believe that a large number of self-employed architects, lawyers, doctors and chartered accountants would prefer to get under the provisions of S. 44AD and thus contribute to enhanced revenue collection. That this would

happen painlessly is a big positive. Undoubtedly, there are some grey areas and also a downside in the fact that goodwill of a professional would also be subject to taxation. As a citizen however, leaving aside personal impact, I would still consider these provisions as a step in the right direction.

There are numerous other small but practical improvements that the FM has introduced in the space of so many clauses forming part of the Finance Bill. The various articles forming part of this issue analyse these in detail and therefore I will not elaborate on them any further. Before looking at the negative features, I must say that the positive features are responsive to grievances expressed in the past, are well thought out and will certainly enhance the reputation of the Government in showing that they intend to deliver what they promise.

Provisions that detract from a positive Finance Bill

Penalty – Section 270 A

I must appreciate that the positive features mentioned above do indicate the FM is keen to deliver on his promise to reform the tax system, making it less litigation prone and more taxpayer friendly. For the common man the objective may appear to have been met. The sting however lies largely in the tail. One of the most well-intended but probably needless change is the substitution of the penalty provisions contained in S.271 with the newly introduced S. 270A. The biggest adverse fallout of this change will be that due to the change in the section itself, coupled with changes in some of the fundamental concepts will fuel enormous amount of fresh litigation. The criticisms in regard to this section stem from the fact that the approach is to try and reduce discretion and introduce greater level of transparency. However, in trying to do so, the concept of **reasonable cause** and **equity** have been largely given the go by. Thus a straitjacket formula to try and fit all situations of additions into two newly coined phrases i.e. *'under reported income'* and *'misreported income'* will give rise to numerous issues of interpretation. Thus while theoretically discretion will be reduced, the uncertainty factor which is equally bad for a taxing statute; will increase significantly, at least in the short run. This is because, whatever be the deficiencies in the earlier drafting, a whole body of judicial precedents had evolved over the years to identify with a fair degree of clarity the situations in which an assessee had 'concealed income' or what could be understood by the phrase "furnished inaccurate particulars of income". Similarly what constituted a 'reasonable cause' had by and large evolved into a settled concept. All these concepts will now be set to naught. Apart from facing a challenge as to whether such a penalty can be considered automatic, the Department in dealing with tax evaders will also have to meet the challenge of what constitutes 'an explanation which is *bona fide*' and what constitutes disclosure of all material facts relevant to the explanation. The very same Government had rightly taken the decision not to pursue the change suggested by the Direct Tax Code, because (amongst many other reasons), it was felt, unsettling decided precedents without really changing the structure of tax and the revenue collected, was not desirable. One hopes that when similar representations are made, the Finance Ministry would have the sagacity to accept that this remedy is possibly worse than the disease that they seek to cure. It must be recognised that the proper way to curb thoughtless and arbitrary levy of penalties, is to enhance accountability rather than to do away with all discretion; which in other words penalises an innocent defaulter as harshly as a determined tax evader.

Chapter XII-EB – Charitable trusts

Another major area of negative which has not been widely appreciated is in the area of taxation of charitable trusts. The article in this regard by my colleague CA Anil Sathe is extremely restrained in dwelling on these adverse features. Apart from being grossly inequitable, the proposals contained in clause 60 - provisions of Chapter XII -EB (going from S. 115 TD to 115 TF) violate a basic assurance given by the FM time and again i.e. to do away with retrospective taxation. In the article contained in this issue CA Anil Sathe mentions that these provisions 'may result in taxation of income which has legitimately enjoyed exemption in earlier years'. The very concept of 'accreted income' implies that what is being brought to tax

is not just the income of the respective year but the income of past years. If this is not retrospective taxation – one wonders what it is? The irony is that these draconian provisions would apply even if the 'accreted income' was legitimately tax free in the years in which it arose but would now be brought to tax.

Further, the proposed provisions make no distinction between cancellation of registration for a trust which violates its original conditions of grant of registration and a trust which continues to do what it has always done – but the definition of charitable purpose has been subsequently amended to render what was always considered charitable up to the beginning of this decade; is rendered "non-charitable" by virtue of changes in the law now effected. Therefore, there has been a spate of cancellation of registrations granted to charitable bodies on account of the wide exclusionary provision of 'any act rendering service in relation to trade, commerce or business'. One will have to take note that tax is to be levied on such an entity not due to any fault of its own, but because the concept of what is charitable purpose has been amended by the lawmakers. This is a classic case, not just of shifting the goalposts, but shifting them retrospectively. Further this would bring to tax the fair market value arising from assets that were legitimately acquired from exempt income. When multinationals are impacted in such a retrospective manner, there is a hue and cry about the confidence in the Indian tax system being shaken. Unfortunately, NGOs and trusts do not enjoy the sort of clout and do not possess the sort of media presence that multinationals are able to garner. Therefore unless there is proper awareness of the ill-effects of this chapter, it is the disadvantaged beneficiaries of these charitable organisations who will have to silently bear the impact of these changes. In fact the manner in which a recovery of tax is to be done within 14 days (even without decision in first appeal) is nothing short of draconian. No thought has apparently been given to the total mismatch between liquidity and assets that may arise. Further, a provision that would deter anybody from even buying such assets from such an entity is included by stating that apart from the principal officer and trustees, the transferee of such assets would also be liable in regard to the tax payable by such entity. It is such provisions that brings to mind the images of a perverse Mr. Hyde and to a great extent obscures the good that has been done in the Finance Bill.

Dispute resolution schemes

To a lesser extent, I would consider the Dispute Resolution Scheme in the manner as it is presented today to be also one of the negatives. The chief demerit of this is its limited applicability (matters pending before CIT (Appeals) only; and the terms of compliance. One would appreciate that the Finance Ministry has its own limitations on what it can offer in order to settle litigation. The manner in which the scheme is framed would however appear to make it a practical non-starter. Therefore one wonders whether a scheme which such limited scope should be brought in at all, given the fact that this will now generate a whole new series of controversies, clarifications and procedures and the net revenue gain or impact for all these efforts may prove to be marginal.

Conclusion

As I mentioned at the outset, clearly the number of positives are far in excess of the negative features of the Finance Bill. It is only the sweeping and pervasive nature of the negatives that is a cause for concern. Perhaps, my own view is prejudiced for the fact that I hold the Finance Minister in high esteem, considering him a man of considerable legal, administrative and political acumen. My expectations from such a Finance Minister are therefore indeed high. It is the few negative features that I mentioned that therefore dampened my reaction to the Finance Bill. It is however not too late. The Finance Minister, on realising the political turmoil caused by the provident fund related clauses, showed political adroitnes in withdrawing these clauses before they snowballed into a much larger controversy. One can only hope that similar wisdom would prevail and at least the clauses relating to penalty and charitable trusts would be withdrawn before the Finance Bill is enacted into law.

CA Usha Kadam

Rates of Taxes

The budget is likely to embark upon a new journey towards achieving a simplified and certain tax regime by bringing in a moderate tax rate accompanied with the phasing out of tax incentives. The Budget contains a number of tax proposals for providing relief to small taxpayers, measures to boost growth and employment generation, incentivising domestic value addition, etc. On personal tax front an unpleasant surprise was the move to impose tax @ 10% on dividend income for certain taxpayers earning more than ` 10 lakhs from dividends on shares (which were hitherto tax free due to the companies having already borne the dividend distribution tax).

A. Rates of Income tax in respect of income liable to tax for the Assessment Year 2017-18

1. Tax rate for Individual, HUF, AOP/BOI

In respect of income of all categories of assessees liable to tax for the Assessment Year 2016-17, the rates of income tax have been specified in Part-I of the First Schedule to the Bill. These are the same as those laid down in Part-III of the First Schedule to the Finance (No. 2) Act, 2015 for the purposes of computation of "Advance tax", deduction of tax at source from "Salaries and charging of tax payable in certain cases".

There has been no change in the Rates of Tax in case of individual, HUF, AOP/BOI, Firms etc. for A.Y. 2017-18. Hence the detailed summary is not provided herewith.

2. The rates of taxes for Corporate is as under:

Sr. No.		Types of assessee	Income tax Rate
1.	**Domestic Company**		
	i)	Where its turnover or gross receipts in the previous year 2014-15 does not exceed Rupees Five Crores	29%
	ii)	Other than (i) above	30%
2.	**Companies other than Domestic Company**		
	i)	On the Income consisting of A Royalties received in pursuance of an Agreement entered after 31.03.1961 but before 1-4-1976	50%

Sr. No.		Types of assessee	Income tax Rate
		B Fees for technical services received in pursuance of an agreement entered after 29.02.1964 but before 01.04.1976	50%
	ii)	On the balance income	40%

Note: *Hon'ble Finance Minister on 8th March, 2016, has announced on the floor of the Parliament that the provisions pertaining to taxing EPF are withdrawn.*

3. Lower tax rate for newly set-up domestic (manufacturing) companies

A new Section 115BA is proposed to be inserted w.e.f A.Y. 2017-18 which provides for an option to the newly set-up domestic (manufacturing) companies set up and registered on or after 1-3-2016 to pay income tax on their Total Income at the rate of 25% provided certain conditions as specified in section 115BA (2) are satisfied.

The option is required to be exercised on or before the due date specified u/s. 139(1) of the Income-tax Act for furnishing return of Income.

4. Surcharge

Surcharge has been levied/increased as mentioned below:

Total Income	Individuals, HUFs, AOP, BOI,		Co-op. Societies, Firms & Local auhtority		Domestic Companies		Foreign Companies	
	A.Y. 2016-17	A.Y. 2017-18	A.Y. 2016-17	A.Y. 2017-18	A.Y. 2016-17	A.Y. 2017-18	A.Y. 2016-17	A.Y. 2017-18
Upto ` 1 crore	NIL	NIL	NIL	NIL	NIL	NIL	NIL	NIL
Above ` 1 crore and upto ` 10 crore	12%	15%	12%	12%	7%	7%	2%	2%
Above ` 10 crore	12%	15%	12%	12%	12%	12%	5%	5%

The marginal relief is continued to be granted in appropriate cases where the total income exceeds ` 1 crore or ` 10 crore as the case may be.

5. Surcharge for sections 115JB, 115JC, 115O, 115QA, 115R, 115TA or 115TD

In case of section 115JB and 115JC surcharge shall be applicable at the rate of 7% or 12% depending upon the total income. In all other above cases surcharge shall be applicable at the rate of 12%.

6. Education Cess

The additional surcharge called Education Cess and Secondary & Higher Education Cess remains unaltered.

7. There has been changes in either Rates for deduction of tax at source or the threshold limits u/ss. 192A, 194BB, 194C, 194D, 194DA, 194EE, 194G, 194H, 194I, 194LA, 194LBB, and TDS is to be deducted as per the rates specified in those section or rates in force but subject to rates provided in Part II of the First Schedule which *inter alia* provides the

rates of deduction of tax at source for the Non Resident assessee governed by sections 115A to 115F, which have remained unchanged. The provisions have been discussed in detail in the subsequent chapter.

8. Tax on Dividend received from domestic companies

Under Section 115O dividends are taxed only at the rate of 15% at the time of distribution in the hands of the company declaring dividend. Thus the tax-payers who have high dividend income are subjected to tax at the rate of 15% whereas such income in their hands would have been chargeable to tax at the rate of 30% (for Individual or HUF where total income is above ` 10 lakh or in case of firm).

With a view to rationalize the tax treatment, a new Section 115BBDA has been proposed to be inserted w.e.f. A.Y. 2017-18 which is applicable for individual, HUF or firm who is resident in India. Any income by way of dividend declared, distributed or paid by domestic companies, in excess of ` 10 lakh shall be chargeable to tax at the rate of 10%. Deemed dividend is not covered under the provisions of this section. No deduction of any expenditure or allowance or set-off of loss will be allowed to be claimed against such dividend income.

Section 10(34) has also been amended so as to provide that any dividend income covered u/s. 115BBDA shall not be exempt from tax.

9. Buy-Back of shares

Section 115QA provides for levy of income-tax at 20% on the distributed income on account of buy-back of shares of unlisted company in accordance with the provisions of Section 77A of the Companies Act 1956.

It is now proposed to amend Sec 115QA so that the provisions of this section shall apply to any buy-back of unlisted shares undertaken by the company as per any law for the time being in force relating to the companies. It is further proposed to provide that for the purpose of computing distributed income, the amount received by the Company in respect of shares bought back shall be determined in the prescribed manner. The rules would thereafter be framed to provide for manner of determination of the amount in various circumstances including shares being issued by the company in tranches, for different consideration, at different point of time or may have been issued in lieu of existing shares of another company under amalgamation, merger or demerger.

This amendment will take effect from 1-6-2016.

10. Installments of advance tax

Section 211 is proposed to be amended to seek advance tax payment from non-corporates in four quarterly installments similar to corporate tax payers.

An eligible assessee in respect of eligible business referred to in Section 44AD opting for computation of profits or gains of business on presumptive basis shall be required to pay advance tax of the whole amount in one installment on or before 15th March of the financial year.

No such provision has been proposed for eligible professionals covered under presumptive taxation u/s. 44ADA.

This amendment will take effect from 1-6-2016.

11. Securities Transaction Tax (Section 98 of the Finance (No. 2) Act, 2004.

The Securities transaction tax on sale of an option in securities where option is not exercised has been increased from 0.017% to 0.05% of the option premium.

CA Rajesh L. Shah

Equalisation Levy

1. Introduction

1.1 In modern era and in digital world, there is huge increase in transaction done through internet/digital domain and the business is not carried out through any physical location. Certain transactions were not taxed since there was no physical presence in India and at the same time they were carrying on huge business with/in India with the help of digital world. This posed the challenge of taxing the transaction carried out through digital world or in other popular parlance ecommerce transactions. In order to tax the transaction carried out through internet/ digital domain, Hon'ble Finance Minister has proposed a new levy called the Equalisation Levy for the procurement of certain services. FM has introduced the levy in line with BEPS (Base Erosion and Profit Sharing) project under Action Plan 1 of OECD (Organization for Economic Co-operation and Development).

1.2 Memorandum to Finance Bill 2016 giving the reasons for introducing the levy stated that

Currently in the digital domain, business may be conducted without regard to national boundaries and may dissolve the link between an income-producing activity and a specific location. From a certain perspective, business in digital domain doesn't seem to occur in any physical location but instead takes place in the nebulous world of "cyberspace." Persons carrying business in digital domain could be located anywhere in the world. Entrepreneurs across the world have been quick to evolve their business to take advantage of these changes. It has also made it possible for the businesses to conduct themselves in ways that did not exist earlier, and has given rise to new business models that rely more on digital and telecommunication network, do not require physical presence, and derives substantial value from data collected and transmitted from such networks.

These new business models have created new tax challenges. The typical direct tax issues relating to e-commerce are the difficulties of characterising the nature of payment and establishing a nexus or link between a taxable transaction, activity and a taxing jurisdiction, the difficulty of locating the transaction, activity and identifying the taxpayer for income tax purposes. The digital business fundamentally challenges physical presence-based permanent establishment rules. If permanent establishment (PE) principles are to remain effective in the new economy, the fundamental PE components developed for the old economy i.e. place of business, location, and permanency must be reconciled with the new digital reality.

1.3 Memorandum in explicit words explains the reasons for introducing the levy so that India does not loose on taxes on the transactions which are sourced/ generated from India. Levy is as per recommendation of Action Plan 1 of BEPS project.

1.4 BEPS project has recommended the following:

BEPS has initiated the project in 2013 on various aspects to prevent the gaps and mismatches that made the profits "disappear" for tax purpose or

allow the shifting of profits to no or low-tax locations where the business has little or no activity. This was mainly due to tax rules which have not changed with the changes in the way the business is carried on. OECD and G20 Governments embarked on the most significant re-write of the international tax rules in a century. Countries recognised the need to prevent the unravelling of the existing consensus-based framework and planned accordingly to ensure that globalisation did not lead to decreased international co-operation and uncoordinated unilateral actions in the tax sphere which would multiply uncertainty and unpredictability.

The Action Plan on BEPS (OECD, 2013) identified 15 actions along three fundamental pillars: introducing coherence in the domestic rules that affect cross-border activities, reinforcing substance requirements in the existing international standards and improving transparency, as well as certainty for businesses that do not take aggressive positions. One of the action plan i.e. Action Plan 1 is on "Addressing the Tax Challenges of the Digital Economy".

The Task Force on Digital Economy which was formed in September 2013 discussed the report on "Electronic Commerce: Taxation Framework Conditions" setting out the taxation principles that should apply to electronic commerce which are discussed in brief hereunder:

i. **Neutrality:** Taxation should seek to be neutral and equitable between forms and electronic commerce between conventional and electronic forms of commerce. Business decisions should be motivated by economic rather than tax considerations. Taxpayers in similar situations carrying out similar transactions should be subject to similar views of taxation.

ii. **Efficiency:** Compliance costs for taxpayers and administrative costs for the tax authorities should be minimised as far as possible.

iii. **Certainty and Simplicity:** The tax rules should be clear and simple to understand so that taxpayers can anticipate the tax consequences in advance of a transaction, including knowing when, where and how the tax is to be accounted.

iv. **Effectiveness and Fairness:** Taxation should produce the right amount of tax at the right time. The potential for tax evasion and avoidance should be minimised while keeping counteracting measures proportionate to the risks involved.

v. **Flexibility:** The systems for taxation should be flexible and dynamic to ensure that they keep pace with technological and commercial developments.

To address the broader direct tax challenges of the digital economy, the **following three tax change options were suggested:**

1. **A corporate income tax on the net income** generated from remote sales of digital goods and services to in-country customers by a foreign producer without a PE to which such income is attributed under current law.

2. **An Equalisation Levy** ("excise tax") imposed on the remote sales of digital goods and services to in-country customers by the same providers and

3. **A withholding tax** on the gross receipts from the remote sale of digital goods and services to in-country customers by the same providers.

Finance Minister in the Finance Bill 2016 has introduced new Chapter VIII called an Equalisation Levy and has by large adopted the second suggestion of the BEPS report on Action Plan 1.

Now let us understand what the provisions of the Equalisation Levy are.

2. Chapter VIII (Equalisation Levy) of Finance Bill 2016

Finance Bill, 2016 seeks to insert new Chapter VIII dealing with levy, collection and recovery of "Equalisation levy" and is not a part of Income

Tax Act. Clause 160 to 177 forms part of new Chapter VIII.

3. Applicability of Chapter VIII

Clause 160 states that Equalisation Levy extends to whole of India except to the State of Jammu and Kashmir and shall come into force from the date of issue of notification by the Central Government.

4. Definition of various terms

4.1 Equalisation Levy is defined under clause 161(d) to mean "the tax leviable on consideration received or receivable for any specified service under the provisions of this Chapter". It means even if the payment is not made but provision is made in the books, equalisation levy will be applicable.

4.2 "Specified Services" is defined in clause 161(i) to mean "online advertisement, any provision for digital advertising space or any other facility or service for the purpose of online advertisement and includes any other service as may be notified by the Central Government in this behalf".

4.3 As defined, Equalisation Levy is applicable to online advertisement or any provision for digital advertising space. It covers all the online advertisement made by the Indian company on various sites like Google, Yahoo, etc. and the payment is made to an overseas company which does not have any presence or permanent establishment in India.

4.4 Online is defined under clause 161(f) to mean a facility or service or right or benefit or access that is obtained through the internet or any other form of digital or telecommunication network.

Now let us understand the meaning of online advertisement

\As per Wikipedia, **online advertising** is also called **online marketing** or **Internet advertising** or **web advertising**, is a form of marketing and advertising which uses the Internet to deliver promotional marketing messages to consumers. It includes e-mail marketing, search engine marketing (SEM), social media marketing, many types of display advertising (including web banner advertising), and mobile advertising.

4.5 Business Dictionary.Com defines online Advertising as "Use of internet as an advertising medium where promotional messages appear on computer screen".

4.6 Techopedia defines online advertising as a marketing strategy that involves the use of the Internet as a medium to obtain website traffic and target and deliver marketing messages to the right customers. Online advertising is geared toward defining markets through unique and useful applications.

From the above definition, it means that Equalisation Levy is applicable to all online marketing, internet advertising, web advertising, email marketing, mobile advertising. It seems that this may not be the intention. To avoid confusion, Government should come out with a circular/FAQ and clarify the meaning of online advertising and specified services.

4.7 Clause 161 also defines other terms such as Appellate Tribunal, Assessing Officer, Board, Income Tax Act, permanent establishment and prescribed. The clause also specifies that the word and expression used but not defined in this Chapter and defined in the Income-tax Act, or the Rules made thereunder, shall have the meanings respectively assigned to them in that Act.

5. Chargeability of Equalisation Levy

5.1 Clause 162 levies a charge of equalisation levy at the rate of 6% of the amount of consideration for any specified services received or receivable by a person being a non-resident form a person resident of India and carrying on business or profession or a non-resident having a permanent establishment in India.

5.2 Clause 162 also specifies that the equalisation policy shall not be charged in the following circumstances:

(i) Non-resident providing the specified services has a permanent establishment in India and the specified services is connected with the permanent establishment or

(ii) The aggregate amount payable by a person resident in India and carrying on business or profession or from a non-resident having a permanent establishment in India does not exceed ` 1 lakh or

(iii) Payment by the person resident in India or the permanent establishment in India for specified services is not for the purpose of carrying out business or profession.

5.3 Equalisation Levy is on a person non-resident in India. Here the chapter covers payment made to non-resident person and since there is no specific definition it will include Individual, LLC, LLP, Private limited companies, public limited companies, etc.

5.4 Equalisation Levy is levied where the non-resident receives from a person resident in India who is carrying on business or profession. It implies that if an individual carries out transactions online in the nature of specified services for personal use then there will be no equalisation levy.

5.5 Further even if the person resident in India is carrying on business or profession in India or a non-resident having permanent establishment in India and the aggregate payment during the year does not exceed ` 1,00,000/-, then there will be no Equalisation Levy.

5.6 Here it is not clear whether equalisation levy will be applicable to Overseas Branch of the Indian company or Bank and are making payment online for specified services and used outside India. It may be noted here that overseas branch of an Indian company is treated as resident in India.

6. Collection and recovery of equalisation levy

6.1 Clause 163 states that every person, being a resident in India or a permanent establishment of non-resident shall deduct the equalisation levy from the amount payable to non-resident in respect of the specified services at the rate of 6% if the aggregate amount exceeds ` 1 lakh.

6.2 Clause 163 further provides that the levy so deducted shall be paid to the Central Government within 7 days from the end of the month in which levy was deducted.

6.3 Clause 163 clarifies that if levy is not deducted, then the assessee will be liable to pay the levy at the rate of 6% to the credit of Central Government.

6.4 Under this clause, an assessee has to deduct equalisation levy of 6% and pay to the Government within 7 days from the end of the month in which levy was deducted. Further if the assessee fails to deduct the levy, then he will be liable to pay the levy himself.

6.5 In a case where assessee does not deduct equalisation levy of 6%, then assessee will be liable to pay the levy. Here a view can be taken if the assessee has borne the levy himself then equalisation levy will not be on the basis of grossing up since there is no provision similar to Section 195A of the Income tax Act, 1961.

6.6 When the assessee bears the tax himself, the question arises whether he will get the deduction of the levy from Income tax. Equalisation levy is a separate levy under Chapter VIII of the Finance Bill (Act after it is passed) and is not a part of Income Tax. This is similar to Service tax which is a separate tax under Chapter V of Finance Act and the deduction of payment of service tax is available. Accordingly, assessee should be able to get deduction of equalisation levy from Income Tax, if he is bearing the same.

6.7 One more issue that arises is that whether DTAA benefit will be available to non- resident where the person resident in India or the permanent establishment in India deducts the equalisation levy. In this respect we will have to refer to respective DTAA which India has signed with respective countries. In most of the treaties, Article 2 relating to taxes covered includes Income Tax (including surcharge tax thereon). Equalisation Levy is under separate chapter of the

Finance Bill and not part of the Income tax. Since the equalisation levy is not under Income tax, it will be difficult for the non-resident to claim credit in their home country.

7. Furnishing of statement

7.1 Clause 164 provides that every assessee shall at the end of each financial year submit a statement in such form, verified in such manner and setting forth such particulars as may be prescribed in respect of all the specified services during such financial year within time limit to be prescribed.

7.2 Clause 164 also provides that revised return can be filed within 2 years from the end of the financial year in which the specified services was provided.

7.3 If the assessee fails to submit such statement, then assessing officer may serve a notice upon such assessee requiring him to furnish the statement in the prescribed form, verified in the prescribed manner and setting forth such particulars, within such time as may be prescribed.

7.4 Assessee will have to submit full particulars of the specified services during such financial year within the prescribed time and form to be specified. The clause also makes provision for revised return and also if the assessee fails to submit the return then notice will be issued by the assessing officer. Here it is not clear whether all the assessees will have to file return where there is nil payment/provision or the payment/provision is less than ` 1 lakh of specified services. We will have to wait for the form to be released or clarification from the Government.

7.5 It is also not clear, how it will be regulated. Whether it will be PAN based or separate registration will be required like in Service Tax. Better option will be on PAN based since the all authority lies with Income Tax department.

8. Processing of Statement

8.1 Clause 165 provides that the statement submitted by the assessee shall be processed as follows:

(i) Equalisation levy shall be computed after making the adjustment for any arithmetical error in the statement.

(ii) The interest, if any, shall be computed on the basis of sum deductible as computed in the statement.

(iii) The sum payable by or the amount of refund due shall be determined.

(iv) Intimation shall be prepared or generated and sent to the assessee specifying the sum to be payable or refund due.

(v) If any refund is due, then it shall be granted to the assessee.

8.2 No intimation shall be sent after the expiry of one year from the end of the financial year in which the statement is furnished.

8.3 The Board may make a scheme for centralised processing of such statements to expeditiously determine the tax payable or refund due.

8.4 This clause provides for intimation to be issued similar to Section 143(1) of the Income tax Act. However here it may be noted that under this clause it is provided that intimation cannot be issued after the expiry of one year from the end of the financial year in which statement is furnished. Here the issue that arises is that if the refund is due to assessee and no intimation is sent within the time limit then whether assessee will be deprived of the refund.

9. Rectification of mistake

9.1 Clause 166 provides for rectification of mistake apparent from the record by the Assessing Officer either *suo moto* or any mistake brought to his notice by the assessee, within one year from the end of the financial year in which the intimation sought to be amended was issued.

9.2 An amendment to the intimation which increases the liability or reduces the refund shall not be made unless the assessee is given a reasonable opportunity of being heard.

9.3 Where any such amendment to any intimation has the effect of enhancing the sum payable or reducing a refund AO shall make an order specifying the sum payable or reducing the refund and the provisions of this chapter accordingly.

10. Interest on delayed payment of Equalisation Levy

Under Clause 167, every assessee who fails to pay the equalisation levy to the Central Government shall have to pay simple interest at the rate of 1% of such levy for every month or part of month for the delayed period.

11. Penalty for failure to deduct or pay Equalisation Levy

11.1 Clause 168 provides that if the assessee fails to deduct the whole or any part of the equalisation levy, then in addition to levy and interest assessee will be liable to pay by way of penalty a sum equal to equalisation levy.

11.2 Clause 168 further provides that an assessee who has deducted the equalisation levy and failed to pay to the Central Government within the time limit then in addition to levy and interest, assessee will be liable to pay by way of penalty a sum of ` 1000/- for every day during which the failure continues which will not exceed the amount of equalisation levy.

11.3 The penalty provisions are harsh since the assessee who has deducted the equalisation levy and not paid to the Central Government will have to pay interest and also penalty which is ` 1000/- per day. Even one day delay of payment will attract penalty apart from interest.

11.4 In clause 168, penalty will be levied where the assessee fails to deduct the whole or any part of the equalisation levy. However, it does not cover the situation where the assessee has not deducted the levy but paid the same under clause 163(3) and borne the same. From the wording it seems that penalty can still be levied even if the levy is paid to the Government in time. The Government should clarify on this aspect.

12. Penalty for failure to furnish statement

Under clause 169, an assessee fails to furnish statement within the prescribed time limit will have to pay penalty of ` 100/- per day.

13. Penalty not to be imposed in certain cases

Under clause 170, no penalty will be imposed under clause 168 or 169 unless the assessee has been given a reasonable opportunity of being heard and the assessee proves to the Assessing Officer that there was a reasonable cause for such failure.

14. Appeals

14.1 Clause 171 provides for appeal to the Commissioner of Income Tax (Appeals) within 30 days from the date of receipt of the order of the Assessing officer and the provisions of section 249 to 251 of the Income Tax Act shall as far as may be apply to such appeal.

14.2 Clause 172 provides for appeal to Tribunal by the assessee or the Income Tax Officer on direction of Commissioner of Income tax within 60 days of the order to be appealed is received by the assessee or Commissioner of Income tax and the provisions of Sections 253 to 255 of the Income tax Act shall as far as may be apply to such appeal.

15. Punishment for false statement and Institution of prosecution

15.1 Clause 173 provides that if a person makes a false statement in any verification or delivers an account statement which is false, he shall be punishable with imprisonment for a term up to 3 years and with a fine. Further the offence shall be deemed to be non-cognizable within the meaning of Code of Criminal Procedure, 173.

15.2 Clause provides no prosecution shall be instituted except with the previous sanction of Chief Commissioner of Income Tax.

16. Applicable of certain provisions of Income Tax

Clause 175 provides that certain provision of the Income Tax Act will apply to Chapter VIII i.e. Equalisation levy viz. sections 120, 131, 133A, 138, 156, Chapter XV and Sections 220 to 227, 229, 232, 260A, 261, 262, 265 to 269, 278B, 280A, 280B, 280C, 280D, 282 and 288 to 293

17. Power to make rules

Clause 176 gives power to Central Government to make rules with respect to time within which and the form and the manner in which the statement will be delivered, the form in which the appeal may be filed and the manner in which it may be verified or any other matter which may be prescribed and will be laid before each House of Parliament.

18. Disallowance under section 40(a)(ib) of the Income tax Act

18.1 Clause 22 of Finance Bill 2016 proposes to introduce new section 40(a)(ib) which will disallow the expenses relating to specified service for failure to deduct equalisation levy under the provisions of Chapter VIII of the Finance Act, 2016 or if such levy has been deducted but has not been paid on or before the due date specified in sub- section (1) of section 139.

18.2 Clause 22 further provides that if equalisation levy is deducted in subsequent year or has deducted during the previous year but paid after the due date specified in sub-section (1) of section 139 then such sum will be allowable in the year of payment.

18.3 The issue that arises that if the equalisation levy is borne by the Indian party and paid to the Government in accordance with clause 163(3), then whether disallowance can still be attracted under the provisions of new section 40(a)(ib). The wording of the section suggest that disallowance can still be made since the deduction of equalisation levy has not been effected or has not been paid within due date. Government should clarify that if equalisation levy is borne by the Indian party and the same has been paid within due date, then no disallowance is attracted.

19. Exemption of Income Arising from Specified Services under Chapter VIII

19.1 New section 10(50) is proposed to be inserted to provide that any income arising from any specified service provided as per Chapter VIII of Finance Act, 2016 will be exempt.

19.2 The proposed new section 10(50) will be effective from the date the provisions of Chapter VIII of Finance Act, 2016 comes into force and chargeable to equalisation levy under Chapter VIII.

19.3 Since Chapter VIII is chargeable on gross basis and to avoid double taxation, Finance Bill provides exemption for any income arises from any specified service. However the method of calculation of exemption is not provided, since equalisation levy under Chapter VIII is on gross basis and Section 10(50) provides exemption any income arising from any specified services. If both Specified Services and other services are provided, it will be difficult to ascertain exempt income be ascertained. Finance Bill should provide for such eventualities.

Conclusion

Equalisation levy is in line with BEPS report of the OECD on Action Plan 1 (Addressing the Tax Challenges of the Digital Economy). This is a new chapter where the levy is on a gross basis irrespective of the profit earned by the non-resident. Certain clarifications as enumerated above are required for smooth implementation of the levy and hope Government clarifies the same before introducing the levy.

CA Mahendra Sanghvi & CA Hitesh R. Shah

Clauses related to Tax Deduction and Collection at Source

Tax deduction and collection at source mechanism is one of the means of tax collection whereby person responsible for payment of any specified sum to any person is required to deduct/ collect tax at source at the prescribed rate, if such payment/receipt exceeds the prescribed threshold limits. It gives hassle free stable source of revenue throughout the year, with least cost to the government while refraining people from avoiding taxes.

The scope of tax deducted at source (TDS) and tax collected at source (TCS) has expanded over the years to widen tax base with stringent, complex and tedious compliances resulting into more litigations. As a result, cost of compliance has increased enormously. At times it also leads to double taxation of income which is against the basic principles of Direct Tax Laws.

As one can witness there are several litigations w.r.t. differential tax rate applicable to different categories of transactions as well as on interpretation of TDS provisions.

Hence there is dire need to simplify and rationalise laws relating to TDS and TCS.

"As stated in the report of Tax Administration Reform committee led by Justice Easwar, that nearly 65% of the personal income tax collection in India being raised through TDS, the onerous task of which has been cast on tax deductors, the TDS provisions need to be made more friendly and not tedious as they have remained over the years.

It was also noted that 80% of the taxpayers in the individual or HUF comes under the bracket of an average tax rate of less than 5%. The committee stated that there was dire need for rationalisation of TDS rates, more particularly on account of lowering down of the average of tax."

Based on the recommendations, this Finance Bill proposes to increase threshold limits for TDS which are puny limits. One can just imagine the enormous work that goes into compliance of these provisions.

Unfortunately in spite of recommendations of committee, no efforts have been made to simplify the TDS and TCS provisions, as a result litigations will keep increasing. Clauses 70 to 77, 79 & 81 of the Finance Bill pertains to increase in threshold limits (except for Insurance Commission) in case of following TDS provisions:

Clause	Section	Nature Of Income/ Payment	Existing threshold limit/ rate of TDS	Proposed threshold limit/ rate of TDS
70	192A	Payment of accumulated balance due to an employee in Employees Provident Fund Scheme by trustees or authorized persons	` 30,000	` 50,000

Clause	Section	Nature Of Income/ Payment	Existing threshold limit/ rate of TDS	Proposed threshold limit/ rate of TDS
71	194BB	Winnings from horse race	` 5,000	` 10,000
72	194C	Payments to Contractors/ Sub-contractors	Aggregate annual limit - Rs.75,000	Aggregate annual limit - Rs. 1,00,000
73	194D	Insurance Commission	` 20,000	15,000
74	194DA	Payment in respect of life insurance policy	2%	1%
75	194EE	Payments in respect of deposits under National Savings Scheme, etc	20%	10%
76	194G	Commission, etc., on the sale of lottery tickets	` 1,000 10%	15,000 5%
77	194H	Commission or brokerage	` 5,000 10%	` 15,000 5%
79	194LA	Payment of compensation on acquisition of certain immovable property	` 2,00,000	` 2,50,000
81	194LBB	Any income other than the income distributed by Alternate Investment Fund to its unit holder in respect of units of Investment Funds	10%	Resident payee - 10% Non-resident Payee (not being Company) or a foreign company - rates in force

As stated above the proposed changes are minuscule for small tax payers. Also no announcement is made in regard to significant recommendations for reforms through administrative instructions which is mainly focused on ease of TDS compliance. Therefore the wearisome compliance procedures would continue to exist.

The said amendments will take effect from 1st June, 2016

1. Clause 78: Omission of Sections 194K & 194L

The bill seeks to omit

(i) Section 194K relating to deduction of Tax at Source @10% on Income in respect of units of Mutual Fund or of the Unit Trust of India exceeding ` 2500/- and

(ii) Section 194L relating to deduction of Tax at Source @10% on compensation/ consideration including enhanced compensation/ consideration on compulsory acquisition of any capital asset under any law for the time being in force exceeding ` 100,000/-

This omission will take effect from 1st June, 2016.

2. Clause 80: Amendment to Section 194LBA

The bill seeks to amend Section 194LBA relating to certain income from units of a business trust as stated in Section 10(23FC). Section is amended to give the reference to newly inserted sub-clause (a) of clause (23FC) of Section 10 in the said sub-sections i.e. interest received or receivable from a special purpose vehicle will be subject to the TDS provisions under this section, which is same as erstwhile Section 10(23FC).

The said amendment is consequential in nature and will take effect from 1st June, 2016.

3. Clause 82: Insertion of new Section 194LBC

The bill seeks to insert new Section 194LBC relating to Income in respect of investment in securitisation trust

It seeks to provide that any income payable to an resident investor, in respect of an investment in a securitisation trust specified in newly inserted Section 115TCA (vehicles set up as trusts and regulated by SEBI or RBI which invite investments from financial players typically Mutual Funds and Non-Banking Finance Companies into debt that banks and other financial institutions want to take off their balance sheets), the person responsible for making the payment shall deduct income-tax thereon,––

(i) **Twenty-five per cent,** if the payee is an individual or a Hindu Undivided Family;

(ii) **Thirty per cent,** if the payee is any other person;

(iii) At the rates in force in case of a non-resident (not being a company) or a foreign company

“Investor” means a person who is holder of any securitised debt instrument or securities issued by the securitisation trust.”

In order to rationalise the tax regime for securitisation trust and its investors, and to provide tax pass through treatment, it is proposed to amend the provisions of the Act by introducing Section 115TCA as a result above provision has been introduced.

This amendment will take effect from 1st June, 2016.

4. Clause 3(d): Amendment to Section 2

The clause seeks to amend Section 2(37A)(iii) in relation to definition 'of rates or rates in force' or 'rates in force'. It proposes to include the words "Section 194LBB or Section 194LBC or" after "Section 194LBA or".

5. Clause 83: Amendment to Section 197

The bill seeks to amend Section 197 relating to Certificate for deduction at lower rate.

Section 194LBB and newly Inserted section 194LBC are included in subsection (1) of the Section 197 for the purpose of certificate of deduction of tax at lower rate".

With this amendment payee who is in receipt of income in respect of units of investment funds and income in respect of investment in securitisation trust can approach tax officer for deduction of tax source at NIL or lower rate.

This amendment will take effect from 1st June, 2016.

6. Clause 84: Amendment to Section 197A

The bill seeks to amend Section 197A relating to no deduction to be made in certain cases

The provision of sub-section 194-I of the Act, inter alia, provides for tax deduction at source (TDS) for payments in the nature of rent beyond a threshold limit. The existing provisions provide threshold of ` 1,80,000 per financial year for deduction of tax under this section. In spite of providing higher threshold for deduction tax under this section, there may be cases where the tax payable on recipient's total income, including rental payments, will be nil. The existing provisions of section 197A of the Income-tax Act, *inter alia* provide that tax shall not be deducted, if the recipient of certain payments on which tax is deductible furnishes to the payer a self- declaration in prescribed Form. No. 15G/15H declaring that the tax on his estimated total income of the relevant previous year would be nil. In order to reduce compliance burden in such cases, it is proposed to amend the provisions of Section 197A for making the recipients of payments referred to in Section 194-I also eligible for filing self-declaration in Form no 15G/15H for non-deduction of tax at source in accordance with the provisions of Section 197A.

This amendment will take effect from 1st June, 2016.

7. Clause 86: Amendment to Section 206C

The Bill seeks to amend Section 206C relating to Profits and Gains from the Business of Trading in alcoholic liquor, forest produce, scrap, etc.

The existing provision of section 206C of the Act, *inter alia*, provides that the seller shall collect tax at source at specified rate from the buyer at the time of sale of specified items such as alcoholic liquor for human consumption, tendu leaves, scrap, mineral being coal or lignite or iron ore, bullion etc. in cash exceeding two lakh rupees.

In order to reduce the quantum of cash transaction in sale of any goods and services, to keep trial of cash transaction and for curbing the flow of unaccounted money in the trading system and to bring high value transactions within the tax net, it is proposed to amend the aforesaid section to provide:

The seller shall collect tax at rate of one per cent

(i) Section 206C(1) : on the sale of motor vehicle of the value exceeding ten lakh rupees at the time of receipt of such amount or debiting the amount payable by buyer

(ii) Section 206C (1D) clause (iii) On any amount received in cash as consideration for sale of any goods other than bullion and jewellery, or providing any service in cash exceeding two lakh rupees.

Provided that no tax is to be collected at source on any amount on which tax has been deducted by the payer under Chapter XVII-B of the Act.

It is also proposed to insert 206C (1E) relating to TCS in relation to sale of any goods (other than bullion and jewellery) or services shall not apply to certain class of buyers who fulfil such conditions as may be prescribed (to be notified). *The budget speech of Hon'ble Finance Minister also has a mention that Farmers and notified class of persons will have an option of giving form by which TCS will not be charged.*

As per the clause (c) of the Explanations appearing after sub Section 206C(11) has been expanded so as to include services. Seller means specified person whose total sales, gross receipts or turnover from the business or profession exceeds the monetary limits of ` 1 Crore in case of person carrying on business and ` 25 lakhs in case of person carrying on profession during the immediate preceding financial year in which the goods of the nature specified in 206C are sold.

Now in case of seller who records cash in books or deposit cash in bank on account of sales need to be very cautious if it exceeds threshold limit since such transactions will now be captured. Further where a buyer pays part amount in cash and part by cheque for sale of goods or services then if the cash amount exceeds Rs.2 lacs then the seller needs to collect TCS. The above amendments will have far reaching consequences in tracking cash transactions.

In case of sale of Motor Car whose value exceeds ` 10 lakhs, question remains to be answered that tax need to be collected at 1%, even on statutory levies such as excise duty or Octroi which are collected and payable to Government. In case of TDS, CBDT has issued circular that service tax should not be considered while deducting tax at source.

This amendment will result in increased burden and cost compliances on the part of the seller and will be tedious in nature.

This amendment will take effect from **1st June, 2016.**

Justice Easwar Committee has recommended that the procedures and provision related to TDS & TCS requires to be simplified in order to be more deductor and deductee friendly and to avoid unnecessary litigations. Unfortunately this Finance Bill does not address problems relating to compliances issues, fines, penalties, credit of taxes deducted/collected and other issues.

CA Anil Sathe

Proposals regarding charitable trusts Insertion of Chapter XII-EB

In the Finance Bill 2016 the Finance Minister proposed a major amendment in the scheme of taxation of charitable/religious trusts by way of insertion of Chapter XII-EB in The Act. One wonders after reading the proposals whether the promise that ''**Acche Din Ayenge**'', will ever be fulfilled. The analysis of these proposals cannot begin without a brief background of charitable trust taxation which is as under:

Brief Background

The concept of charity is not new to India and the Income tax Act. Various exemptions/benefits had been included in the old Act "(Indian Income tax Act, 1922) and also appear in the existing Act. The object behind the same is to encourage the role of philanthropy in relieving distress and in helping to meet the economic, social, cultural and religious needs of the Society. I must draw your attention to the fact that under Income tax Act, 1922, the provisions of exemption were extremely lenient. These were made stricter, in the 1961 Act but even then ingenious and unscrupulous persons started taking advantage of the same by using charitable trusts as vehicles of tax avoidance / evasions. To curb this scenario the Government included various provisions in the existing Act from time to time. An illustrative list of recent amendments is as under:

Sr No	Section	Purpose
1	Proviso to Section 2(15)	Treating certain trusts carrying on business as non-charitable
2	Section 13(8)	Denying the exemption to trusts which carried on business
3	Section 12AA(3)	Expanding powers of the Commissioner to cancel registration of a trust
4	Section 115BBC	Taxing anonymous donations at the maximum marginal rate

From the above one may conclude that now misuse of provisions is not easy as it was earlier. Systematic efforts have already been taken from time-to-time to plug the loopholes. We all understand that no set of provisions in taxation laws can be fool proof, especially in India where People are very creative in finding out ways to avoid tax by various so called "tax planning".

However the pendulum now seems to have swung the other way. On account of some individuals who have taken undue advantage of the law, the Government has now proposed provisions which if enacted will create a plethora of problems. The change in attitude of the Government might be the reason behind introducing such a harsh amendment in Finance

Bill, 2016 where an entire amount of notional income (defined as accreted income) is proposed to be taxed. I now proceed to discuss entire set of provisions under Sections 115TD, 115TE & 115TF for better understanding.

Discussion of legal proposition

In nutshell, the provisions are as under:

Section 115TD (1) is a charging provision and lays down ''charge of additional income tax'' on prescribed situations occurring which are as under:

- Conversion of the trust into other entity which is not eligible for grant of registration u/s. 12AA
- Merger with any entity which does not have objects similar to that of the merging trust, and is not registered under section 12 AA
- Failure to transfer assets on dissolution of the trust/institution to an entity registered u/ss. 12AA, 10(23C)(iv), 10(23C)(v), 10(23C)(vi) and 10(23C)(via), within a period of 12 months from the end of the month in which dissolution takes place

On one of the abovementioned events occurring, the trust is liable to pay tax on **''Accreted Income''** at **"maximum marginal rate (MMR.)"**

Sec 115TD (2) defines the concept of accreted income which is **"fair market value** of total asset on specified date as exceeding total liabilities. The meaning of specified date is given in Explanation and one must refer to the same for calculating accreted income on the said date.

Sec 115TD (3) enunciates a concept of **"Deemed Conversion of a trust to an entity not registered u/s 12AA"** and the specified events are as under:

- Registration granted u/s 12AA to the trust has been cancelled
- Modification of objects is not in consonance with original registration conditions and an application for fresh registration has not been made or has been made but rejected.

It is pertinent to note that if one of the events takes place in the year then it is deemed that the trust is converted into an entity not registered us 12AA and charging provision of Sec 115TD(1) will be attracted .

Section 115TD (4) is a clarificatory in nature which clearly lays down that additional income tax u/s 115TD is to be paid notwithstanding the fact that income tax is not paid or payable under normal provisions of The Act.

Section 115TD (5) lays down the time limit for payment of tax which is 14 days. The same is to be calculated as under.

Event creating charge	Date from which period of 14 days is to be reckoned
Registration under Section 12AA has been cancelled	Date on which order of cancellation is received
Objects have been modified and trust has not applied for fresh registration	End of previous year in which objects modified
Objects modified and application for registration is rejected	Date on which order of rejection is received
In case of merger with an ineligible institution	Date on which merger takes place
Failure to transfer assets to eligible institution within twelve months of dissolution	Date on which period of 12 months expires

Section 115TD (6) provides that the tax on accreted income shall be treated as the final tax on income and no further credit shall be claimed in regard to the same.

Section 115TD(7) does not allow deduction of income tax paid u/s 115TD to any person, trust or institution under any provisions of The Income Tax Act, 1961.

Section 115 TE charges simple interest @ 1% on delayed payment. The interest is to be calculated from expiry of 14 days in which payment to be made till actual date of payment.

Section 115TF provides that the trust is deemed to be "assesse in default" if the tax is not paid under Sec 115TD.

After briefly discussing the scope of this proposed amendment, I now proceed to discuss some issues, discrepancies and challenges as under:

Issues

Scheme of taxation of notional income as accreted income is defined as excess of FMV of assets over liabilities

One will appreciate that entire scheme of Income tax is based on Real income theory and the government has no right to tax notional income unless specifically provided in The Act. This proposed set of provisions seeks to tax something which is neither accrued nor realised at the time of levy of tax. the excess of fair market value over the book value of assets would clearly be notional income. Taxing notional income created by a fiction of law is to be used in exceptional circumstances. On analysing the scheme one wonders whether such a fiction needs to be used in the case of charitable trusts. Needless to say the same will create hardship on the trust. This scheme of taxation is against the fundamental principles of tax where the assessee has not received a single penny, nor has it accrued to it but is asked to pay tax as if it has entered into a transaction and has earned income by disposal of assets at fair market value. Further the tax is to be paid at **MMR.**

The concept of ''deemed income'' is not new to us. There are many provisions in the Income tax Act which treat notional income as real income and proceed to tax the same. (50C, 43CA). All these provisions seek to tax income of persons who have undertaken some transaction. One must appreciate that in these provisions the person has entered into a transaction and it is only the sale value that is being substituted. To put it in another way, a person who has sold his residential house for ` 60 lakh, but his sale consideration is substituted by the stamp duty valuation, will have some funds to defray his tax liability. In the case of accreted income, there are two fictions are being created the first being that a transaction of transfer has taken place and the second one that the same has taken place at fair market value. The trigger for such tax is an event over which the assessee has no control. Even in the case of a harsh provision like Section 45(4), distribution is essential for the charge to fructify. In the case of a provision like Section 45(2), the capital gains crystallises at conversion , but is brought to tax at the point of time of actual sale. No such concession is given to charitable trusts and the entire accreted income, is brought to tax at one point of time. It appears that the provision is totally unreasonable and deserves a serious reconsideration.

Proposed balance sheet approach may result in taxation of income which has legitimately enjoyed exemption in earlier years

One must realise that a concept of accreted income is based on balance sheet approach and same may result in taxing an amount which was always eligible or entitled to an exemption. Under the current provisions of Section 11, a trust is entitled to accumulation of 15% of its income without fetter. Let us assume that during the years that the exemption provisions in respect of such a trust were tested, it was granted this exemption and the said accumulation of 15% would have been invested in various assets. If in those earlier years the trust was entitled to an exemption, and then on account of some alleged infringement which has taken place in this year to levy taxes on

such accumulation which was hitherto exempt is totally unwarranted. It is pertinent to note that a trust which has been accepted as genuine and charitable before happening of a specific event cannot be taxed on some stray incident in a particular year. It is an avowed principle of equitable taxation that the penalty must correspond to the gravity of the offence. This aspect of the matter does not appear to have been considered at all.

One must appreciate that section 11 exemption is not an automatic one. A trust needs to be registered under Section 12AA and such registration is granted u/s. 12AA by DIT (E). Needless to say the same is granted after detailed examination of objects and activities and recording satisfaction that the same are genuine and as per the Act. In such a situation to tax income of earlier years will result in grave inequity. One of the events which brings the accreted income to tax is cancellation of registration. There are a large number of cases where the registration is cancelled for reasons which are considered frivolous by a judicial forum before which they are challenged. The chapter does not provide for holding the recovery process in abeyance till an order of cancellation is considered by the first appellate forum. In such a situation one will have two rely on exercise of judicial discretion for stay of such demand by authorities concerned.

Payment of tax within 14 days is totally unfair and unreasonable

In the case of an ordinary assessee, a tax is required to be paid within 30 days from completion of assessment. When an average assessee is entitled to 30 days charitable trust should have been given more leeway. Instead it is expected to pay tax within a period of 14 days which is totally unfair. As has been pointed out in the foregoing paragraphs, a charitable trust is expected to pay tax on accreted income. This is an accumulation, of income of earlier years and yet it is given only 14 days to defray the liability.

Provision to collect tax before the order of creating the charge is tested is unfair

It is well known that unlike other provisions of the Income Tax Act, the provisions pertaining to charitable trusts are not fully appreciated by the revenue officers in the field. In such a situation a genuine error may occur on the part of a revenue officer, resulting in cancellation of registration or refusal to register the trust on modification of objects. In such a situation to insist that the charitable trust pays tax even before the order has been tested judicially for the first time is totally unwarranted. As pointed out earlier since the tax has to be paid on fair market value of assets in excess of liabilities. In some cases a charitable trust may be forced to dispose of an asset which it has been hitherto using for its objects, just to defray taxes. Even if the trust thereafter succeeds in an appeal forum, replacing that asset with a new one may become very difficult if not impossible. There are a large number of cases where, the cancellation of registration has been found incorrect by the Appellate Authority. In such a situation if the trust has had to pay tax by disposing of its assets the remedy of appeal may become infructuous.

Conclusion

On a reading of, the entire set of new provisions governing charitable trust is as proposed in the Finance Bill, one feels that the thinking of the Government is that the exemption provisions pertaining to charitable trusts have been misused. While this may be true to some extent, painting all charitable institutions with the same brush is incorrect. The assessing authorities are armed with sufficient powers to penalise trusts which have misused the provisions and evaded tax. Instead of providing drastic measures as proposed in this bill, it would have been appropriate if the enquiry and machinery provisions would have been strengthened and fine-tuned to ensure better compliance. It would be appropriate if the provisions are reconsidered or substantially amended.

CA Reepal Tralshawala

Finance Bill 2016 – Proposed Amendments

PHASING OUT OF DEDUCTIONS AND EXEMPTIONS

Sections 10AA, 35AC, 35CCD, 80IA, 80IAB, 80IB, 32, 35(1)(ii), 35(1)(iia), 35(1)(iii), 35(2AA), 35(2AB), 35AD, 35CCC – Phasing out of deductions and exemptions –

(Clauses: 8, 15, 17, 18, 19, 20, 39, 40, 42)

The Finance Minister in his Budget Speech 2015 has indicated that the rate of corporate tax will be reduced from 30% to 25% over the next four years along with corresponding phasing out of exemptions and deductions. The Government proposed to implement this decision in a phased manner. In this regard, broad guiding principles had been put in the public domain for receiving comments from the stakeholders. These guiding principles are listed below for reference

- Profit linked, investment linked and area based deductions will be phased out for both corporate and non-corporate tax payers.
- The provisions having a sunset date will not be modified to advance the sunset date. Similarly the sunset dates provided in the Act will not be extended.
- In case of tax incentives with no terminal date, a sunset date of 31-3-2017 will be provided either for commencement of the activity or for claim of benefit depending upon the structure of the relevant provisions of the Act.
- There will be no weighted deduction with effect from 1-4-2017.

Proposed Phase out plan of incentives (Profit linked Deductions/weighted deduction) available under the Act

Section	Incentive available currently	Present quantum of Deduction	Proposed Amendment
10AA	Profit Linked deductions for units in SEZ for profit derived from export of articles or things or services	100% of profits derived from exports for a period of 5 consecutive Asst. years and 50% of profits derived from exports for the next 5 consecutive Asst. years	No deduction available for units commencing manufacture or production of article or thing or start providing services on or after 1st April, 2020. i.e A.Y. 2021-22. **[clause No. 8]**

Section	Incentive available currently	Present quantum of Deduction	Proposed Amendment
35AC	Any sum paid to a public sector company or a local authority or to an approved association or institution, etc. on certain eligible social development project or a scheme	100% of the sum paid	No deduction shall be available with effect from 1st April, 2017. i.e. A.Y. 2018-19. **[clause no. 17]**
35CCD	Any expenditure incurred (not being expenditure in nature of cost of any land or building) on any notified skill development project by a company.	Weighted deduction of 150% of the expenditure incurred	Deduction shall be restricted to 100% from 1st April, 2020, i.e. A.Y. 2021-22. **[clause no. 20]**
80IA, 80IAB, 80IB	Profit Linked deductions for specified period on eligible business carried on by industrial undertakings or enterprises referred in Sections 80IA, 80IAB and 80IB	100% of profit linked deductions	No deduction shall be available if the specified Activity commences on or after 1st April, 2017, i.e. A.Y. 2018-19. **[clauses no. 39, 40 and 42]**

Proposed Phase out plan of incentives (Accelerated Depreciation/Weighted Deduction) available under the Act

Section	Incentive available currently	Present quantum of Deduction	Proposed Amendment
32	Accelerated depreciation is provided to certain Industrial sectors in order to give impetus for investment	Up to 100% in respect of certain block of assets	The highest rate of depreciation shall be restricted to 40% w.e.f 1st April, 2017. i e. Asst Year 2018-19 and subsequent years. The new rate is proposed to be made applicable to all the assets (whether old or new) falling in the relevant block of assets.
35(1)(ii)	Any sum paid to an approved scientific research association, approved university, college or other institution	Weighted Deduction of 175% of the sum paid	Weighted deduction shall be restricted to 150% from 01/04/2017 to 31/03/2020 and deduction shall be restricted to 100% from

Section	Incentive available currently	Present quantum of Deduction	Proposed Amendment
	which has the object of undertaking scientific research and if such sum is used for scientific research.		1st April, 2020, i.e. A.Y. 2021-22. **[clause no. 15]**
35(1)(iia)	Any sum paid as contribution to an approved scientific research company and if such sum is used for scientific research	Weighted deduction of 125% of the sum paid	Deduction shall be restricted to 100% w.e.f 1st April, 2017, i.e. A.Y. 2018-19. **[clause no. 15]**
35(1)(iii)	Any sum paid as contribution to an approved research association or university or college or other institution to be used for research in social science or statistical research	Weighted deduction of 125% of the sum paid	Deduction shall be restricted to 100% w.e.f 1st April, 2017, i.e. A.Y. 2018-19. **[clause no. 15]**
35(2AA)	Any sum paid to a National Laboratory or a university or an Indian Institute of Technology or a specified person for the purpose of approved scientific research programme.	Weighted deduction of 200% of the sum paid	Weighted deduction shall be restricted to 150% from 01/04/2017 to 31/03/2020 and deduction shall be restricted to 100% from 1st April, 2020, A.Y. 2021-22. **[clause no. 15]**
35(2AB)	Any expenditure (not being expenditure in the nature of cost of any land or building) incurred by a company, engaged in the business of biotechnology or in the business of manufacture or production of any article or thing except some items appearing in the negative list specified in Schedule-XI, on scientific research on approved in-house research and development facility.	Weighted deduction of 200% of the sum paid	Weighted deduction shall be restricted to 150% from 01/04/2017 to 31/03/2020 and deduction shall be restricted to 100% from 1st April, 2020, A.Y. 2021-22. **[clause no. 15]**

Section	Incentive available currently	Present quantum of Deduction	Proposed Amendment
35AD	Capital expenditure (other than expenditure on land, goodwill and financial assets) in case of following specified business: - a cold chain facility - Section 35AD(8)(c)(i) - warehousing facility for storage of agricultural produce – Section 35AD(8)(c)(ii) - Hospital with at least 100 beds - Section 35AD(8)(c)(v) - affordable housing project - Section 35AD(8)(c)(vii) - production of fertiliser - Section 35AD(8)(c)(viii)	Weighted deduction of 150% of the sum paid	Deduction shall be restricted to 100% w.e.f 1st April, 2017, i.e. A.Y. 2018-19. **[clause no. 18]**
35CCC	Expenditure incurred on notified agricultural extension project.	Weighted deduction of 150% of the sum paid	Deduction shall be restricted to 100% w.e.f 1st April, 2017, i.e. A.Y. 2018-19. **[clause no. 19]**

Currently weighted deduction is available for expenditure on research and development. Current set of provision didn't provide incentive for creation of value. Introduction of concessional rate of tax at 10% in respect of income from Indian patents, it seems move is to grant relief / concession to the assessee who creates value and not merely incurs expenditure.

Critical Analysis of proposed amendment

In the Budget speech of 2015, it was very clearly stated that the reason for phasing out the various deductions and exemptions is that the rate of corporate taxation will be reduced from present 30% to 25% in phased manner. However, in the Finance Bill of 2016, though the various deductions and exemptions as stated above are phased out, the corporate taxation is not reduced from 30% in all cases but only in cases of corporate entity whose total turnover or gross receipts in the previous year 2014-15 i.e. AY 2015-16 does not exceed 5 crore is reduced from 30% to 29% for AY 2017-18. This means that only those corporate entities where total turnover or gross receipts is less than 5 crores in AY 2015-16 are given the benefit of lower corporate tax of 29% for AY 2017-18 whereas the deductions and exemptions are phased out in all cases, which is against the reasoning given by the FM in the budget speech of 2015. Further there is no change in taxation for non-corporate assessee. Thus, there is total contrast in what the FM said in Budget 2015 and the actual implementation of the promise, which clearly show that promise is given only in words and not actually. Further the lower tax rate of 29% is only for AY 2017-18 for those corporates having total turnover or gross receipts of less than ` 5 crores in AY 2015-16. So again for lower corporate tax for AY 2018-19, if

they do, would again be conditional which one would only know in the next budget, which is suspense as of now.

Income deemed to accrue or arise in India: Insertion of new clause (e) in Section 9(1)(i) – (Clause 5)

Finance Bill 2016 proposes to insert new clause (e) to Section 9(1)(i) in the case of foreign company engaged in mining of diamonds.

Proposed Amendment

It is proposed to provide that in the case of a foreign company engaged in the business of mining of diamonds, no income shall be deemed to accrue or arise in India through or from the activities which are related to the display of uncut and unassorted diamond in any special zone notified by the Central Government.

Reason

A "Special Notified Zone" (SNZ) had been created to facilitate shifting of operations by foreign mining companies (FMC) to India and to permit the trading of rough diamonds in India by the leading diamond mining companies of the world. The activity of FMC of mere display of rough diamonds even with no actual sale taking place in India may lead to creation of business connection in India of the FMC. This potential tax exposure has been an area of concern for the mining companies willing to undertake these activities in India. In order to facilitate the FMCs to undertake activity of display of uncut diamon (without any sorting or sale) in the special notified zone, it is proposed to amend Section 9 of the Act to provide that in the case of a foreign company engaged in the business of mining of diamonds, no income shall be deemed to accrue or arise in India to it through or from the activities which are confined to display of uncut and unassorted diamonds in a Special Zone notified by the Central Government in the Official Gazette in this behalf.

Effective Date

This amendment will take effect retrospectively from 1-4-2016 i.e. from A.Y. 2016-17.

New Section 10(48A) - (Clause 7D)

Proposed Amendment

Clause 7D of the Finance Bill seeks to insert a new clause 48A in Section 10 so as to provide for exemption on respect of any income accruing or arising to a foreign company on account of storage of crude oil in a facility in India and sale of crude oil there from to any person resident in India subject to following conditions:-

(i) The storage and sale by the foreign company is pursuant to an agreement or an arrangement entered into by the Central Government or approved by the Central Government; and

(ii) Having regard to the national interest, the foreign company and the agreement or arrangement are notified by the Central Government in this behalf.

Effective Date

This amendment will take effect from 1-4-2017 i.e. from A.Y. 2017-18.

Section: 32 - Allowability of Additional Depreciation to an assesses engaged in the business of Transmission of Power - (Clause 13)

Existing provision

Presently Section 32(1)(iia) provides initial additional depreciation @ 20% in case of new machinery or Plant acquired and installed by the assesse engaged in the business of manufacture or production of any article or thing [or in the business of generation or generation and distribution of power]. Under the existing provisions, the benefit of additional depreciation is not available on the new machinery or plant installed by an assessee engaged in the business of transmission of power.

Proposed amendment

Clause 13 seeks to extend the benefit of initial additional depreciation to an assessee which is engaged in the business of transmission of power.

Reason

In order to rationalise incentive of power sector, it is proposed to provide that an assessee engaged in business of transmission of power shall also be allowed additional depreciation @ 20 % of actual cost of new machinery or plant acquired and installed in previous year.

Effective Date

This amendment will take effect from 1-4-2017 i.e. from A.Y. 2017-18.

Section 32AC (1A) - Tax Incentive u/s. 32AC- (Clause 14)

Existing provision

Presently Section 32AC (1A) provides that in case of company assessee, engaged in the business of manufacture or production of any article or thing, acquires and installs new assets exceeding ` 25 Crore in a previous year, then deduction @ 15% of the actual cost shall be allowed of such new asset, subject to condition that the acquisition and installation has to be done in the same previous year. However, the dual condition of acquisition and installed causes genuine hardship in cases in which assets having been acquired but could not be installed in same previous year.

Proposed amendment

In order to obviate the difficulty in acquiring and installing the Plant & Machinery in the same year, it is proposed to amend the Section to provide that the acquisition of Plant & Machinery of the Specified value has to be made in the previous year; however, installation of such Plant & Machinery may be made on or before 31-3-2017.

It is also clarified that where the installation of the new assets is in a year other than the year of acquisition, deduction shall be allowed in the year of installation of such new assets.

Effective Date

The above amendment will take effect from A.Y 2016-17 and accordingly, apply to A.Y. 2016-17 & A.Y 2017-18.

Insertion of New Section 35 ABA relating to amortization of spectrum fees for purchase of Spectrum - (Clause 16)

Proposed Amendment

Clause 16 seeks to introduce new section 35 ABA which provide that any capital expenditure incurred and actually paid by the assessee on the acquisition of right to use spectrum for telecommunication services shall be allowed as deduction in equal instalment on the tenure of spectrum, i.e. period starting from the year in which such payment is made and ending in the year in which useful life of the spectrum comes to an end.

The other salient features are as under:

a) Where the spectrum is transferred and proceeds of the transfer is less than the unamortized expenditure, a deduction equal to the expenditure remaining to be allowed as reduced by the proceeds of transfer, shall be allowed in the year in which spectrum is transferred.

b) If the spectrum is transferred and the proceeds received on transfer exceeds the amounts remaining to be allowed , such excess shall be chargeable to tax as profits & gains of business in which in the year in which spectrum is transferred.

c) Where the part of the spectrum is transferred, unallowed expenses would be amortised.

d) Under the scheme of amalgamation, if the amalgamating company sells or transfer the spectrum to an amalgamated company, then the provision of the section will apply to amalgamated company as

they would have applied to amalgamating company if such amalgamating company has not transferred the spectrum.

Reason

Government has newly introduced the spectrum fees for auction of airwaves. There is uncertainty in tax treatment of payment of spectrum i.e. whether spectrum is an intangible asset and eligible for depreciation u/s. 32 of the Act or whether it is in the nature of licence to operate telecommunication business and eligible for deduction u/s. 35 ABB of the Act. In order to provide clarity and avoid future litigation and controversy, it is proposed to insert section 35 ABA to provide for amortizations of spectrum fee over the tenure of the spectrum.

Effective Date

This amendment will take effect from 1-4-2017 i.e. from A.Y. 2017-18.

Insertion of new Section 80-IBA: Deduction in respect of Profits and Gains from Housing Projects - [Clause 43]

New Provision

It is proposed to to provide for 100% deduction of the profits and gains of an assessee developing and building affordable housing projects, if, the housing project is approved by the competent authority after 1st June 2016 but before the 31st March, 2019 in accordance with such guidelines as may be prescribed and subject to certain conditions which *inter alia*, include:-

(i) The project is completed within a period of **3** years from the date of approval;

(ii) The project is on a plot of land measuring not less than 1000 sq. metres where the project is within 25 km from the municipal limits of four metros namely Delhi, Mumbai, Chennai & Kolkata and where the size of the residential unit in the said areas is not more than thirty sq. metres. In any other area, the plot of land is measuring not less than 2000 sq. metres and the size of the residential unit in the said areas is not more than sixty sq. meters;

(iii) Where residential unit is allotted to an individual, no other such unit shall be allotted to him or spouse or minor children's of such individuals;

(iv) The built-up area of the shops and other commercial establishments included in the housing project should not exceed 3% of the aggregate built-up area;

(v) The assessee maintains separate books of account in respect of the housing project;

(vi) No deduction is allowed to any undertaking, which executes the housing project as a works contract awarded by any person including State or Central Government.

The assessee is required to complete the said project (with certificate of completion from the competent authority) within a period of three years from the date of approval by the competent authority, failing which the entire deduction claimed in previous years shall be deemed as his income deemed to be the income of the assessee chargeable under the head "Profits and Gains of Business or Profession" of the previous year in which the period for completion so expires. The Competent Authority means Authority empowered by the Central Government.

Reason

To incentivise affordable housing sector as a part of larger objective of 'Housing for All.'

Effective Date

This amendment will take effect from 1-4-2017 i.e. from A.Y. 2017-18.

Critical Analysis of proposed amendment

On one hand, the deduction is phased out by not giving benefit of profit linked incentive to all the entities and on the other hand, new provision is introduced for giving benefit of deduction to entities engaging in the business of affordable housing projects. Since this is one of the pet project of the present Government, hence, has introduced this provision. However, irrespective of whether it is case of affordable housing projects or otherwise, there is no benefit of this tax benefit passed on to the ultimate consumers by the builder and developers by reducing the sale price and therefore there is no point in giving this benefit. In any case, even though the new provision is introduced which is very much similar to that of earlier provision of Section 80IB(10) of the Act. Unlike old provisions, proposed provisions have restriction of size of residential unit, utilisation of floor area ratio etc. It also refines which would mean residential unit. However, the new provision also would lead to increase in lots of litigation for want of clarification on various aspects such as-

a) The new provision gives time limit of completion of housing project only 3 years from the date of approval. Again this is not in *pari-materia* with the reality of situation since even the FM knows that construction of new housing projects takes time and keeping this as a reason, the FM has proposed in this very budget extension of time from 3 years to 5 years in Section 24 of the Act for claiming interest benefit on borrowings made for acquiring under-constructed property. Thus, the time limit for completion of housing project should be made of 5 years as against proposed 3 years.

b) It is again not clarified whether proportionate deduction will be available if the built-up area of commercial establishment or any of the residential units is beyond the prescribed specifications and therefore the law that is settled in respect of the earlier provision of Section 80IB(10) of the Act ought to apply, however, litigation would definitely be there since the lower authorities may not accept the propositions laid down in relation to the earlier provision of Section 80IB(10) of the Act.

c) Thus, on one hand, the FM wants to clarify various provisions so as to reduce litigation, however, this new provision is very loosely drafted, which if not clarified while passing the bill, would definitely give rise to litigation on these aspects.

Substitution of Section 80JJAA: Deduction in respect of employment of new employees [Clause 44]

Existing Provision

Section 80JJAA provides for a deduction of 30% of additional wages paid to new regular workmen in a factory. The provisions apply to the business of manufacture of goods in a factory. The deduction is available for three assessment years including the assessment year relevant to the previous year in which such employment is provided. New regular workmen are considered where 'workmen' are employed for not less than three hundred days in a previous year. Further, benefits are allowed only if there is an increase of at least ten per cent in total number of workmen employed on the last day of the preceding year.

Deduction under this section is not available if the factory is hived off or transferred from another existing entity or acquired by assessee as a result of amalgamation with another company.

Proposed Amendment

It is proposed to substitute new section. It is proposed that the deduction under this provision shall be available to any assessee deriving profits and gains from business and who is liable for tax audit u/s. 44AB.

Such an assessee will be allowed a deduction of an amount equal to 30% of "additional employee cost" incurred in the course of such business in the previous year. The deduction is available for three assessment years including the assessment year relevant to the previous year in which such employment is provided.

"Additional employee cost" here means total emoluments paid or payable to additional employees employed during the previous year. Further in the first year of a new business, emoluments paid or payable to employees employed during that previous year shall be deemed to be the additional employee cost;

However, in case of an existing business additional cost shall be considered NIL, if-

i. There is no increase in the number of employees from the last day of the preceding year

ii. Emoluments are paid otherwise than by an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account

"Additional employee" here means an employee who has been employed during the previous year and whose employment has the effect of increasing the total number of employees employed by the employer as on the last day of the preceding year.

Following employees are not considered part of "Additional employees':

(a) An employee whose total emoluments are more than Rs. 25,000 per month; or

(b) An employee for whom the entire Employees' Pension Scheme is paid by the Government; or

(c) An employee employed for a period of less than 240 days or

(d) An employee who does not participate in the recognised provident fund;

Thus the norms for minimum number of days of employment in a financial year from 300 days are reduced to 240 days. Further, the condition of 10% increase in number of employees every year is proposed to be done away with, so that any increase in the number of employees will be eligible for deduction under the provision.

"Emoluments" here means any sum paid or payable to an employee in lieu of his employment by whatever name called, but does not include—

(a) Any contribution by the employer to any pension or provident or any other fund for the benefit of the employee under any law for the time being in force; and

(b) Any lump-sum payment to an employee at the time of termination of his service or superannuation or voluntary retirement, such as gratuity, severance pay, leave encashment, voluntary retrenchment benefits, commutation of pension etc..

Deduction under this section will not be allowed, if:

(a) The business is formed by splitting up, or the reconstruction, of an existing business:

(b) The business is acquired by the assessee by way of transfer from any other person or as a result of any business re-organisation;

(c) The assessee does not furnish prescribed audit report of Chartered Accountant in this regard along with the return of income

The sub-section (3) provides that the provision as it stood immediately prior to the amendment by this finance bill shall apply to an assessee eligible to claim any deduction for any assessment year commencing on or before 1st April, 2016.

Reason

To provide employment generation incentive to all the sectors.

Effective Date

This amendment will take effect from 1-4-2017 i.e. from A.Y. 2017-18.

Critical Analysis of proposed amendment:

This is another pet project of this Government i.e. increase in employment and therefore giving benefit of additional deduction. However, again this deduction is only given to those employees who are liable for tax audit u/s. 44AB of the Act, thereby denying the benefit to small entrepreneurs and there is no reason given for the same, thereby drawing distinctions between different class of assessees. On one hand the Government has introduced start-up business and certain benefits given to them, however this benefit is not extended to these assessees where employment would be done on large scale. Again this proposed amended provision, though has increased the scope of deduction by including employment of any new employee as per prescribed conditions and not restricting to the workmen in Factories as was earlier proposed in Finance Act 2015, however, this amended provision may also lead to unavoidable litigation in future as implementation of this provision vis-à-vis evidentiary value is not full proof.

Insertion of Section 115BBF: Concessional Taxation of income on patents – (Clause 52)

Proposed Amendment

A new Section 115BBF is proposed to be inserted in the Income-tax Act to provide that where the total income of the eligible assessee includes any income by way of royalty in respect of a patent developed and registered in India, then such royalty shall be taxable at the rate of ten per cent (plus applicable surcharge and cess) on the gross amount of royalty. No expenditure or allowance in respect of such royalty income shall be allowed under the Act. For the purpose of this concessional tax regime an eligible assessee means a person resident in India, who is the true and first inventor of the invention and whose name is entered on the patent register as the patentee in accordance with Patents Act, 1970 and includes every such person, being the true and the first inventor of the invention, where more than one person is registered as patentee under Patents Act, 1970 in respect of that patent.

Reason

In order to encourage indigenous research & development activities and to make India a global R & D hub, the Government has decided to put in place a concessional taxation regime for income from patents. The aim of the concessional taxation regime is to provide an additional incentive for companies to retain and commercialize existing patents and to develop new innovative patented products. This will encourage companies to locate the high-value jobs associated with the development, manufacture and exploitation of patents in India. The Organization for Economic Co-operation and Development (OECD) has recommended, in Base Erosion and Profit Shifting (BEPS) project under Action Plan 5, the nexus approach which prescribes that income arising from exploitation of Intellectual property (IP) should be attributed and taxed in the jurisdiction where substantial research & development (R&D) activities are undertaken rather than the jurisdiction of legal ownership only.

Effective Date

This amendment will take effect from 1-4-2017 i.e. from A.Y. 2017-18.

SPECIAL PROVISIONS RELATING TO CERTAIN COMPANIES - (Clause 53(I))

Amendment to Section 115JB : BOOK PROFITS FOR CONCESSIONAL TAXATION OF INCOME ON PATENTS

Proposed Amendment

It is proposed to amend Section 115JB of the Income-tax Act relating to special provision for payment of tax by certain companies by inserting a new clause (fd) in Explanation 1 to sub-section (1) of the aforesaid section so as to provide that the book profit shall be increased by an amount or amounts of expenditure relatable to income, by way of royalty in respect of patent chargeable to tax in accordance with the provisions of Section 115BBF. It is further proposed to insert a new clause (iig) in the long line to the said Explanation 1 so as to provide that the amount of income, by way of royalty in respect of patent chargeable to tax in accordance with the provisions of section 115BBF, shall be reduced from the book profit, if any such amount is credited to the profit or loss account.

Effective Date

This amendment will take effect from 1-4-2017 i.e. from A.Y. 2017-18.

Amendment to Section 115JB : APPLICABILITY OF MINIMUM ALTERNATE TAX (MAT) ON FOREIGN COMPANIES FOR THE PERIOD PRIOR TO 01.04.2015.

Existing Provision

Under the existing provisions contained in sub-section (1) of the 115JB in case of a company, if the tax payable on the total income as computed under the Income-tax Act, is less than eighteen and one-half per cent of its book profit, such book profit shall be deemed to be the total income of the assessee and the tax payable by the assessee for the relevant previous year shall be eighteen and one-half per cent of its book profit. Issues were raised regarding the applicability of this provision to Foreign Institutional Investors (FIIs) who do not have a permanent establishment (PE) in India. Vide Finance Act, 2015, the provisions of section 115JB were amended to provide that in case of a foreign company any income chargeable at a rate lower than the rate specified in section 115JB shall be reduced from the book profits and the corresponding expenditure will be added back. However, since this amendment was prospective w.e.f. assessment year 2016-17, the issue for assessment year prior to 2016-17 remained to be addressed.

Proposed Amendment

An Explanation is proposed to be inserted so as to provide that the provisions of the said section 115JB, shall not be applicable and shall be deemed never to have been applicable to an assessee, being a foreign company, if––

(i) The assessee is a resident of a country or a specified territory with which India has an agreement referred to in sub-Section (1) of Section 90 or the Central Government has adopted any agreement under sub-section (1) of Section 90A and the assessee does not have a permanent establishment in India in accordance with the provisions of such agreement; or

(ii) the assessee is a resident of a country with which India does not have an agreement referred to in clause (i) and the assessee is not required to seek registration under any law for the time being in force relating to companies.

Effective Date

This amendment will take effect from 1st April, 2001 and will, accordingly, apply in relation to the assessment year 2001-02 and subsequent assessment years.

CA Ketan Vajani

Amendments to Provisions related to Capital Gains

The Finance Bill, 2016 tabled in the Parliament on 29th February, 2016 is one of the Finance Bills of recent past containing large number of amendments. As the day in the February was an extra day, which comes once in four years, this Finance Bill is also carrying extra load in the form of several amendments to both Direct and Indirect Taxes. There are 112 clauses proposing amendments in the area of Direct Tax. Add the numbers of sub-clauses and also 31 clauses pertaining to two new schemes and the number becomes too large to understand for any professional. In this backdrop, this yearly story done by the Chamber is really of immense help to the tax professionals to understand the amendments and also various issues that might arise in interpretation and implementation of the provisions.

This article seeks to discuss some of the amendments proposed in the area of Capital Gains. "Capital Gains" is a chapter which hurts all the taxpayers in more than one manner. One is always aggrieved by the fact that ultimately you are paying tax on inflation, albeit subject to indexation as may be available. The chapter is unfair to the tax-payers in various manners and also has several deeming fictions, which tax your income, which a common man does not believe to be income in the first place. Fortunately this Finance Bill has proposed some amendments which have the effect of diluting the hardships faced by the tax-payers to some extent. With that preliminary thought let us venture to analyse the amendments proposed by the Finance Bill 2016 in the area of Capital Gains:

Amendments related to The Gold Monetisation Scheme, 2015

Existing Provisions

Clause (15) Section 10 of the Income-tax Act, 1961 provides for exemption in respect of interest on Gold Deposit Bonds issued under Gold Deposit Scheme, 1999. Further these bonds are excluded from the definition of Capital Asset as provided in Section 2(14) of the Act. Accordingly there is no tax levied either on interest earned on these bonds or on capital gains arising on transfer of such bonds.

Proposed Amendments

Clause 7(B) of the Finance Bill, 2016 seeks to amend clause (15) of section 10 so as to provide exemption in respect of interest on deposit certificates issued under the Gold Monetisation Scheme, 2015 on similar lines with the Gold Deposit Scheme, 1999.

Clause – 3(a) of the Finance Bill, 2016 seeks to amend clause (14) of section 2 i.e. the definition of Capital Asset. It seeks to exclude the deposit certificates issued under the Gold Monetisation Scheme 2015 from the definition of Capital Asset. This is also proposed on similar lines with the Gold Deposit Scheme, 1999.

Reason for Amendments
The Government of India has introduced The Gold Monetisation Scheme, 2015. The amendments are sought to be made with a view to extend the same tax benefits to the scheme as were available to the Gold Deposit Scheme, 1999.

Effective Date
These amendments are sought to be made with retrospective effect from 1-4-2016 and accordingly will apply for A.Y. 2016-17 and subsequent years.

Amendment related to Sovereign Gold Bond Scheme, 2015

Amendment to Sections 47 and 48 of the Income-tax Act

Existing Provisions
Section 47 of the Act lists down certain transactions which are not regarded as transfer and provides that nothing contained in section 45 shall apply to such transactions. There are many clauses in the section which contains the list of transactions which are not regarded as transfers.

Section 48 of the Act lays down the mode of Computation of Capital Gains chargeable under the Act. The second proviso to the section provides that for the long term capital gains arising from transfer of an asset (other than capital gain arising to a non-resident from transfer of shares in or debentures of an Indian company as described in the first proviso), the assessee shall be entitled to indexation in respect of cost of acquisition and cost of improvement of the asset transferred. The third proviso provides that the indexation benefit shall not be available in respect of any bond or debenture other than the capital indexed bonds issued by the Government.

Proposed Amendments

(I) Insertion of new clause – (viic) in section 47

Clause 28(A) of the Finance Bill seeks to insert one more clause namely clause (viic) in section 47. Clause (viic) seeks to provide that any transfer of Sovereign Gold Bond issued by the Reserve Bank of India under the Sovereign Gold Bond Scheme, 2015, by way of redemption by an assessee being an individual shall not be regarded as transfer.

(II) Amendment to the third proviso to section 48

Clause 29 of the Finance Bill seeks to amend the third proviso to section 48 of the Act. The third proviso is sought to be amended so as to provide that the indexation benefit shall not be available in respect of any bond or debenture other than (a) capital indexed bonds issued by the Government or (b) Sovereign Gold Bond issued by the Reserve Bank of India under the Sovereign Gold Bond Scheme 2015. The amendment therefore, effectively permits indexation benefits to long terms capital gains arising on transfer of Sovereign Gold Bond to all the assessees.

Reason and Implication
The Government of India has introduced the Sovereign Gold Bond Scheme with the aim of reducing the demand for physical gold so as to reduce the outflow of foreign exchange on account of import of gold. The Gold Bond is a mode for substitution of physical gold and also provides security to the individual investor who invests in gold for meeting their social obligation. The amendment is sought to be made with a view to providing parity in tax treatment between physical gold and Sovereign Gold Bond. Since it is sought to be provided that the redemption of such Gold Bond will not be regarded as a transfer, there will not be any capital gains on redemption of such Gold Bonds.

However, it is relevant to note that the exclusion from transfer is provided only in the case of an individual and not any other assessee. Further, the exclusion is provided only in the case of redemption of the Sovereign Gold Bond. If,

however, the individual assessee transfers the bond, otherwise than redemption, the benefit of the exclusion will not be available in such a case.

In the cases of transfer by any assessee other than individual or by an individual otherwise then on redemption, the benefit of indexation will be available as per the amendment proposed in the third proviso to section 48 of the Act.

Effective Date

Both the above amendments are sought to be made w.e.f. 1-4-2017 and accordingly will be applicable on and from assessment year : 2017-18.

Amendment related to conversion of a company to LLP

Existing Provisions

Clause (xiiib) of section 47 provides that any transfer of a capital asset or intangible asset by a private company or unlisted public company to an LLP or any transfer of a share or shares held in the company by a shareholder as a result of conversion of the company into an LLP in accordance with the provisions of sections 56 or 57 of the Limited Liability Partnership Act 2008 shall not be regarded as transfer.

The proviso to the said clause lists down various conditions which are to be fulfilled for the conversion to be not regarded as a transfer. As per the existing provisions, there are six such conditions enumerated under clauses (a) to (f) in the proviso.

Proposed Amendment

Clause 28(B) of the Finance Bill seeks to insert one more condition by insertion of clause (ea) in the proviso. The clause (ea) seeks to provide additional condition that the total value of the assets as appearing in the books of account of the company in any of the three previous years preceding the previous year in which the conversion takes place shall not exceed five crore rupees.

Reason and Implication

As per the Memorandum explaining the provisions, this amendment is proposed as a rationalisation measure. It is pertinent to note that there is already a condition in the said proviso which provides that the company's gross receipts, turnover or total sales in any of the preceding three years shall not exceed amount of ` 60 lakh. The condition now proposed puts a further restriction on the book value of the assets in any of the three preceding previous years to be maximum ` 5 crore. As such, the amendment has the effect of creating further difficulties for the companies which wish to convert themselves into LLP. All the conditions listed in the proviso are cumulative and therefore violation of any one of the same results in the transaction losing the benefit of not regarded as transfer, which ultimately leads to levy of capital gain tax on such transfers.

At this juncture, a fundamental issue also needs to be addressed as to whether such conversion can ever result into transfer. For any transfer to be effective, there has to be two parties namely transferor and transferee. In the case of conversion of a company to an LLP, there is absence of this basic test of there being two distinct and separate parties. It is the company itself which is converting into LLP. The transferor and the transferee are not present at any given point of time. When the transferor (company) is in existence, there is no transferee (LLP) and when the transferee comes into existence, the transferor ceases to exist.

Accordingly the conversion does not have the element of transfer at all. Even without the provisions of section 47(xiiib), such conversion would not have attracted the levy of capital gains in absence of there being any transfer. For this proposition a very useful reference can be made to the decision of the Hon. Bombay High Court in the case of *CIT vs. Texspin Engineering & Manufacturing Works (2003) 263 ITR 345 (Bom.).* It was a case of conversion of a firm into company under Part IX of the Companies Act, 1956 and the Bombay High Court has categorically

held that there cannot be any transfer on such conversion.

Effective Date

The amendment is sought to be made w.e.f. 1-4-2017 and accordingly will be applicable on and from assessment year : 2017-18.

Amendment related to Consolidation of Plans within a Scheme of Mutual Fund

Insertion of new clause (xix) in section 47 of the Act

Proposed Amendment

Clause 28(C) of the Finance Bill seeks to insert one more clause namely clause (xix) in section 47 of the Act. Clause (xix) seeks to provide that any transfer by a unit holder of a capital asset, being a unit or units held by him in the consolidating plan of a mutual fund scheme made in consideration of the allotment to him of a capital asset, being a unit or units, in the consolidated plan of that scheme of the mutual fund shall not be regarded as transfer.

The Explanation to the clause seeks to explain the meaning of certain terms for the purpose of this clause. As per the explanation, "consolidating plan" means the plan within a scheme of a mutual fund which merges under the process of consolidation of the plans within a scheme of mutual fund in accordance with the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 made under the Securities and Exchange Board of India Act, 1992.

"consolidated plan" means the plan with which the consolidating plan merges or which is formed as a result of such merger;

"mutual fund" means a mutual fund specified under clause (23D) of section 10.

Reason and Implication

Clause (xviii) of section 47 excludes any transfer by a unit holder of a unit or units in the consolidating scheme of a mutual fund in consideration of the allotment of a unit or units, in the consolidated scheme of the mutual fund. SEBI has issued guidelines for consolidation of mutual fund plans within a scheme. The present clause (xviii) does not cover the cases of consolidation of plans within the same scheme. Accordingly, the new clause is inserted with a view to extend the tax exemption on merger or consolidation of plans within the same scheme of the mutual fund. For Example, if one converts the growth plan in a particular scheme to a dividend plan of the same scheme, the said transaction will not be regarded as transfer due to the insertion of the new clause (xix).

Effective Date

The above amendment to section 47 is sought to be made w.e.f. 1-4-2017 and accordingly will be applicable on and from assessment year : 2017-18.

Comment

Ideally, the above amendment should have been made with retrospective effect so as to avoid the confusion prevalent on the subject. The retrospective amendment would have avoided the hardship faced by the assessees who have switched their plans in the financial years prior to 2016-17. However, this is not done and so the difficulty continues for the past transactions.

However, it may be possible for the assessees to contend that though the amendment is not expressly retrospective, it is made with a view to avoid a difficulty which is genuinely faced by the tax-payers due to lapse in the language of the provisions and therefore the amendment shall be read as retrospective in operation though it is not expressly provided for. For this proposition, a useful reference can be made to the decisions of the Supreme Court in the cases of *Allied Motors Pvt. Ltd. vs. CIT (1997) 224 ITR 677 (SC); CIT vs. Alom Extrusions Ltd. (2009) 319 ITR 306 (SC)* and also the recent decision in the case of *CIT vs. Vatika Township Pvt. Ltd. (2014) 367 ITR 466 (SC).*

Amendment related to Rupee Denominated Bonds issued by Indian Companies

Insertion of fourth proviso in Section 48 of the Act

Existing Provisions

Section 48 of the Act lays down the mode of Computation of Capital Gains chargeable under the Act. There are three provisos to section 48 providing for different situations. The provisos has been already discussed in this article while discussing the amendments related to Sovereign Gold Bond Scheme, 2015

Proposed Amendment

Clause 29 of the Finance Bill seeks to insert the fourth proviso to section 48. The fourth proviso seeks to provide that in the case of a non-resident assessee, any gains arising on account of appreciation of rupee against a foreign currency at the time of redemption of rupee denominated bond of an Indian company shall be ignored for the purpose of computation of full value of consideration under section 48.

Reason for Amendment

The Reserve Bank of India has recently permitted Indian corporates to issue rupee denominated bonds outside India as a measure to enable the Indian corporate to raise funds from outside India. The amendment is proposed with a view to provide relief to non-resident investor who bears the risk of currency fluctuation.

Effective Date

The above amendment is sought to be made w.e.f. 1-4-2017 and accordingly will be applicable on and from assessment year : 2017-18.

Amendment for Rationalisation of Section 50C

Amendment to Section 50C of the Act

Existing Provisions

Section 50C of the Act provides for replacing the value adopted or assessed by stamp valuation authority for the purpose of stamp duty, in place of full value of consideration, for the purpose of computation of capital gains in a case of transfer of a capital asset being land or building or both. This is subject to certain exceptions as provided in the section itself.

Proposed Amendment

Clause – 30 of the Finance Bill seeks to insert two provisos to sub-section (1) of section 50C. The first proviso seeks to provide that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer.

The second proviso however puts a further condition that the first proviso shall apply only in a case where the amount of consideration or a part thereof has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account on or before the date of the agreement for transfer.

Reason and Implication

The Income Tax Simplification Committee (Easwar Committee) has in its first report, pointed out that the existing provisions of section 50C do not provide any relief where the seller has entered into an agreement to sell the property much before the actual date of transfer of the immovable property and the sale consideration is fixed in such agreement, whereas similar provision exists in section 43CA of the Act i.e. when an immovable property is sold as a stock-in-trade. The amendment is proposed to be made with a view to bring a parity between the provisions of section 43CA, which applies to transfer of stock-in-trade and

section 50C, which applies to transfer of capital asset.

However, it is pertinent to note that under sub-section (4) of section 43CA the benefit of taking the stamp duty value of the earlier date is made available in a case where the amount of consideration or a part thereof has been received by any mode other than cash on or before the date of agreement. As against this the second proviso sought to be inserted in section 50C(1) permits adopting the earlier value only when the consideration is received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account on or before the date of the agreement for transfer.

Accordingly, it may be noted that in a case of receipt of consideration by journal entry or such other mode, sub-section (4) of section 43CA gets complied with and therefore the assessee is eligible to get the valuation of the earlier date. However, in similar situation the second proviso to section 50C(1) do not get complied and it will not be possible for the assessee to adopt the value as on the date of agreement. To this extent the amendment is restrictive in nature as compared to the provisions of section 43CA.

Effective Date

The amendment to section 50 is sought to be made w.e.f. 1-4-2017 and accordingly will be applicable on and from assessment year : 2017-18.

Amendment to Section 112 of the Act

Existing Provisions

Section 112(1)(c) of the Act provides that in the case of a non-resident, tax rate shall be of ten per cent for long-term capital gain arising from transfer of securities, whether listed or unlisted. The expression "securities" for the purpose of the said provision has the same meaning as in clause (h) of section 2 of the Securities Contracts (Regulations) Act, 1956 (32 of 1956)('SCRA').

Proposed Amendment

Clause 48 of the Finance Bill seeks to amend the provisions of clause (c) of sub-section (1) of section 112 of the Income- tax Act. The proposed clause seeks to provide that long-term capital gains arising from the transfer of a capital asset being unlisted securities, or shares a company not being a company in which the public are substantially interested, shall be chargeable to tax at the rate of 10 per cent.

Reason for Amendment

A view has been taken by the courts that shares of a private company are not "securities". From the reading of the amendment it is clear that the amendment seeks to insert an additional item i.e. “shares of a company not being a company in which the public are substantially interested” to be taxed @ 10%. However, as per the Memorandum explaining the provisions, the amendment is sought to be made with a view to clarify the position so far as taxability is concerned.

Effective Date

The amendment to section 112 is sought to be made w.e.f. 1-4-2017 and accordingly will be applicable on and from assessment year : 2017-18.

Other Amendments under the Chapter of Capital Gains

Clause 31 of the Finance Bill seeks to insert a new exemption section 54EE providing for exemption against investment in units of specified funds. Clause 32 of the Finance Bill seeks to amend section 54GB by allowing exemption for investment in shares of an eligible start-up. These clauses are related to Tax Incentives provided to start-ups. There is a separate article in this special story dealing with start ups. In that article, CA Anup Shah has dealt with the subject extensively including the clauses 31 and 32 of the Finance Bill. Readers are suggested to read the said article for a complete understanding of the subject.

Few of the thoughts on section 54EE which arises in my mind are bulleted as under :

- Section 54EE provides for exemption up to maximum ` 50 lakh. The provisions are similar to section 54EC. Now the assessees would be able to take the benefit of both the sections and will be in a position to save tax on Long Term Capital Gains up to ` 1 crore.

- Considering that the purpose of the Government is to finance the start-up funds, for which the expected investment is ` 2,500 crore each for next four financial years, the ceiling of ` 50 lakh, appears to be misplaced. The same could have been allowed without any ceiling, which would have ultimately been beneficial for start-up funds and start-up entities.

- The investment as envisaged under section 54EE has to be made of the amount of capital gains (similar to section 54EC). When the assessee transfers an immovable property being a land or building or both and the computation is subject to section 50C of the Act, there is a genuine difficulty in such a case. Since the actual consideration is less than the deemed consideration, cases have come to light where the capital gains are higher than the actual consideration and the assessee does not have money to make the investment to the extent of the capital gains as computed due to operation of section 50C. The same results in a dichotomy and the assessee cannot avail complete exemption even if the entire consideration is invested in section 54EC bonds.

Mumbai Tribunal in the case of *Nila V. Shah vs. CIT (2012) 51 SOT 461 (Mum.)* has taken a view that in such a situation the sale consideration for the purpose of computation will be the stamp duty value as adopted under section 50C. However for computing exemption eligible to the assessee, the sale value will be taken at the actual sale consideration. A contra view is taken by the Jaipur Bench of the ITAT in the case of *Prakash Karnavat vs. ITO (2012) 49 SOT 160 (Jp.),* where complete exemption is allowed to the assessee u/s. 54EC in similar situation. The same controversy is likely to arise in the case of exemption u/s. 54EE as well.

Clause 35 of the Finance Bill seeks to amend section 55 of the Act. This amendment is a consequential amendment and the primary amendment is proposed by clause 12 of the Finance Bill in section 28(va) of the Income-tax Act. CA Sanjeev Lalan has dealt with the chapter of Profits and Gains on Business and Profession in a separate article and has also covered the above consequential amendment to section 55 of the Act. Readers are advised to refer to the article of CA Sanjeev Lalan on the subject.

Conclusion

An attempt has been made in the above article to put forward the amendments related to Capital Gains in a manner which will be easy to understand for all the readers. I express my sincere thanks to the Journal Committee of the Chamber for giving me this wonderful opportunity to deal with this subject. I must admit that but for this opportunity, I would not have gone through the Finance Bill provisions so minutely. It is said that when you spread knowledge, you gain more knowledge. This is more so when it comes to the interpretation of tax laws. I thank the Chamber for giving me this chance to gain some more knowledge.

CA Anup P. Shah

Start-up Taxation

1. Introduction

1.1 The Prime Minister of India has been very enthusiastic about promoting the entrepreneurship culture in India and wants to foster an environment and an ecosystem where start-ups thrive and are incubated till they mature. Start-ups have been seen as an instrument for India's transformation. Accordingly, the *Start-up India Action Plan **(SIAP)*** was unveiled by the Government on 16th January 2016 which addresses various facets of the start-up ecosystem and includes simplification steps as well as incentives for start-ups. Amongst the incentives, certain tax benefits have also been proposed by the SIAP. Taking a cue from the SIAP, the Finance Bill 2016 proposes certain benefits to start-ups and their promoters.

1.2 These proposals if implemented by the Government would become effective from Financial Year 2016-17 or Assessment Year 2017-18.

2. Proposals in the Finance Bill, 2016

2.1 Certain tax incentives have been proposed for start-ups by the Finance Bill 2016 which are enlisted below.

2.2 Tax Holiday u/s. S.80IAC

A Tax Holiday is proposed to be made available to ***eligible start-ups*** incorporated between 1st April 2016 and 31st March 2019, subject to the following conditions:

a) It must be an eligible start-up, i.e., a company engaged in an ***eligible business***. An eligible business is defined to mean a *business which involves innovation, development, deployment or commercialisation of new products, processes or services driven by technology or intellectual property.*

Compare this definition with the definition in the SIAP and the Commerce Ministry's Notification dated 17th February 2016 which defines a start-up in the same manner as that contained in the SIAP. The SIAP / Notification also permits a business which aims to develop and commercialise a significantly improved existing product or service or process, that will create or add value for customers or workflow. This flexibility is not allowed u/s.80IAC.

Further, the SIAP / Notification states that that the mere act of developing products or services or processes which do not have potential for commercialization, or developing undifferentiated products or services or processes, or developing products or services or processes with no or limited incremental value for customers or workflow would not be covered under the definition of a start-up.

Further, only companies are eligible for this tax holiday. The SIAP / Notification permitted start-ups in form of LLPs or firms also.

One wonders when the Notification was issued as recently as on 17th February, 2016 where was the need to have a different definition on 29th February, 2016? Why could not the same definition have been retained for this purpose. So there may now be a case where an entity could be a start-up under other laws but not so under Income-tax Act and *vice-versa*. Ironically, the Notification states that it is issued to *bring uniformity in identified enterprises*. A clear case of disconnect between ministries!

One good aspect of s.80IAC is that unlike the SIAP / Notification, it does not require that to be a start-up, the entity must be incubated by a recognised incubator / funded by SEBI registered entities / must have a patent. Thus, there is one less level of condition as compared to the SIAP / Notification.

b) To be eligible the total turnover of the eligible start-up ≤ ` 25 crores in any of 3 financial years within the 5 years' period of 1st April 2016 - 31st March 2021. The term *turnover* has not been defined. Here again, the Notification states that turnover would be as per the definition under the Companies Act, 2013. S.2(91) of that Act defines turnover to mean the aggregate value of the realisation of amount made from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during a financial year. Would this definition also apply under the Income-tax Act or would one rely to the judgments in the context of tax audit u/s. 44AB of the Income-tax Act?

c) The business of start-up must be certified as being eligible by the Inter-Ministerial Board of Certification.

d) 100% deduction from profits is available in any consecutive 3 AYs out of a block of 5 years at the option of the start-up. The period of 5 years begins with the year in which the start-up is incorporated.

e) Eligible start-ups should not be formed by split up or reconstruction of a business already in existence except if the start-up is formed as a result of the revival of the business of any undertaking which has suffered severe damage due to floods, riots, fire, etc., as referred to in s.33B. Further, the revival must be in accordance with the conditions specified therein.

f) Start-ups should not be formed by transfer of previously used plant and machinery from any other business in India. However, relaxation is provided that used assets, if any, should not exceed 20% of total assets.

g) The start-up must obtain an audit report from a CA and submit it at the time of filing the return of income to avail the tax holiday.

h) Inter-unit transfer of goods / services by start-ups should be at an arm's length price.

i) The eligible start-up will not be eligible to claim any other deductions under Chapter VIA during the period of the tax holiday.

j) For determining the quantum of deduction available, the profits would be computed as if the eligible business was the only source of income of the company during the entire tax holiday period.

Comments

- A start-up which makes profits in the First 5 years of incorporation is indeed a rare utopian concept! Very large e-commerce companies have not yet broken-even, forget making profits. A better option would have been to provide a tax holiday

in a block of 3 out of the first 10 years. Hence, it appears that this provision is a pie in the sky deduction!

- Further, MAT @ 18.5% + applicable surcharge + cess would continue to apply to all such companies. Thus, it is clear that even if the start-up makes profit, it would get no real benefit! The SIAP did not mention MAT at all.
- Existing start-ups are discriminated against. However, as a pacifier, certain existing start-up companies have been given a concessional tax rate as explained below.
- Once the tax holiday period is over, the start-up can claim deduction u/s. 80JJAA available for providing employment to additional employees.

2.3 Rollover of Capital Gains u/s. 54EE

If any assessee transfers a long-term capital asset and invests the capital gains arising from the transfer within 6 months in the units of the Start-up Fund of Funds to be set-up by the Central Government, then the gain would be exempt. A maximum investment of ` 50 lakh is allowed, even if spread over two financial years. The units of this Fund must be held for 3 years from acquisition. The benefit is allowed only for investments made in units issued before 1st April 2019.

Comments

It may be noted that this exemption is available to any assessee and not just to start-ups / their promoters. Thus, this exemption is similar to the one available in case of investment in capital gains savings bonds issued u/s. 54EC.

2.4 Sell House and Invest in Start-up u/s. 54GB

An individual / HUF which sells a residential house can save the long-term capital gains if sold before 31st March 2019 and the net sale consideration is invested in the shares of a start-up company before the due date of filing the Income-tax Return. The assessee availing this exemption must own >50% of the shares of the start-up and continue to own them for a period of 5 years. Further, the start-up company must use this investment within 1 year on acquiring a new asset, i.e., plant, machinery and in case of technology driven companies, it would also include computers/ software. The start-up company must not transfer the new asset for a period of 5 years.

If before 5 years, either the shares of the start-up are sold or the new asset is sold by the start-up, then the capital gains which were exempt earlier would become the income of the year of default.

Comments

Sell your house and start a start-up is the motto of this section! While sections 54 and 54F promote housing for all, this section endorses the reverse. Only an entrepreneur who has more than one house in the family could consider this deduction. Most bootstrap entrepreneurs have only one asset, a family home, this section encourages them to sell that also!

A lock-in period of 5 years and that too for 50% of the capital of the start-up is an extremely harsh condition. Dilution is the norm in start-ups and founder stake below 50% is quite expected and accepted in this industry. Norms which apply to conventional industries are not normal in the case of start-up sector.

Further, while the section allows investment in computers and computer software for technology driven start-ups, it requires them to hold on to these assets for a period of 5 years. Digital obsolescence and technological disruption is the mantra for start-ups. 5 years is a lifetime when it comes to information technology. Hence, it is advisable that the 5 years condition be suitably modified both for the holding of the shares of the start-up as well as for the holding of the asset by the start-up.

One would have preferred that this exemption be extended to all capital assets. Thus, if a

entrepreneur were to sell any long-term capital asset and he invests in shares of a start-up, he would be eligible for the exemption from capital gains.

2.5 Concessional Tax Rate

All companies, including existing start-ups are eligible for the concessional tax rate of 29% + applicable surcharge + cess provided their total turnover / gross receipts did not exceed ` 5 crore in the Financial Year 2014-15. Thus, for existing start-ups there is a reduction of 1% in the income-tax rate while for newly setup start-ups there is an option of a tax holiday.

Further, u/s. 115BA domestic companies set-up on or after 1st March 2016 which are engaged in the business of manufacturing / production can opt for a concessional tax rate @ 25% + applicable surcharge + cess. However, they would not be eligible to claim any deduction / benefit u/s. 10AA, accelerated depreciation, tax holidays under Chapter VI-A (including s.80IAC), scientific research and investment allowance. However, such a company can claim deduction u/s. 80JJAA for generating employment. Thus, if start-up company is into manufacturing, then it may consider this option.

3. Missed Opportunities

3.1 In addition to the 3 provisions for start-ups, there were several other provisions which were either promised by the SIAP or were keenly expected by the start-up ecosystem. These have not made their way to the Finance Bill 2016 and are a missed opportunity to further improve the business landscape.

3.2 The provisions which were promised or expected are as follows:

Provision	Remarks
Investment in shares of an unlisted company @ Premium – s.56(2)(viib)	• Any investment in shares of an unlisted company at a price above the fair market value of shares is taxable as income of the company. The Rules provide for valuation methodology for determining the FMV, e.g., by applying the Discounted Cash Flow value. • In start-ups it is often difficult to determine cash flows and hence, apply the Discounted Cash Flow method. • The SIAP had promised that just as investment by SEBI registered venture capital funds in companies is exempted from this provision, the same exemption shall be extended to investment made by incubators in the start-ups. • This exemption has not been extended by the FB 2016.
Explanation of source of funds of investor –s.68	• Any unlisted company issuing shares must explain the source of funds from which an investor has invested in the shares. If the Officer finds the explanation unsatisfactory then the issue would be taxed as Cash Credits of the company. • There is an exemption for investments by a Venture Capital Fund. • It was expected that the exemption would be broadened to cover various other investors of a start-up.

Provision	Remarks
Carry forward of Business Losses – s.79	• Business losses are one of the most valuable assets of a start-up. • However, in cases where not less than 51% of the voting power changes hands, the set-off of losses is not allowed to a company. • This is a major disadvantage for a start-up since shareholding would get diluted with every successive series of funding. This results in start-ups losing out on the benefit of carry forward and set-off of losses. • It was hoped that s.79 would be amended to exclude start-ups from its ambit. However, no such mercy has been shown.
Sweat Equity Taxation	Founders / Co-founders of start-ups are rewarded in the form of sweat equity, i.e., an issue of shares at a discount / no consideration. The Company Law Committee in its February 2016 Report has recommended that start-ups be allowed to liberally allot sweat equity since that is one of the key motivators for founders. It has also suggested relaxation in the Companies Rules in respect of sweat equity. Should not the Income-tax Act follow suit?
Buy-back Taxation	Buy-backs are an important way of facilitating exits in start-ups. The buyback tax u/s. 115QA acts as a big dampener. A relaxation was expected on this front.

4. Conclusion

While the intent is clear, the action must follow to benefit the start-ups. Baby steps have been taken which should be lauded but much more needs to be done. Incentives and benefits must be real and tangible which would spur a whole new class of entrepreneurs. Only then would the *start-up India* dream really start up!

P.S.: Is it *start-up* (as referred to in the Finance Bill) or *startup* (as referred to in the SIAP / the Notification)?

> Tell me, why is the media here so negative? Why are we in India so embarrassed to recognise our own strengths, our achievements? We are such a great nation. We have so many amazing success stories but we refuse to acknowledge them. Why?
>
> *— A. P. J. Abdul Kalam*

CA Anish Thacker

Proposals aimed at facilitating Business in India

INTRODUCTION

In the third Finance Bill of the present Government the Hon. Finance Minister (FM) has proposed certain amendments to the Income-tax Act, 1961 (Act) that are aimed at easing doing business in India. This article aims to analyse some of these proposals.

PROPOSALS RELEVANT TO REAL ESTATE INVESTMENT TRUSTS (REITS) and INFRA-STRUCTURE INVESTMENT TRUSTS (InvITs) (Clauses 7 (c) (II) (III), 55(a), 61, 80 of the Finance Bill, 2016 (FB 16)

The Finance Bill (No. 2) Act, 2014 introduced provisions for taxation of REITs and InvITs in the Act. The manner of taxation of these trusts was that the trusts would be 'pass through' and that the income from the property/infrastructure project should be taxed in the hands of the investors in the REITS/InvITs. The 'pass through' that was provided was however, not a 'complete pass through'.

The typical structure of REITs/InvITs is that the property/infrastructure project (asset) is housed by i. e. owned by a Special Purpose Vehicle (SPV) , a company. The trust buys shares of this company and the funding for this purchase comes from units that investors in the trust subscribe to. The trust, from the shares of the SPV that it holds, receives dividend.

Since the SPV is an Indian company like any other Indian company paying dividend, it also is liable to pay Dividend Distribution Tax (DDT) under Section 115-O of the Act.

Now, the SPV does not have any income or asset other than what it earns from the asset to pay this DDT. Consequently, the amount of dividend that it can pay to the trust and consequently, the amount the trust can distribute to its unit holders, reduces thereby not making this a complete 'pass through' process. Undoubtedly, the dividend does not get taxed once it reached the trust and thereafter but as far as a taxpayer investor (say a senior citizen or a Mutual Fund) is concerned, the DDT is a tax outgo that the investor is unable to claim credit for. This was particularly concerning to taxpayers which did not have tax liability.

Numerous representations were made to the Government in this regard to make the ' pass through' to the Investor complete. Taking heed to the representations the FB 16 proposes to exempt the dividend that a SPV distributes to the trust and amend sections 10 (23FC), 10 (23FCA), 115-O, 115-UA and 194 LBB of the Act to provide for this. The exemption from the DDT is available only if the trust holds the entire share capital of the SPV. To prevent possible misuse, it is also provided that dividend that the SPV pays out of accumulated profit or profit earned upto the date on which the SPV acquires

the asset, should not be exempt from payment of the DDT.

These proposals, if enacted, will take effect from 1st June 2016.

REITS and InvITs were launched with much enthusiasm by the present Government presumably, in the financial services sector this is the only initiative where the proposals outlining the tax treatment of the constituents were put in place prior to the Securities and Exchange Board of India (SEBI) using the guidelines for regulating these entities. Removal of the DDT when the SPV distributes dividend to the trust was one of the long standing demands of the industry. One would probably have been more enthused if the industry's other demand, namely the exemption from capital gains on transfer of the property / project by the SPV to the trust was also accepted. That would then have completed the 'pass through' fully.

PROPOSALS RELATED TO MANAGEMENT OF OFFSHORE FUNDS (Clause 6 of the FB 16)

The Finance Act, 2015 has inserted Section 9A in the Act where it was provided that in case of eligible funds, the fund management activity carried out through an eligible fund manager acting on behalf of the fund would not constitute a business connection in India of the fund.

Both the offshore fund and the India fund manager were required to fulfil certain conditions for this to happen. The conditions to be fulfilled by the fund were 13 in number enumerated in the clauses (a) to (m) of Section 9A(3) of the Act. In addition, the fund manager also needed to satisfy conditions enumerated in clauses (a) to (d) of Section 9A(4) of the Act.

The industry very strongly represented to the Government that the said conditions were such that these put a very big dampener on the ability of this provision to practically work as funds (if indeed they satisfied the eligibility criteria) may not find fund managers that would satisfy (or want to satisfy) the eligibility criteria applicable to them.

The FB 16 proposes to provide relaxation as far as some eligibility criteria are concerned. One of the eligibility criteria for a fund was that the fund was a resident of a country or a specified territory with which India has entered into an agreement referred to in Section 90 or Section 90A of the Act (in other words a treaty jurisdiction). This would potentially lead to funds from non-treaty jurisdiction like Hong Kong, Cayman Islands, etc., to not be able to fall within the purview of Section 9A of the Act. It is now proposed to add the words "or is established or incorporated or registered in a country or a specified territory notified by the Central Government in this behalf are proposed to be inserted with effect from (w.e.f) 1 April 2017 i. e. Assessment Year (AY) 2017- 2018. Thus the eligible fund would not necessarily have to be a resident of a treaty jurisdiction going forward. It could also be a resident of a notified non- treaty jurisdiction. Of course one will need to wait for a notification from the Central Government in this regard before the fund can take advantage of section 9A.

Another condition proposed to be relaxed by the FB 16 is the condition that the fund should not control or manage a business from India. Institutions sometimes pick up significant minority stakes in companies outside India (India has a ceiling of 10% of the capital to be invested by a Foreign Portfolio investor, so for Indian investments the fund typically will never end up controlling or managing the company) which could in some cases give them control over the foreign investee company. In the present regime, this disentitles the fund from being able to gain access to the beneficial provisions of Section 9A of the Act. This condition of denial of access to the fund if it is managing or controlling of a business from India is proposed to be relaxed.

The relaxation of these two conditions is welcome. Yet, the relaxation of these two conditions is in itself not sufficient for fund managers to start managing foreign funds

from India. The industry has represented for relaxation of several other conditions both on part of the fund and on part of the manager for this to become a reality.

In recent conclave when the Hon. Revenue Secretary was addressing the delegates, further relaxation of the conditions was alluded to. The fund management industry therefore continues to monitor the situation with definite expectations of simplification and relaxation so as to enable managers to commence managing foreign funds from India.

PROPOSALS RELATING TO SECURITISATION TRUSTS (Clauses 3, 7(C) (I)(V), 57, 58, 59, 82, 83 of the FB 2016)

Non-Performing Assets (NPAs) of banks have significantly increased. In the recent past, the print and television media has made the general public aware of the situation and therefore, in the budget speech as well, the Hon. Finance Minister announced several measures to incentivise asset restructuring as well as facilitate institutional and non-institutional investment in security receipts.

From an income- tax point of view, the Finance Act, 2013 inserted Chapter XII–EA consisting of Sections 115TA, 115TB and 115TC in the Act. The treatment of securitisation transactions as far as the Act was concerned was as follows:-

(i) Income from a securitisation trust was exempt from Income-tax (Section 10 (23DA)) with effect from 1st April 2014.

(ii) With effect from 1 June 2013, as per Section 115TA of the Act, any amount of income distributed by a securitisation trust to its investors was chargeable to tax and the securitisation trust was liable to pay additional income- tax on such distributed income at the rate of 25 per cent on income distributed to an individual or HUF and 30 per cent on income distributed to any other person (where however, the income of the person to whom income was distributed by the securitisation trust was not chargeable to tax, irrespective of its nature, illustratively, a mutual fund, no additional income- tax payable).

(iii) Amount of distributed income received by the recipient was exempt from income- tax in his hands (Section 10(35A) of the Act).

The additional income-tax payable by the securitisation trust was a big dampener for the activity of securitisation because (a) The additional income-tax paid by the securitisation trust was not creditable in the hands of the recipient of the distribution and therefore, a sunk cost and (b) The distributed income being exempt in the hands of the recipient exposed the recipient to disallowance under Section 14A of the Act where the disallowance is not only rule based and can far exceed the income. It was for these reasons that the activity of securitisation greatly reduced to a pale shadow of its former self practically becoming close to zero.

Given that the NPAs of the Public Sector Banks had reached alarming proportions and a need to revive securitisation was acute, a comprehensive review of the tax provisions was also done and the entire scheme is now proposed to be overhauled. The key features of the overhaul contained in clauses 3, 7 C) (I)(V), 57, 58, 59, 82, 83 of the FB 2016 are as follows:-

(i) Section 10(35A) will not exempt any income received by the recipient of income distributed by the securitisation trust on or after 1st June 2016. A proviso is proposed to be inserted therein to provide for this.

(ii) A securitisation trust will no longer be required to pay additional Income-tax on income distributed on or after 1st June 2016. A proviso is proposed to be inserted in section 115TA to this effect.

(iii) The meaning of the term 'securities' under section 115TC of the Act is proposed to be extended with effect from 1st June 2016 to include security receipts (in addition to debt securities)

(iv) The definition of the term 'securitisation trust' is proposed to be widened to include a trust set up by a securitisation company or a reconstruction company formed for the purposes of the SAR FESI Act, 2002 or in pursuance of any guidelines or directions issued for the said purposes by the Reserve Bank of India (RBI).

(v) 'Security Receipt' is proposed to be defined as having the same meaning as assigned to it in Section 2(1) (zg) of the SAR FESI Act, 2002.

(vi) After Section 115TC of the Act, a new Section, 115TCA is proposed with effect from 1st April 2017 to provide that:

(a) Notwithstanding anything contained in the Act, any income accruing or arising to, or received by any person, being an investor of the securitisation trust, out of the investments made in the securitisation trust shall be taxable in the same manner as if it were the income accruing or arising to or received by the person had the investments in the securitisation trust been made directly by him.

(b) The income paid or credited by the securitisation trust shall be deemed to be of the same nature and in the same proportion in the hands of the investor as if it had been received by or accrued or arisen to the securitisation trust during the previous year.

(c) The income accruing or arsing to or received by the securitisation trust during a previous year, if not paid or credited to the investor shall shall be deemed to have been credited to his account on the last day of the previous year in the same proportion as the investor would have been entitled to receive in the immediately preceding previous year. This income shall not be taxed again in the year of actual receipt.

(d) The securitisation trust shall furnish a statement of income and tax deducted therefrom (see the next point) to the investor giving such particulars as may be prescribed.

(vii) A new Section, Section 194LBC is proposed to be inserted with effect from 1st June 2016 to provide for tax deduction at source (TDS) from the income paid by a securitisation trust to an investor. For a resident investor, the rate of TDS will be 25% if the investor is an individual or a HUF and for other persons, it would be 30%. For Mutual Funds however, there would be no TDS keeping the provisions of section 196(1)(iv) of the Act in mind. For non-resident investors, the TDS would be at the rates in force which would mean that the treaty rates (which typically would be Nil or lower) should be able to be factored in by the trust when it deducts tax from the income distributed.

(viii) Section 197 of the Act is also proposed to be amended to provide for an option to the investor to approach the income-tax department for a nil or a lower TDS certificate from his assessing officer.

These proposals if enacted ought to give the required fillip to the securitisation industry and to facilitate offtake of stressed assets by professional fund managers who could then use their experience and expertise to restructure these assets.

PROPOSALS RELATING TO PLACE OF EFFECTIVE MANAGEMENT (POEM) (Clauses 4 , 54 and 235 of the FB 16)

The test of residence of companies has undergone a change in the recent past. Section 6(3) of the Act, prior to its amendment by the

Finance Act, 2015 provided that a company was resident in India if it was an Indian company or if the control and management of its affairs was situated wholly in India. This provision was apprehended to result in creation of shell companies and the test of residence was therefore changed w.e.f 1st April 2016 to make the Place of Effective Management (POEM) as the test for arriving at the residential status of a company which was not an Indian company. POEM was defined in the Explanation to Section 6(3) of the Act to mean the place where key management and commercial decisions necessary for the conduct of the business of the entity as a whole are in substance made. This was perceived to be a more complex test for determining the residence and the fact that there could be a lot of subjectivity in interpreting these provisions was brought to the notice of the Government. The Government then promised to bring out guidelines which would explain the meaning of certain terms and would also illustrate how POEM was to be looked at in different situations. A draft of the guidelines was circulated for public comments in January 2016. The final guidelines are yet to be published.

Keeping this in mind, it was thought prudent by the Hon. Finance Minister to defer the applicability of POEM by one year i.e. to 1st April 2017. Clause 4 of the FB16 therefore proposes to replace the present Section 6(3) of the Act by an exactly identically worded section w.e.f. 1st April 2017. It is perplexing to say the least as to why this has been done when all that was required was to make the existing section effective from 1st April 2017. Be that as it may, the applicability of POEM is therefore proposed to be deferred by a year which essentially means that for the Assessment Year 2016-17, POEM is no longer proposed to be looked at as a test of residence of a non-Indian or a foreign company. Also, Clause 54 proposes to introduce a new Chapter, Chapter XII-BC, containing Section 115JH of the Act which provides for 'transitional provisions' which will be notified in respect of a foreign company whose is considered to be a resident in India by virtue of application of POEM and issue a notification which will be laid out before both Houses of Parliament, which specifies how the income of the said company is to be computed in the period between the previous year and the financial year in which the assessment of the income of the foreign company considered to be resident in India by application of POEM is completed. Certain very typical issues could arise from the application of this section if it is enacted in the present form. For lack of space, these are not discussed threadbare here. Suffice it to say that we will still hear a lot on this POEM in the coming future with the guidelines to be expected soon (hopefully) and then a holistic analysis of the provisions including the transitional provisions will need to be done to evaluate the complete implications.

PROPOSALS RELATING TO TAXATION OF INCOME OF A TAXPAYER IN AN INTERNATIONAL FINANCIAL SERVICES CENTRE (Clauses 7(VI), 53(II), 55(b), 230(b) and 234 of the FB 16)

An International Financial Service Centre (IFSC) is understood as:

"A zone that provides financial services to non-residents and residents (to the extent permissible under the current regulations) in any currency except Indian Rupee"

It is an agglomeration of financial intermediaries, such as banks, insurance companies, asset management companies, brokers, investors, and hedge funds, and related professions, such as lawyers, accountants and information technology specialists, who provide high quality end to end financial services to customers around the globe. It targets offshore business and deals only sparingly with residents [only to the extent permitted by a non-resident under the Foreign Exchange Management Act, 1999 (FEMA)].

It has been India's long standing dream to have an IFSC. The idea was floated in 2007 when the Percy Mistry Committee recommended that India should have an IFSC.

IFSC is a designated area where financial services providers such as banks, insurance companies, asset management companies, brokers, etc. are envisaged to provide high quality end to end financial services to customers and where transactions take place in a currency other than the Indian Rupee. The IFSC regime has been introduced by the GOI with the stated intention of encouraging foreign financial institutions/ players to set-up a presence in India. Gujarat International Finance Tec-City (GIFT) is India's first IFSC set-up in the State of Gujarat.

Currently, the only tax deduction available to a unit in an IFSC is in relation to the business income derived by it from activities for which the unit is approved, as per section 80LA of the Act. The deduction is follows:

- 100% deduction of the eligible income in the first 5 years;
- 50% deduction of the eligible income for the next 5 years.

  The deduction is available from the year in which the necessary permissions have been obtained to undertake the approved activities.

  With a view to provide a competitive tax regime to IFSCs, the Bill proposes to introduce the following additional tax benefits/ exemptions

- Transactions in securities/commodities undertaken in foreign currency on a recognised stock exchange located in an IFSC shall be exempted from levy of STT and Commodities Transaction Tax (CTT), respectively. (see clauses 230(b) and 234 of the FB 16) These amendments will take effect from 1st June 2016.
- With effect from 1st April 2017 i.e. Assessment Year 2017-18 any income arising from transfer of a long-term capital asset being an equity share or unit of an equity oriented fund or unit of a business trust shall be exempt from tax provided the transaction is undertaken in foreign currency on a recognised stock exchange located in an IFSC (See clause 7(VI) of the FB 16).
- With effect from 1st April 2017 i.e. Assessment Year 2017-18: in case of a company, being a unit located in an IFSC and deriving its income solely in convertible foreign exchange:
  - o The applicable rate of MAT shall be 9% (plus applicable surcharge and education cess (See clause 53(II) pf the FB 16)
  - o No tax on distributed profits shall be chargeable on any amount declared, distributed or paid by such company by way of any dividend (either in the hands of the distributing company or in the hands of the recipient) (See clause 53(b) of the FB 16).

Knowledge can only be got in one way, the way of experience; there is no other way to know.

— *Swami Vivekananda*

CA Sanjeev Lalan, CA Saloni Zaveri

Provisions related to Business and Profession

In this article an attempt is made to analyse the amendments proposed in the Finance Bill, 2016 and which affect the taxation of income under the head Income from Business and Profession. All the provisions dealt herein shall have effect from 1st April, 2017, unless specifically mentioned.

Taxation of Non-Compete Fees and exclusivity rights in case of Profession – Section 28(va)

(Clauses 12 & 33 of the Finance Bill 2016)

- Section 28(va) of the Income-tax Act ('the Act') was inserted by Finance Act, 2002 totax any sum received or receivable in cash or in kind under an agreement for not carrying out activity in relation to any business i.e. non-compete fees under the head "Profit and Gains of Business or Profession".
- Further, the provisions of Section 28(va) clarified that receipts for transfer of right to carry on any business, which are chargeable to tax under the head "Capital gains", would not be taxable as profits and gains of business or profession and in computing such capital gains 'cost of acquisition' and 'cost of improvement' were taken as Nil.
- However, non-compete fee received/ receivable in relation to carrying out of profession were not covered under these provisions.
- Therefore, it is proposed to amend Section 28(va) of the Act to bring the non-compete fee received/receivable (which are recurring in nature) in relation to not carrying out any **profession,** within the scope of the charging section of profits and gains of business or profession.

  Further, it is also proposed to amend the proviso to clarify that receipts for transfer of right to carry on any profession, which are chargeable to tax under the head "Capital gains", would not be taxable as profits and gains of business or profession.
- On similar lines, consequential amendments are proposed in section 55, viz.-

  (i) Cost of Improvement of right to carry on any profession shall be taken to be Nil &

  (ii) Cost of Acquisition of right to carry on any profession shall be purchase price (in case of Purchase) & Nil (In other cases).
- In a recent case of ***Satya Kant Khosla v. ITO [2015] 63 taxmann.com 293 (Delhi-***

*Trib.)*the assessee, acting as managing director of a company engaged in manufacturing two wheelers, received certain amount at the time of termination of his relation with the company in consideration of his not providing 'the benefit of his knowledge of regulatory matters, negotiating skills and strategic planning expertise to any other person in India in the two wheeler segment for a period of two years from the date of the agreement'. The Hon'ble Tribunal agreed with the assessee that the said amount cannot be regarded as non-compete fee because it has not been paid for not competing with the payer, but for not providing the benefit of his knowledge, expertise, skills etc. to any other person in the two wheeler segment. The amount so received was neither taxable under section 17(3) i.e. 'profits in lieu of salary' nor under section 28(va) i.e. 'non-compete fees'. Further the Hon'bleTribunal held that section 28(va) taxes a sum received for a restrictive covenant in relation to a business, but not a profession and, therefore the sum received by the assessee does not fall within the ambit of Section 28(va) and it was not chargeable to tax as it constituted a capital receipt. It may be noted that the Hon. Supreme Court in *G. K. Choksi & Co. vs. CIT (2007) 295 ITR 376,* in context of allowability of expenses on maintenance of guest house expenses, has held that wherever a benefit under any provision was intended for both business or profession, the words "business or profession" were specifically mentioned.

Thus, the proposed amendment seeks to overcome the said decision.

Presumptive Taxation Scheme for Professionals – New Section 44ADA

(Clauses 24, 25 & 27 of the Finance Bill 2016)

- Currently, the presumptive tax regime does not apply to an assessee, who is carrying on profession.
- Clause 27of the Finance Bill 2016 seeks to insert a new Section 44ADA in the Income-tax Act relating to special provision for computing profits and gains of profession on presumptive basis, in line with the existing Section 44AD which is applicable to business only.

Applicability

- This Section shall be applicable to a resident assessee engaged in a profession referred to in sub-section (1) of Section 44AA and whose total gross receipts from profession during the year under consideration does not exceed ` 50 lakhs in the previous year.
- Section 44AA(1) applies to every person carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or any other profession as may be notified by the Board in the Official Gazette.

[Notified professions : (a) The profession of authorised representative; and (b) the profession of film artist (actor, cameraman, director, music director, art director, dance director, editor, singer, lyricist, story writer, screen play writer, dialogue writer and dress designer)—Notification : No. SO 18(E), dated 12-1-1977 / Profession of Company Secretary—Notification: No. SO 2675, dated 25-9-1992 Profession of Information Technology—Notification: No. SO 385(E), dated 4-5-2001.]

- While in the proposed Section 44ADA it is not specified which assessees would be covered, however the memorandum specifies that this scheme shall be applicable to Individual, HUF and Partnership Firm (but being LLP) only. It is not clear whether such omission in

the proposed section is an oversight or intentional.

Amount chargeable to tax

- Fifty per cent of the gross receipts or a higher sum as declared by the assessee will be considered as the presumptive income chargeable to tax under the head "Profits and Gains of Business or Profession".
- Effect shall be deemed to have been given to all the Sections from 28 to 43C, including for payment of salary, remuneration and interest to partners of a partnership firm.
- The written down value of any asset used for the purposes of profession shall be deemed to have been calculated as if the assessee had claimed and had been actually allowed the deduction in respect of the depreciation for each of the relevant assessment years.

Requirement for maintenance of books of account & Audit

- An assessee who claims that his profits and gains from the profession are less than 50% of the gross receipts and his total income exceeds the maximum amount which is not chargeable to income-tax shall be required to keep and maintain books of account as per Section 44AA (1) and get them audited under Section 44AB.
- Section 44AA(2) (i.e. maintenance of account) has not been amended in this regard. However, the Memorandum explaining provisions of Finance bill expressly mentions that there shall be no requirement for maintenance of books of account or audit under Section 44AB unless under circumstances as specified above.
- Consequential amendment is also proposed accordingly in Section 44AB and accordingly a person carrying on profession shall be required to get the accounts audited if the gross receipts in profession exceed ` 50 lakhs as per amendment proposed to clause (b) to Section 44AB.
- The stated purpose for introducing presumptive taxation scheme for professionals is to reduce the compliance burden of the small taxpayers having income from profession and to facilitate the ease of doing business.

Issues

- While under the regime of presumptive taxation for small taxpayers all along in case of partnership firms the deduction for payment of interest and remuneration was allowed after determining the presumed income subject to limits and conditions specified in Section 40(b). Under the proposed amendment no such provision is proposed. In view of the same, separate deduction for payments made to partners in respect of interest payments and remuneration, etc. will not be available. Whereas, in the hands of partners such receipts are taxable by virtue of provisions of section 28(v). Thus, where partnership deed provides for such payments to partners, would same become taxable in partners' hands?

It may be noted that determination of book-profit for purpose of Section 40(b) is determined per Explanation 3 to Section 40(b), accordingly "book-profit" means the net profit, as shown in the profit and loss account for the relevant previous year, computed in the manner laid down in Chapter IV-D as increased by the aggregate amount of remuneration paid or payable to all the partners of the firm if such amount has been deducted while computing the net profit. Thus, the starting point for computing book-profit for computing the remuneration is profit and loss account. Can a firm say that it is not required to maintain books of account and thus no profit and loss account is prepared? Normally, the partnership deed shall

provide for maintenance of books of account and preparation of annual financial statements. Also, where interest is to be paid to partners as per deed of partnership, it would be necessary to maintain books for determining amounts standing to credit of a partner. It is interesting to note that while under proposed sub-section (4) to the said Section it is provided that a person not declaring income under the provision of presumptive income shall maintain books of accounts and other documents, no corresponding amendment is proposed in Section 44AA for those opting for this scheme.

- An issue that would also consequentially arise, where such receipts are held to be taxable in the hands of partner, as to what would be the base of profit for calculation of such incomes taxable u/s. 28(v)? In case of reverse working for remuneration, from the base of presumptive income declared, one would arrive at absurd results.
- Further, in case of a partner of a professional firm who has receipt of remuneration, interest etc. from partnership firm which is less than ` 50 lakhs, whether he can declare presumptive income of 50% or such higher income as he may choose to declare? The Hon. Kolkata Tribunal has in *Usha A. Narayanan vs. DCIT (2013 TIOL 497 ITAT KOL),* following Amal Ganguly *(ITA No. 2135/ Kol./2008),* held that a partner of a firm was liable to get the accounts audited if the remuneration exceeded the limits laid down for audit of a professional u/s. 44AB. Thus, by implication the amount of remuneration etc. received and which are taxable by virtue of Section 28(v) would be construed to be "gross receipts" of the partner concerned. However, the issue is not free from doubt and is debatable.

Increase in threshold limit for presumptive taxation scheme for business Income - 44AD

(Clauses 25, 26 & 87 of the Finance Bill, 2016)

- The existing provisions of section 44AD provides for presumptive taxation scheme for an eligible business. Under the said scheme, in case of an "eligible assessee" engaged in "eligible business", having total turnover or gross receipts less than ` 1 crore, a sum equal to 8% of the total turnover or gross receipts, or as the case may be, a sum higher than the aforesaid sum shall be deemed to be profits and gains of such business chargeable to tax under the head "Profits and Gains of Business or Profession".
- In order to reduce the compliance burden of small tax payers and to facilitate the ease of doing business, it is proposed to increase the threshold limit of ` 1 crore specified in the definition of "eligible business" to ` 2 crores.
- Under the existing scheme as per proviso to Section 44AD(2), where the eligible assessee is a firm, the salary, remuneration, interest etc. paid to its partners shall be deductible from the income computed under Section 44AD(1) subject to the conditions and limits specified in Section 40(b).

It is proposed to omit the said provisionfrom Section 44AD(2) and accordingly, in case of eligible assessee being a firm, salary, remuneration, interest etc. paid to its partners shall not be allowed to be deducted separately from the income computed under 44AD(1).

- Section 44AB (4) has been substituted to provide that persons have to offer income as per provisions of this section,for consecutive 6 assessment years, in order to enjoy offering income on presumptive basis for the following succeeding year.

If a person fails to offer income on presumptive basis in any year, the said year being within the 6 years as explained above, he will be disqualified from offering income on presumptive basis for next succeeding 5 years.

For example, an eligible assessee claims to be taxed on presumptive basis under Section 44AD for AY 2017-18 and offers income of ` 8 lakhs

on the turnover of ` 1 crore.For AY 2018-19 and AY 2019-20 also he offers income in accordance with the provisions of section 44AD. However, for AY 2020-21, he offers income of ` 4 lakh on turnover of ` 1 crore. In this case since he has not offered income in accordance with the provisions of Section 44AD for 5 consecutive assessment years, after AY 2017-18, he will not be eligible to claim the benefit of Section 44AD for next five AYs i.e. from AYs 2021-22 to 2025-26. However, if he continuously offers income under the said provision up to AY 2023-24 and discontinues from the said scheme in AY 2024-25, he can again avail the benefit of the scheme from AY 2025-26 anytime without any limitation of having to wait upto AY 2029-30.

- It is further proposed by way of sub-Section (5) to Section 44AD, that an assessee to whom the provisions of sub-Section (4) are applicable and whose total income exceeds the maximum amount which is not chargeable to Income-tax, he shall be required to keep and maintain such books of account and other documents as per Section 44AA(2)(iv) and get them audited and furnish a report of such audit as required under Section 44AB(e).

Consequential amendments have been proposed in Sections 44AA and 44AB.

- Further as the turnover limit of presumptive taxation scheme has been enhanced to ` 2 crores, it is proposed to provide that eligible assessee shall be required to pay advance tax. However, in order to keep the compliance minimum in his case, it is proposed that he may pay whole amount of advance tax in one installment by 15th March of the financial year. Consequential amendment is proposed in Section 211(1)(b). This provision shall take effect from 1st June, 2016.
- Consequential amendment is also proposed in Section 234C(1)(b) whereby an eligible assessee shall be liable to pay interest @ 1% for shortfall in payment of advance-tax.

Issues

- Some of the issues, which are discussed in context of taxation of partnership firm carrying on profession hereinabove, same shall also be faced in relation to eligible assessees being partnership firms.
- Another issue that will be faced is in context of applicability of liability to deduct tax at source in case of eligible assessees whose turnover falls within the bracket of ` 1 crore to ` 2 crores. In all the provisions relating to liability to deduct TDS, the reference is to clauses (a) and (b) of Section 44AB. While one can understand that the benefit of presumptive taxation is extended only to an "eligible assessee" engaged in an "eligible business" defined under Section 44AD, there are other assessees engaged in businesses other than eligible businesses, where this benefit is not sought to be extended. However, the stated purpose for amending the Section and enhancing the limit is to reduce the compliance burden on small assessees. Hence, it is essential that the same should have reflected in the various provisions relating to liability to deduct tax at source. Otherwise all the eligible assessees whose turnover or gross receipts from eligible businesses are between ` 1 crore to ` 2 crores will have to comply with provisions relating to deduction of tax at source.

Benefits of initial additional depreciation for power sector – Section 32(1)(iia)

(Clause 13 of the Finance Bill 2016)

- Under the existing provisions of Section 32(1)(iia) of the Act, the benefit of additional depreciation of 20% on the cost of new plant or machinery acquired and installed is allowed to assessees engaged in the business of generation and distribution of power.

- In order to rationalize the incentive of power sector, it is proposed to provide that an assessee engaged in the business of **transmission of power** shall also be allowed additional depreciation of 20% on actual cost of new machinery or plant acquired and installed in a previous year.
- Thus, *vide* the proposed amendment, the benefit of additional depreciation has been extended to assessees engaged in the business of transmission of power.

Deduction for provision of Bad & Doubtful Debts

(Clause 21 of the Finance Bill 2016)

- Under the existing provisions of Section 36(1)(viia)(c) of the Act, a deduction with respect to provision for bad & doubtful debts subject to maximum of 5% of total income (computed before making any deduction under this clause and Chapter VI-A). This deduction is allowed to State financial corporation or a State industrial investment corporation.
- While the NBFC's are also required to follow the prudential norms of accounting and provisioning laid down by the Reserve Bank of India, in *Art Leasing Ltd. vs. CIT (2010) 229 CTR 272,* the Kerala High Court has held the provisions of section 36(1)(viia) are not applicable to the NBFCs.
- Considering the fact that Non-Banking Financial Companies (NBFCs) are also engaged in financial lending to different sectors of society, it is proposed to amend the Section 36(1)(viia) to allow the said deduction of provision for bad & doubtful debts to NBFCs also.
- NBFC shall have the meaning assigned to it in clause (f) of section 45-I of the Reserve Bank of India Act, 1934.

Extension of scope of Section 43B to include certain payments made to Railways

(Clause 23 of the Finance Bill 2016)

- The scope of Section 43B has been expanded to include payments made to Indian Railways for use of Railway assets within its ambit. This has been done with a view to ensure prompt payment of dues to Railways for use of the Railway assets.
- Therefore, any sum payable by an assessee to the Indian Railways for the use of Railway assets shall be allowable as deduction in the previous year in which the sum is actually paid (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the accounting method employed).

Disallowance u/s. 40

(Clause 22 of the Finance Bill 2016)

- Chapter VIII of the Finance Bill 2016 deals with the concept of Equalization Levy which is to be levied on non-residents providing specified services (online advertising, etc). The said chapter also provides that every resident or non-resident (having Permanent establishment) shall deduct equalisation levy from amount paid or payable to non-resident for specified service at the rate specified i.e. 6%.
- Sub-clause (ib) has been added to Section 40(a) to provide for disallowance of such payment for specified services to non-resident in case of non-deduction or non-payment of equalization levy to the credit of Central Government before the due date of filing return u/s. 139(1).

It is further provided that where equalisation levy has been deducted in any subsequent year or has been deducted in the previous year but paid in any subsequent year after the date specified in Section 139(1), the sum shall be deductible in the concerned previous year. This provision shall take effect from 1st June, 2016.

CA N. C. Hegde

MAT on Foreign Companies – For once, a welcome retrospective amendment

Minimum Alternate Tax ("MAT") was effectively introduced in India by the Finance Act of 1987, *vide* Section 115J of the Income-tax Act, 1961 ("IT Act"), to facilitate the taxation of 'zero tax companies'. It had been observed that many companies, despite showing high profits in their books of account and paying substantial dividends, were paying marginal or no tax, by taking advantage of various tax concessions and other incentives, in a manner so as to avoid paying tax[1]. MAT was thus envisaged as levying a minimum tax on such companies by deeming a certain percentage of their book profits, computed under the Companies Act, as taxable income. The Section has gone through several changes since the time it was introduced to counter attempts by the taxpayer to escape the clutches of this levy and is presently contained in the provisions of section 115 JB of the I.T.Act.

As per section 115JB(1) of the Income-tax Act, 1961 ('the Act'), in case of every company where the income tax calculated under the normal provisions of the Act is less then eighteen and one-half per cent of the book profits, such book profit shall be deemed to be the total income of the company and the tax shall be payable at the rate of eighteen and one-half percent of its book profit. One of the key stipulations under section 115JB is that such company shall prepare its profit and loss account for the relevant financial year in accordance with the provisions of Part II of Schedule VI to the Companies Act, 1956.

Given that foreign companies not having a business in India would not need to prepare such accounts in India or pay dividends in India, the general consensus was that the provisions of MAT were not applicable to foreign companies. As a result, it was widely believed that there would be no MAT on foreign companies and more so in the case of FIIs as these were long term investors in the Indian stock markets and were governed by a separate self-contained code. Way back in 1997, the Authority for Advance Rulings in P 14 of 1997[1] had in the context of section 115 JA of the Act held that the provisions of MAT would apply to a foreign company having a project office (permanent establishment) in India as the provisions of MAT would apply to all companies with there being no exception for foreign companies even though some of the provisions of the section may not be so applicable.

The controversy around the issue raged for a while with there being a cleavage of judicial opinion on the subject. In *Timken Company*[2] the Authority of Advance Ruling ('AAR') held that MAT provisions shall not apply to FIIs in

1. 100 Taxmann1
2. Timken Company [2010] 326 ITR 193 (AAR)

respect of capital gains earned from India in the absence of any PE. However a contrary ruling was pronounced by AAR in case of *Castleton Investment Limited*[3] ruled that MAT provisions shall be applicable to FIIs even if it has no PE in India.

Aggrieved by the AAR ruling, Castleton Investment Limited filed a Special Leave Petition before the Supreme Court. Meanwhile, Indian tax authorities started issuing notices to foreign companies including FIIs to show cause why capital gains earned on sale of Indian companies shares should be subject to MAT. The dispute also circled around whether section 90 of the Act is subject to the provisions of section 115JB of the Act considering the *non obstante* effect of the latter provision. Being troubled by the demands raised by Indian Tax Authorities without considering the beneficial provisions of Tax Treaty as may be applicable, there was a concern on foreign companies about the levy of MAT which added to uncertainty of taxation of their operations in in India, especially when they believed that they were not liable to tax as such.

As an attempt to put an end to this controversy, section 115JB of the Act was amended *vide* the Finance Act, 2015 to exclude the income of foreign companies earned in relation to capital gains arising on transactions in securities, interest, royalty or fees for technical services etc., from the chargeability of MAT. However, such amendment was to operate prospectively i.e., from Assessment Year 2016-17 onwards and the prospective amendment provided a shot in the arm for the tax authorities as it seemed to affirm their belief that in the absence of the amendment, the provisions of MAT would apply.

In order to put an end to the controversy, the Government constituted a committee lead by Justice A. P. Shah, to provide its recommendations on the issue. After examining the issue threadbare, the Shah Committee recommended that MAT should not be applicable to FPIs for the period before April 1 2015 and that the ruling in the case of Castleton, really did not reflect the correct legal position. The same was accepted by the Government and the CBDT issued Instruction No. 9 /2015 dated 2 September, 2015 and followed it up with a press release dated 24th September, 2015 confirming it's acceptance to the recommendation of Justice A.P. Shah Committee relieving all foreign companies not having a permanent establishment in India from the levy of MAT with retrospective effect from AY 2001-02. There was an assurance that the press release would be followed up by the necessary amendments in the statute..

The Finance Bill 2016 proposes to amend section 115JB by inserting *Explanation 4* to provide an exemption from MAT retrospectively from AY 2001-02 and onwards, to all foreign companies provided that

i. Foreign company is a resident of a country with which India has entered into a DTAA and the foreign company does not have a PE in India

ii. Foreign company is a resident of a country with which India has not entered into a DTAA and the foreign company is not required to seek registration under any law for the time being in force relating to foreign companies

The amendment is extremely welcome as it brings to end, an issue that has been troubling foreign companies for more than a decade. The Government must be complimented on bringing this controversy to a logical end once they realised this issue would create a climate of uncertainty. The Government may be well advised to constitute a committee to look at all such issues, impacting both domestic and foreign taxpayers and clearly advise the Revenue to drop such litigation especially where the stand of the Revenue is not legally tenable. This will bring down the number of cases clogging the Courts.

3. Castleton Investment Limited [2012] 348 ITR 537 (AAR)

CA Devendra Jain, & Dharan Gandhi, *Advocate*

The Income Declaration Scheme, 2016 (Chapter IX of the Finance Bill, 2016)

The Hon'ble Finance Minister of India, Shri Arun Jaitley, has in his budget speech said that:

".....while compliant taxpayers can expect a supportive interface with the department, tax evasion will be countered strongly……. I want to give an opportunity to the earlier non-compliant to move to the category of compliant". With these words, the Hon'ble Finance Minister introduced Income Declaration Scheme in the current Finance Bill. Last year, Government had come out with a scheme in respect of the undisclosed income and assets sourced outside India and in this Bill it has come out with a scheme for undisclosed income other than that covered by the Black Money Law. This scheme is proposed to come into force from 1-6-2016 (S. 178).

One has to test the validity of the scheme based on the undertaking given by the Central Government to the Hon'ble Supreme Court in All India Federation of Tax Practitioners v. Union of India [(1998) 231 ITR 24(SC)]. Notably, the earlier scheme under the Black Money Law, on similar lines, has not yet been challenged. Further, after filing the declaration under the present scheme, if the scheme is declared unconstitutional by the Hon'ble Supreme Court, then the repercussions of the same will be for one to guess. Be that as it may, we shall go through the scheme in a step by step manner as given in Chapter IX of the Finance Bill, 2016 starting from clause 178 and ending with clause 196. The term 'Act' in this write up shall imply the Income-tax Act, 1961.

Eligibility (Clauses 180 and 193)

Any person may make a declaration under this scheme on or after the commencement of the scheme (1.6.2016) but before a date to be notified by the Central Government in the official gazette,. However, in the following scenarios the scheme shall not apply:

a. to any person in respect of whom an order of detention has been made under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 subject to certain exceptions.

b. in relation to prosecution for any offence punishable under Chapter IX or Chapter XVII of the Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Unlawful Activities (Prevention) Act, 1967 and the Prevention of Corruption Act, 1988

c. to any person notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992;

d. in relation to any undisclosed foreign income and asset which is chargeable to tax under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015

e. in respect of income of any assessment year prior to AY 2017-18 where:-

   a. notice u/s 142 or 143(2) or 148 or 153A or 153C of the Income Tax Act, 1961 has been issued and proceedings are

pending before the Assessing Officer or

b. a search has been conducted u/s 132 or requisition has been made u/s 132A or a survey has been carried out u/s 133A of the Income-tax Act in respect of such assessment year and no notice has been issued u/s 143(2) or 153A or 153C but the time limit has for issue of such notice has not expired or

c. any information has been received by the competent authority under an agreement entered into by the Central Government u/s 90 or 90A of the Income-tax Act in respect of such undisclosed asset.

Thus, any person whether resident or non-resident can make a declaration under this scheme.

Subject matter and computation (Clause 180)

Subject Matter

A. Declaration can be made in respect of any income chargeable to tax under the Act for any assessment year prior to the AY 2017-18:-

   i. for which no return of income has been filed u/s 139 or

   ii. which is not disclosed in the return of incone furnished before the commencement of this scheme or

   iii. which has escaped assessment by reason of omission or failure on the part of such person to furnish a return of incone under the Income-tax Act or to disclose fully and truly all material facts necessary for the assessment or otherwise.

B. Declaration of income can also be made in the form of investment in any asset .

Computation

A. No deduction in respect of any expenditure or allowance shall be granted against the income in respect of which declaration is made.

B. Asset is to be disclosed at the Fair Market Value as on the date of commencement of the scheme and such value shall be determined in the manner as may be prescribed.

Thus, a person can make a declaration in respect of his undisclosed income chargeable to tax prior to FY 2016-17. Such income which are in the form of investment in any asset can also be declared. If disclosure of asset is made, then the same is taxable on its Fair Market Value as on the date of commencement of the scheme. Further, such undisclosed asset and income should not be the ones that are getting covered by the Black Money Law. Thus, disclosure can be made only in respect of income and assets sourced in India.

There's no clarity as to whether one is bound to disclose the undisclosed investment in assets or whether option is given to disclose the undisclosed income invested in such asset, since if the asset is disclosed, then the tax is payable on its current fair market value and thus the quantum of income will differ. There is also no clarity as regards the cost of acquisition and period of holding of assets declared under the scheme, while calculating the capital gain on subsequent transfer of such assets. Also, one has to see that if instead of assets the underlying income is disclosed, whether immunity available in respect of wealth tax assessments as discussed later will still be available or not.

Chargeability (Clauses 181 and 182)

Undisclosed income as computed in the manner given above, shall be chargeable to tax at the rate of 30% of such income. Such tax shall be increased by a surcharge called the Krishi Kalyan Cess computed at the rate of 25% of such tax. Further, the Declarant shall be liable for penalty computed at 25% of such tax amount. Thus, in all, the declarant will be liable to pay 45% of the undisclosed income amount.

In the disclosure scheme floated under the Black Money Law, the declarants were taxed at 30% and penalised at another 30% of the value of undisclosed income and asset. Thus, the Government has reduced the overall rate from 60% to 45% in respect of undisclosed income originating in India. May be

this provides insight in the success or otherwise of the Black Money Law scheme.

Procedure for making disclosure (Clauses 183 and 184)

Declaration has to be made to the Pr. CIT or the CIT and it should be in such form and verified in such manner as may be prescribed. Such declaration has to be made from the date of commencement of this scheme (1-6-2016) but before a date which shall be notified by the Central Government. Importantly, declaration under this scheme can be filed by a person only once.

The declarant has to make payment of tax, surcharge and penalty before a date which the Government shall notify. The proof of such payment then has to be filed with the Pr. CIT or the CIT as the case may be before whom the declaration has been made.

If there is any failure as to the payment, then the declaration shall be deemed to have been never made under this scheme.

The Hon'ble Finance Minister in his speech, has said that the Government is planning to open the window under this scheme from 1st June to 30th September, 2016 for filing of declaration with an option to pay the amount due within 2 months therefrom. The prescribed date shall be notified once the scheme is sanctioned.

Impact on Income-tax and Wealth-tax Assessment (Clauses 185, 186, 191 & 192)

Where there is total compliance with the provisions of this Chapter viz. filing of declaration and payment in accordance with the scheme, then the undisclosed income so declared shall not be included in computation of total income for any assessment year under the Act.

Where the undisclosed income is represented by any asset in respect of which there is any failure in compliance with the provisions of Wealth-tax Act, then:

a. Where no return has been filed or where the said assets are not disclosed in the return of net wealth filed, wealth tax shall not be payable in respect of the assets so declared.

b. Where the assets has been understated in value in the return of net wealth furnished by the Declarant, then the amount by which it is so understated, to the extent it does not exceed the voluntarily disclosed income utilised in acquiring such asset, shall not be taken into account in computing the net wealth for such years.

Where the declaration has been made by the firm, the above provisions in respect of wealth tax shall apply in determining the value of interest of partners in such firm also.

Further, a declarant under this scheme shall not be entitled to reopen any assessment or reassessment under the Income-tax Act or the Wealth-tax Act or claim any set-off or relief in any appeal, reference or similar other proceedings in relation to such years.

The provisions of the Income-tax Act, 1961 and the Wealth-tax Act, 1957 in respect of Chapter dealing with 'Liability in Special Cases' shall mutatis mutandis apply to this scheme.

Deemed Income (Clause 194)

The draconian deeming provision of the Black Money Law has been continued in this scheme also. It is provided that where the declaration has been filed but payment in respect of taxes has not been made, then the undisclosed income shall be treated as the income of previous year in which such declaration is made.

In respect of undisclosed income or asset acquired out of such income, for which no declaration has been made:

a. such income shall be deemed to have accrued, arisen or received and

b. such assets shall be deemed to have been acquired or made

in the year in which notice u/s 142, 143(2), 148, 153A or 153C is issued by the AO and the provisions of the Income Tax Act shall apply accordingly. In simple words, the undisclosed income shall be deemed to the income of the year in which it is unearthed by the AO.

Thus, where declaration has been filed and no tax, surcharge penalty is paid in accordance with

the provisions of this scheme, then the declared amount shall be deemed to be the income of the year in which the declaration was made. If the declarant realises that the income was not chargeable to tax as the same was in the nature of capital receipt or for any other reason he feels that the income is not chargeable to tax and therefore abstains from making payment of tax etc. then such declared amount is treated as the income of the declarant. Further, if there is any error in making the declaration, there being no provision to revise the declaration, if lesser amount of tax is paid as relatable to the proper disclosure made, then also the declaration shall be deemed to be invalid and the entire declared amount including the error shall be treated as the income of the declarant.

The undisclosed and undeclared income and asset, as stated above, shall be deemed to be the income of the previous year in which the notice is issued. Thus, this deeming provision has done away with the concept of charging income in the year in which it is earned or received as the case may be. Even the limitation for reopening of assessments for past six assessment years has been indirectly done away with because under the aforesaid provision of this scheme, such income shall be deemed to have accrued, arisen or received and such assets shall be deemed to have been acquired or made in the year in which notice u/s 142, 143(2), 148, 153A or 153C is issued by the AO.

Impact on other Statutes (Clauses 187 and 189)

The scheme also provides that the provisions of Benami Transaction (Prohibition) Act, 1988 shall not apply in respect of assets declared, if the assets existing in the name of a benamidar is transferred to the declarant being the person who provides the consideration for such asset or his legal representative, within period notified by Central Government.

Further, the declaration furnished shall not be used as an evidence for imposition of penalty under any law (other than under this scheme) and for prosecuting a person under the Income-tax Act and Wealth Tax Act.

Immunity is provided from penalty and prosecution under the Income-tax and Wealth Tax Law as no such declaration shall be used as an evidence for penalising or prosecuting a declarant. Immunity is also provided from Benami Transaction (Prohibition) Act, 1988 subject to fulfilment of certain conditions. The Hon'ble Finance Minister has in his speech also specified that there will be no scrutiny or enquiry regarding income declared in these declarations under the Income-tax Act or the Wealth-tax Act.

Miscellaneous (Clauses 189, 190, 194, 195 and 196)

Scheme provides that under no circumstances the amount of tax, surcharge and penalty shall be refunded. Further, where the declaration has been made by misrepresentation and suppression of facts, such declaration shall be treated as void. It is clarified that other than the declarant, no person shall be construed as been given any benefit, concession or immunity.

Power has been given to the board to remove difficulty if any to give effect to the provisions of the scheme within 2 years from the date on which it comes into force. So also the Board has been given powers to come out with relevant rules.

Based on the news reports available, the Black Money Law scheme has been able to garner a weak response with only 638 disclosures disclosing income and assets worth ` 3770 crores and earning around ` 2500 crore for the Government. One of the important reasons which may be assigned to such weak response would be lack of clarity and other would be high tax rate (including penalty). In so far as the second reason is concerned, the rate of tax has been reduced to 45% (including penalty) of the income and also the level of clarity is much higher than the earlier scheme. One has to wait and see the fate of this scheme especially where the opposition parties have made a huge hue and cry of the scheme.

Ajay Singh, Advocate & CA Hitesh R. Shah

The Direct Tax Dispute Resolution Scheme, 2016

Introduction

In the 2016 Finance Bill, Hon'ble Finance Minister Arun Jaitley has introduced a new scheme called the Dispute Resolution Scheme, 2016 (The Scheme) under Direct Tax. It is an alternate mechanism to resolve disputes which, over the years, have accumulated including tax disputes arising on account of retrospective amendments that are not moving in any direction.

The scheme is aimed at accomplishing the three fold objectives, first to create tax friendly atmosphere, second to reduce cost of litigation, both for Government and for taxpayers, thirdly at the same time to enable Govt. to realise its dues expeditiously.

Hon'ble Finance Minister in his speech mentioned that:

"Litigation is scourge for a tax friendly regime and creates environment of distrust in addition to increasing the compliance cost of tax payers and administrative cost for the Govt. There are about three lakh cases pending with the 1st Appellate Authority with disputed amount being ` 5.5 lakh crore. In order to reduce numbers I propose to a new Dispute Resolution Scheme."

The Scheme also covers tax disputes arising on account of retrospective amendment introduced in Finance Act. The object is to put an end to all pending litigation matters in the form of Appeals , references, revisions, and writ petitions under Income-tax Act and Wealth-tax Act. The scheme has been introduced on similar lines to Kar Vivad Samadhan Scheme introduced in 1998 by Government. The scheme in substance is a recovery scheme though it was nomenclatured as a ' The Direct Tax Dispute Resolution Scheme' and is different from earlier KarVivadSamadhan Scheme.

The Scheme was introduced with the intention to provide tax friendly regime and remove the environment of distrust as stated by FM in his budget speech, however the scheme contains provisions for settlement of disputes up to CIT(A) in case of tax arrears (other than disputes which are on account of retrospective amendments) and will not cover disputes which are pending before the higher dispute resolution forum such as Tribunals, High Courts and Supreme Court which will act as a deterrent. Thus the scheme has carved out class within a class for availing benefit of the scheme and may act as deterrent in making scheme more successful.

Scheme is also not applicable in case matter is before DRP or appeal is filed against the order of DRP. Considering the Governments twin objectives i.e. reduction in litigation and recovering the sums locked in disputes, in our considered view Government should extend the benefit of scheme in case of tax arrears dispute pending before any other forum other than CIT(A).

A. Salient Features of the Scheme:

1. The Scheme shall come into force from 1st June, 2016.

2. The scheme defines, *inter alia*, two terms, viz. "specified tax" and "tax arrear". "Specified tax" pertains to a tax dispute which is pending as on 29th February, 2016, as a result of retrospective amendment. Whereas, "tax arrear" means tax, interest or penalty determined under the Income-tax Act or the Wealth-tax Act, 1957 in respect of which appeal is pending before the Commissioner of Income-tax (Appeals) or the Commissioner of Wealth-tax (Appeals) as on the 29th Day of February 2016.

3. Person may make declaration in prescribed form in respect of tax arrears and specified tax on or after the date of commencement of the Scheme i.e. 1-6-2016 but before date to be notified, to a designated authority i.e. Commissioner Of Income Tax.

4. Notwithstanding anything contained in the Income-tax Act or any other provision of any law for the time being in force amount payable under the scheme is:

Sr. No.		Tax and Interest	Penalty
1	In case of pending appeal related to tax arrear		
	(a) being Tax and interest(against an assessment order) (i) Where Disputed tax < 10 lacs	Whole of Disputed tax and interest thereon till the date of assessment / Reassessment	NIL
	(ii) In any other case	Whole of Disputed tax and interest thereon till the date of assessment / Reassessment	25% of the minimum penalty leviable
	(b) Pending appeal relates to penalty order	the tax and interest payable on the total incomefinally determined	25% of the minimum penalty leviable
2	In case of Specified Tax (tax dispute on account of retrospective amendment)	Amount of such tax so determined	NIL

5. Where declaration is w.r.t. tax arrears consequent to such declaration, appeal in respect of the disputed income and disputed wealth and tax arrears pending before the Commissioner (Appeals) shall be deemed to have been withdrawn.

6. Where declaration is in respect of specified tax , such declarant shall be required to withdraw any appeal/ or writ petition (wherever applicable) filed against such specified tax before the Commissioner (Appeals) or the Tribunal or High Court or Supreme Court, before making the declaration and shall also be required to furnish a proof of such withdrawal.

7. Further if any proceeding for arbitration conciliation or mediation has been initiated by the declarant or he has given any notice under any law or agreement entered into by India, whether for protection of investment or otherwise, he shall be required to withdraw such notice or claim for availing benefit under this Scheme.

8. It is proposed that person making declaration in respect of specified tax shall be required to furnish an undertaking in the prescribed form and verified in the prescribed manner, waiving the right, whether direct or indirect, to seek or

pursue any remedy or claim in relation to the specified tax which otherwise be available to them under any law, in equity, by statute or under an agreement, whether for protection of investment or otherwise, entered into by India with a country or territory outside India.

9. It is proposed that no Appellate Authority or Arbitrator or Conciliator or Mediator shall proceed to decide an issue relating to the specified tax mentioned in the declaration in respect of which an order is made by the designated authority or in respect of the payment of the sum determined to be payable.

10. It is proposed that where the declarant violates any of the conditions referred to in the scheme or any material particulars furnished in the declaration is found to be false at any stage, it shall be presumed as if the declaration was never made under this Scheme and all the consequences under the Income-tax Act or Wealth-tax Act under which the proceedings against declarant were pending, shall be deemed to have been revived.

11. Time and manner of payment

    (I) The designated authority within 60 days from the date of receipt of declaration determine the amount payable by declarant and grant a certificate stating the particulars of the tax arrears or specified tax and the sum payable.

    (II) The declarant shall pay the amount stated the certificate within 30 days of its receipt and intimate the same to the designated authority along with proof and the designated authority shall thereupon pass an order stating that the declarant has paid the sum.

    (III) The order passed shall be conclusive as to matters stated therein and no matter covered by such order shall be reopened in any other proceeding under Income-tax Act, Wealth-tax Act or any other lawor agreement entered into by India with any other country or territory outside India.

12. Immunity from initiation of proceedings in respect of offence and imposition of penalty in certain cases

    (I) The designated authority shall grant -

        a. Immunity from instituting any proceedings in respect of an offence under the Income-tax Act or Wealth-tax Act.

        b. Immunity from imposition or waiver of penalty under the Income-tax Act or Wealth-tax Act in respect of specified tax or tax arrears covered in declaration to the extent the penalty exceeds the amount of penalty referred as per the scheme (difference between the Penalty leviable and penalty as per scheme)

        c. Waiver of interest under the Income-tax Act or Wealth-tax Act in respect of specified tax covered in declaration or tax arrears covered in declaration to the extent the interest exceeds the amount of interest referred in the scheme i.e. (interest on leviable and interest till the date of assessment or reassessment)

13. Any amount paid in pursuance of declaration shall not be refundable.

14. It is also proposed that nothing contained in the Scheme shall be construed as conferring any benefit, concession or immunity on the declarant in any proceedings other than those in relation to which the declaration has been made.

15. Scheme not to apply in certain cases:
    (I) In respect of tax arrears or specified tax
        a. Relating to an assessment made under section 153A or 153C (relating to search) of the Income-tax Act or assessment or reassessment under sections 37A (relating to Search) or 37B (relating to requisition) of the Wealth-tax Act if it relates to any tax arrears
        b. Relating to an assessment or reassessment in respect of which survey was conducted under section 133A of the Income-tax Act or section 38A of the Wealth-tax Act if it relates to any tax arrears
        c. Relating to an assessment year in respect of which prosecution has been instituted on or before the date of filing of declaration under this scheme
        d. Relating to undisclosed income from a source or an undisclosed asset, located abroad
        e. Relating to an assessment or reassessment on the basis of information received under DTAA under section 90 or section 90A of the Income-tax Act where the declaration is in respect of tax arrears
    (II) To any person in respect of whom an order has been made under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974
    (III) Cases covered under Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Unlawful Activities (Prevention) Act, 1967, the Prevention of Corruption Act, 1988.
    (IV) Person notified under Special Court Act, 1992
16. The Central Government may, by order remove the difficulty by an order not after the expiry of a period of two years from the date on which the provisions of this Scheme come into force.

B. Kar Vivad Samadhan Scheme, 1998

Kar Vivad Samadhan Scheme, 1998 similar to The Direct Tax Dispute Resolution Scheme, 2016 was announced by Government of India in 1998. The memorandum explaining provisions of the scheme states that the said scheme seeks to provide a quick and voluntary settlement of tax dues outstanding as on 31-3-1998, both in various direct tax enactments as well as indirect taxes enactment by offering waiver of a part of the arrears taxes and interest and providing immunity against institution of prosecution and imposition of penalty. The assessee on his part shall seek to withdraw appeals pending before various appellate authorities and Court.

Difference between The Direct Tax Dispute Resolution Scheme 2016 and Kar Vivad Samadhan Scheme, 1998 is given as under:

Sr. No.	Particulars	The Direct Tax Dispute Resolution Scheme, 2016	Kar Vivad Samadhan Scheme, 1998
1.	Applicability in respect of	Tax arrears and specified tax (tax dispute on account of retrospective amendment) outstanding as on 29-2-2016	Tax arrears outstanding as on 31-3-1998

Sr. No.	Particulars	The Direct Tax Dispute Resolution Scheme, 2016	Kar Vivad Samadhan Scheme, 1998
2.	Tax arrears under which acts covered	• Income-tax Act, 1961 • Wealth-tax Act, 1957	• Income-tax Act, 1961 • Wealth-tax Act 1957, • Gift-tax Act, 1958 • Expenditure-tax Act 1987 • Interest-tax Act, 1974
3.	Penalty	In case of pending appeal related to tax arrears a) Being Tax and interest(against an assessment order) i. Where Disputed tax < ` 10 lakh Tax and Interest - Whole of disputed tax and interest thereon till the date of assessment / reassessment Penalty - Nil ii. In any other case Tax and Interest - Whole of disputed tax and interest thereon till the date of assessment / reassessment Penalty - 25% of the minimum penalty leviable b) Pending appeal relates to penalty order Tax and interest - the tax and interest payable on the total income finally determined Penalty - 25% of the minimum penalty leviable In case of Specified Tax (tax dispute on account of retrospective amendment) Tax and Interest - Amount of such tax so determined Penalty - Nil	Under Income tax Act, 1961 1. Tax arrears (comprising of income-tax, interest payable or penalty levied) • in case of Company or a firm-35% of disputed income • in case of others - 30% of disputed income 2. Tax arrears (comprising of interest payable or penalty levies) • 50% of tax arrears 3. Tax arrears determined under search and seizure proceedings • in case of Company or a firm-45% of disputed income • in case of others - 40% of disputed income **Under Wealth tax Act, 1957** 1. Tax arrears (includes wealth-tax, interest or penalty levied) - 1% of disputed wealth 2. Tax arrears (includes only interest or penalty levied) - 5% of tax arrears 3. Tax arrears determined under search and seizure proceedings - 2% of disputed wealth

C. Constitutional validity

Apex Court in case of *UOI vs. Nitdip Textile Processors Pvt. Ltd (2011) 245 CTR 241 (SC)* while deciding the while deciding whether section 87(m)(ii)(b) of Kar Vivad Samadhan Scheme is violative of Article 14 of the Constitution of India in so far as it seeks to deny the benefit to those who were in arrears of Excise duties, etc., as on 31-3-1998 but to whom the notices were issued after 31-3-1998 held that

"The Legislature, in its wisdom, has thought it fit to extend the benefit of the scheme to such of those assessees whose ***tax arrears are outstanding as on 31-3-1998, or who are issued with the demand or show-cause notice on or before*** *31-3-1998, though the time to file declaration for claiming the benefit is extended till 31-1-1999.*

The classification made by the Legislature appears to be reasonable for the reason that the Legislature has grouped two categories of assessees, namely, the assessees whose dues are quantified but not paid and the assessees who are issued with the demand notice and show-cause notice on or before a particular date, month and year.

The distinction so made cannot be said to be arbitrary or illogical which has no nexus with the purpose of legislation. In determining whether classification is reasonable, regard must be had to the purpose for which legislation is designed. The legislation is based on a reasonable basis which is firstly, the amount of duties, cesses, interest, fine or penalty must have been determined as on 31-3-1998 but not paid as on the date of declaration and secondly, the date of issuance of demand or show-cause notice on or before 31-3-1998, which is not disputed but the dues remain unpaid on the date of filing of declaration. Therefore, the Scheme 1998 does not violate the equal protection clause where there is an essential difference and a real basis for the classification which is made .

To satisfy the test of permissible classification, it must not be "arbitrary, artificial or evasive" but must be based on some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the Legislature. The taxation laws are not exception to the application of this principle of equality enshrined in Article 14.“

In case of *All India Federation of Tax Practitioners vs. UOI (1998) (101 Taxmann 401) (Delhi)* it has been held that classification between litigants who are in arrears of tax and those who are not in arrears of tax irrespective of whether tax was paid voluntarily by assessee or realised involuntarily by department resorting to coercive means of recovery or by making adjustment could not be held arbitrary or unreasonable in view of two-fold objectives sought to be achieved by Scheme.

The scheme carves out two different classes for settlement of dispute

i) Arising onaccount of retrospective amendment pending before any forum

ii) Arising onaccount of any other dispute and pending before CIT(A)

Two different treatment has been provided for two different classes for settlement of disputes. Declarant, in case of settlement of dispute arising on account of retrospective amendments need to pay only tax determined whereas in other cases he needs to pay tax determined and concessional interest and penalty wherever applicable.In the second class of cases a person is denied benefit of scheme in case of tax arrears where dispute is pending before higher forum such as Tribunals or Courts. Thus it has created further class within a class. Further it provides differential tax treatment to different classes. The issue of denying benefit of scheme where dispute is pending before higher forum in case of tax arrears and providing differential tax treatment for different classes, can be considered as reasonable, valid or violative of Article 14 of the Constitution of India (discriminatory in nature) and will not be surprised if challenged in in the Court of law.

D. Issues

An effort has been made to carve out some of the issues that may arise in case of tax arrears disputes requiring necessary clarifications or suitable directions in the scheme:

1. Whether an appeal which has been restored to file of CIT(A) to decide afresh can be covered in the scheme.
2. Whether a defective appeal or a belated appeal could treated as an appeal pending before CIT(A).
3. Whether excess tax paid because of mistake in computing the tax arrears would be refunded.

   e.g. in case of penalty appeal assessee has already paid 45% of demand. Whether assessee still be liable to pay 25% or whether penalty paid earlier would be adjusted against the demand and assessee would be entitled for refund excess demand i.e. 20%?
4. Whether tax computed on protective assessment would be covered under the scheme
5. Whether the assessment years covered by the scheme would be amenable to reassessment, revision or rectification.

   Above clarification would go long way in successful implementation of the scheme.

CA Prachi Parekh

Amendments at a glance – Return of Income & Assessment Procedures

This article intends to cover the provisions of the Finance Bill 2016, relating to the areas of Return of Income and Assessment Procedures. Related clauses have been grouped and then analysed with an intention to provide better reading of the proposed amendments.

Clause 3(b): Amendment of Section 2

Proposed Amendment: New Clause (23C) inserted

This clause defines "hearing" to include communication of data and documents through electronic mode.

Purpose: This amendment is in line with the intention of the Government to provide adequate legal framework for paperless assessment. Further, it also aims at enhancing the efficiency in the functioning of the Income Tax Department, and reducing the burden of compliance.

Impact: If implemented properly, this amendment is expected to pave the way for e-assessments in the coming future. These amendments shall further the department to promote the paperless assessment scheme that has been introduced by the department on a pilot basis for select non-corporate assessees presently.

Clause 109: Amendment of Section 282A – Authentication of notices & other documents

Current Provision: (1) Where this Act requires a notice or other document to be issued by any income tax authority, such notice shall be signed in manuscript by that authority.

Proposed amendment: In the aforesaid sub-section, for the words "signed in manuscript by that authority", the words "signed and issued in paper form or communicated in electronic form by that authority in accordance with such procedure as may be prescribed" shall be substituted w.e.f 1st June, 2016.

Purpose: Intention of this proposed amendment is to facilitate the expedition of proceedings and move towards an environment that supports paperless assessment.

Clause 66: Amendment of Section 143 – Assessment

A. Section 143(1) :

Current Provision: Presently, Section 143(1) reads as follows:

Where a return of income has been made under Section 139, or in response to a notice under sub-section (1) of Section 142, such return shall be processed in the following manner, namely-

(a) The total income or loss shall be computed after making the following adjustments, namely-

i. Any arithmetical error in the return OR

ii. An incorrect claim, if such incorrect claim is apparent from ay information in the return.

Proposed Amendment: After sub-clause (ii), the following sub-clauses shall be inserted w.e.f. 1st June, 2016.

iii. Disallowance of loss claimed, if return of previous year for which set-off of loss is claimed was furnished beyond the due date specified under sub-section (1) of Section 139.

iv. Disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return;

v. Disallowance of deduction claimed under Sections:

- 10AA, - Special Provisions in respect of newly established units in SEZ
- 80-IA, Deductions in respect of profits and gains from industrial undertakings or enterprises engaged in infrastructure development, etc
- 80-IAB, Deductions in respect of profits and gains by an undertaking or enterprise engaged in development of Special Economic Zone
- 80-IB, Deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings
- 80-IC, Special provisions in respect of certain undertakings or enterprises in certain special category States
- 80-ID Deduction in respect of profits and gains from business of hotels and convention centres in specified area
- 80-IE, Special provisions in respect of certain undertakings in North Eastern States
- if the return is furnished beyond the due date specified under sub-section (1) of Section 139; or

vi. Addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:

Provided that no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode:

Provided further that the response received from the assessee, if any, shall be considered before making any adjustment, and in a case where no response is received within thirty days of the issue of such intimation, such adjustments shall be made;

Purpose: Owing to the increase in online compliances, the Department has, at its disposal several information in the form of audit reports, returns of earlier years, 26AS statements etc. To make use of such information at the time of processing return of income u/s. 143(1), it is proposed to expand the scope of

adjustments that can be made at the time of processing returns of income. Before making such adjustments, the assessee shall be intimated of the same in writing or in electronic mode, and response given by the assessee within 30 days of issuing the intimation to be considered before making any adjustments.

Impact: The additions made to section 143(1) facilitate the execution of several *prima facie* adjustments to the return of income. To claim the benefit of various tax holiday under section 80IA to 80 IE and the exemption under section 10AA, it is now mandatory for the assessee to file his return of income on or before the due date stipulated u/s. 139(1). The proposed amendment provides for addition of income basis the income appearing in the 26AS statements or Form 16/16A. This is likely to pose certain issues, in case there is difference in the method of accounting adopted by the payer & payee. Further, even otherwise, presently, assessees are facing lot of issues owing to non-grant of TDS credit by the CPC. In cases where income is added based on these statements, whether grant of TDS credit would also be given on the same criteria remains to be seen.

The amendment also mentions that, according to the principles of natural justice, before such adjustments are made, it would be imperative to inform the assessee about the same either in writing or in electronic mode. One has to note that the assessee has to give his response, if any, on the adjustments within 30 days from the date when such intimation is issued, and NOT when such intimation is served. Considering the department's intention to move towards paperless assessments and encouragement for issue of notices electronically, professionals and tax-payers would have to take extra care to not miss out on any emails from the Income tax department. If no response is received within the stipulated period of 30 days, the adjustments shall be made. It also remains to be seen what are the remedies available to the assessee in case the representations made by him *vis-à-vis* the adjustments are not considered. He can, perhaps prefer an appeal, or go in for a rectification u/s. 154.

B. Section 143(1D)

Current Provision: This Section states: Notwithstanding anything contained in sub-section (1), the processing of a return shall not be necessary, where notice has been issued to the assessee under sub-section (2).

Proposed amendment: The following proviso is proposed to be inserted to the aforesaid sub-section: Provided that such return shall be processed before the issuance of order under sub-section (3).

Purpose: This proposed amendment shall ensure that *prima facie* adjustments can be made. Since the returns will be processed before the issuance of order u/s. 143(3), it will lead to saving of interest on refund.

C. Section 143(2)

Current Provision: Where a return has been furnished under Section 139, or in response to a notice under sub-section (1) of Section 142, the Assessing Officer shall,-

(I have reproduced only the second clause hereunder of the existing provisions)

ii. Notwithstanding anything contained in clause (i), if he considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not underpaid the tax in any manner, serve in the assessee a notice requiring him, on a date to be specified therein, either to attend his office or to produce or cause to be produced, any evidence on which the assessee may rely in support of the return:

Provided that no notice under clause (ii) shall be served on the assessee after the expiry of six months from the end of the financial year in which the return is furnished.

Proposed Amendment: Where a return has been furnished under Section 139, or in response to a notice under sub-section (1) of Section 142, the Assessing Officer or the prescribed Income Tax Authority, as the case may be, if, considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has or under-paid the tax in any manner, shall serve on the assessee a notice requiring him, on a date specified therein, either to attend the office of the Assessing Officer or to produce or cause to be produced before the Assessing Officer any evidence on which the assessee may rely in support of the return

Provided that no notice under this sub-section shall be served on the assessee after the expiry of six months from the end of the financial year in which the return is furnished.

Purpose: The words "either to attend the office of the Assessing Officer.." have been inserted by virtue of this amendment. This is again expected to result in expediting the assessment procedures.

Clause 65: Amendment to Section 139

A. Section 139(1):

Current Provision: (6th Proviso) Provided also that every person, being an individual or a Hindu Undivided Family or an association of persons or a body of individuals, whether incorporated or not, or an artificial juridical person, if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year, without giving effect to the provisions of Section 10A or Section 10B or Section 10BA or Chapter-VIA exceeded the maximum amount which is not chargeable to income-tax, shall, on or before the due date, furnish a return of his income or the income of such other person during the previous year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed.'

Proposed Amendment: in the aforesaid sub-section, for the words, figures and letter "provisions of clause (38) of Section 10 or Section 10A shall be substituted with effect from 1st April 2017.

Purpose: To widen the base of tax-compliance with respect to filing returns, and ensure that assessees having exempt long term capital gains from dealing in STT paid securities transactions furnish details of the same by filing their return of Income.

Impact: By virtue of this proposed amendment, any person having Long Term Capital Gains on account of sale of securities in a STT paid transaction, exceeding the basic exemption limit, before availing of the benefit u/s. 10(38), will also be required to furnish his return of income on or before the due date specified u/s. 139(1). Earlier, such exempt income was not included in the above proviso. This will lead to a larger number of people requiring to comply with the provisions of furnishing return of income, and eventually the department may verify the genuineness of the share transactions, as recently there has been a spate of transactions wherein assessees have resorted to have purchased capital gain.

B. Section 139 (3)

Current Provision: If any person who has sustained a loss in any previous year under the head "Profits & Gains of Business and Profession" or under the head " Capital Gains" and claims that the loss or any part thereof should be carried forward under sub-section (1) of Section 72, or sub-section(2) of Section 73, or sub-section (1)or sub-section (3) of Section 74, or sub-section (3) of Section 74A, he may furnish, within the time allowed under sub-section (1), a return of loss in the prescribed form, and verified in the prescribed manner and containing such other particulars as may be prescribed, and all the provisions of this Act shall apply, as if it were a return under sub-section (1).

Proposed Amendment: in sub-section (3), after the words, brackets and figures, sub-section (2) of Section 73, the words, brackets, figures & letter "or sub-section (2) of Section 73A" shall be inserted.

Purpose: It will ensure better compliance.

Impact: In order to avail carry forward of losses incurred in any of the specified businesses covered by Section 35AD, it will now be necessary to file the return of loss on or before such due date. In the earlier scenario, it was not necessary to file the return of loss within the due date to avail carry forward of aforesaid loss.

C. Section 139 (4)

Current Provision: Any person who has not furnished a return within the time allowed to him under sub-section (1), or within the time allowed under a notice issued under sub-section (1) of Section 142, may furnish the return for any previous year at any time before the expiry of one year from the end of the relevant assessment year or before the completion of assessment, whichever is earlier:

Proposed Amendment: Any person who has not furnished a return within the time allowed to him under sub-section (1), may furnish the return for any previous year at any time before the end of the relevant assessment year or before completion of the assessment, whichever is earlier.

Purpose: To promote culture of compliance and expedite proceedings.

Impact: The proposed amendment is expected to accelerate the compliance with respect to return filing as the time limit for filing belated return has been reduced.

D. Section 139(5)

Current Provision: if any person, having furnished a return under sub-section (1), or in pursuance of a notice issued under sub-section (1) of Section 142, discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before completion of assessment, whichever is earlier.

Proposed amendment: If any person, having furnished a return under sub-section (1) or sub-section (4), discovers any omission, or any wrong statement therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.

Purpose: To promote culture of compliance.

Impact: A belated return of income filed u/s. 139(4) can now be revised u/s. 139(5).

Judgment Over-ruled: The SC ruling in the case of Kumar Jagdish Chandra Sinha vs Commissioner of Income Tax, 86 Taxmann122 (1996) now over-ruled.

Section 139(9): Explanation aa to be omitted.

Current Provision: the tax together with interest, if any, payable in accordance with the provisions of Section 140A, has been paid on or before the due date of furnishing return.

Proposed Amendment: The aforesaid explanation is proposed to be deleted.

Purpose: Merely non- payment of self assessment tax is not sufficient reason to treat a return as defective.

This clause was inserted by Finance Act 2013, w.e.f 01.06.2013. The purpose for introducing the same was there was a large number of assessees who were filing their returns without payment of SA tax. It is now sought to be removed stating the above reason.

Clause 68 : Substitution of new Section for Section 153: Time Limit for completion of assessment, reassessment & recomputation.

The proposed amendments as well as the current provisions in respect of this Section are too

lengthy, so I have preferred to include the same in brief by distinguishing the difference in the time limits for completion of proceedings. **Reference: Page No. 31& 32 of Explanatory Memorandum.**

A need is perceived for rationalisation of the statutory time limits for completion of assessment proceedings, in line with the objective to finalise the same, more expeditiously, as digitisation of the Department has enhanced its efficiency in handling workload. This amendment will take effect from 1st June, 2016. Further, the provisions of Section 153, before such substitution by the Finance Act, 2016, shall apply to and in relation to any order of assessment, reassessment or recomputation made before 1st June 2016.

Section 153 is sought to be substituted in the following manner:

i. For completion of Assessment u/s. 143 or 144:

Current Provision: Two years from the end of the assessment year in which the income was first assessable.

Proposed Amendment: Twenty-one months from the end of the assessment year in which the income was first assessable.

ii. For completion of assessment u/s. 147:

Current Provisions: One year from the end of the financial year in which the notice under Section 148 was served.

Proposed Amendment: Nine months from the end of the financial year in which the notice under Section 148 was served.

iii. For completion of fresh assessment in pursuance of an order u/s. 254 or 263 or 264, setting aside or cancelling an assessment:

Current provisions: One year from the end of the financial year in which the order u/s. 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, or the order u/s. 263 is passed by the Principal Commissioner or Commissioner.

The aforesaid time limit to be changed to nine months from one year.

iv. Other Proposed Amendments:

a. Period for giving effect to an order u/s. 250 or 254 or 260 or 262 or 263 or 264 or an order of the Settlement Commission u/s. 245D(4), where effect can be given wholly or partly otherwise than by making a fresh assessment or reassessment shall be three months from the end of the month in which the order is received or passed, as the case may be, by the Principal Chief Commissioner or Chief Commissioner, or Principal Commissioner or Commissioner

b. In case the AO is unable to give effect to such an order in the stipulated period, additional period of six months to be allowed, on receipt of reasons in writing for the same, by the AO. In respect of cases pending as on 01.06.2016, the time limit for passing such order is proposed to be extended to 31.03.2017.

c. In case of assessment, reassessment, or recomputation made on the assessee or any other person in consequence of or to give effect to any finding or direction contained in an order u/s. 250, 254, 260, 262, 263 or Section 264, or in an order of any court in a proceeding otherwise than by way of appeal or reference under the Income Tax Act, then time limit for completion of aforesaid proceedings shall be twelve months from the end

of the month in which such order is received by the Principal Commissioner or Commissioner. In respect of cases pending as on 1-6-2016, the time limit for passing such order is proposed to be extended to 31-3-2017 or twelve months from the end of the month in which such order is received whichever is later.

d. In case where assessment is made on a partner of the firm in consequence of the assessment made on the firm u/s. 147, such assessment is to be made before the expiry of twelve months from the end of the month in which the assessment order in case of the firm is passed. In respect of cases pending as on 01.06.2016, the time limit for passing such order is proposed to be extended to 31.03.2017 or twelve months from the end of the month in which such order is received whichever is later.

Clause 46: Amendment of Section 92CA – Reference to Transfer Pricing Officer

This amendment is consequential to the amendment proposed to be effected by substitution of Section 153.

In cases where reference has been made to Transfer pricing officer, and period of limitation needs to be computed:

- in case where any assessment proceeding is stayed by an order or injunction of any court, or
- the period beginning with the date on which application is made before the Authority for Advance Rulings, and ending on the date, it is pronounced by the Authority,
- it is proposed that if the period of limitation available to the Transfer Pricing Officer is less than sixty days, such remaining period shall be extended to sixty days, and the aforesaid period of limitation shall be deemed to be extended accordingly.

Judicial Analysis: In the case of Honda Trading Corporation Vs. Japan, 61 taxmann 233 (2015), it was where reference was made to the TPO, an order was to be made at any time before sixty days prior to the date on which limitation period prescribed in section 153 / 153B expires. Further, TPO would be bound by given time limit and in case the TPO passes a time barred order read in terms of section 92CA (3) read with section 153, additions made by the TPO would be deleted. The proposed amendment states that in certain cases, clauses (ii) and (vii) of Explanation 1 to section 153, if the period available to the TPO is less than sixty days, the same shall be extended to sixty days, thereby ensuring that the TPO has clear sixty days to pass his order.

Clause 69: Substitution of Section 153B

Post the proposed amendment to Section 153, in respect of rationalising time limits for completion of assessment, reassessment and recomputation, there is need to amend the time limits in respect of completion of assessments made under Section 153A or Section 153C, to bring it in line with the proposed changes. As like in the earlier clause No. 68, I have covered the current changes and proposed amendments in brief, highlighting the effect of the proposed amendments. This amendment shall take effect from 1-6-2016. The Section prior to substitution shall apply to and in relation to any order, assessment, reassessment or recomputation made before 1st day of June 2016.

It is sought to simplify the provisions of existing Section 153B, by making the following changes.

i. **For completion of assessment u/s. 153A, for each of the assessment year falling in the block of six years, and in respect of the assessment year relevant to the previous year in which search is**

conducted u/s. 132, or requisition is made u/s. 132A:

Current Provision: Two years from the end of the financial year in which the last of the authorisations for search u/s. 132 was executed.

Proposed Amendment: Twenty One months from the end of the financial year in which the last of the authorisations for search u/s. 132 was executed.

ii. **For completion of assessment in case of other person referred to in Section 153C:**

Current Provision: two years from the end of the financial year in which the last of the authorisations for search u/s. 132 or requisition u/s. 132A was executed

Proposed Amendment: twenty one months from the end of the financial year in which the last of the authorisations for search u/s. 132 or requisition u/s. 132A was executed

Or changed from one year to nine months from the end of the financial year in which the books of accounts or documents or assets seized or requisitioned are handed over u/s. 153C to the Assessing officer having jurisdiction over such other person, whichever is later.

Clause 63: Amendment of Section 124 – Jurisdiction of Assessing Officer

This Section deals with the jurisdiction of the Assessing Officers. In sub-section (3), the following clause is proposed to be inserted:

(c) where an action has been taken under Section 132 or Section 132A, after the expiry of one month from the date on which he was served with a notice under sub-section (1) of Section 153A or sub-section (2) of Section 153C or after the completion of assessment, whichever is earlier.

Purpose: This provision refers to assumption of jurisdiction of Assessing Officer and it presently does not refer to notices issued u/s. 153A or Section 153C which relate to assessment in cases where a search and seizure action has been taken or cases connected to such cases. There have been instances where jurisdiction of the AO have been called in question at the appellate stages despite the fact that order passed under Sections 153A or 153C is read with Section 143(3) of the Act. To remove this ambiguity, the proposed amendment has been made. This will be with effect from 01.06.2016.

Judicial Analysis: This proposed amendment shall over-rule the following judicial decision:

i. *CIT vs. Ramesh D Patel, 42 taxmann.com 540 (Guj HC) (2014)*

Clause 64: Amendment to Section 133C – Power to call for information by prescribed tax authority.

Current Provision: The prescribed income tax authority, may for the purposes of verification of information in its possession relating to any person, issue a notice to such person requiring him, on or before a due date to be specified therein, to furnish information or documents verified in the manner specified therein, which may be useful for, or relevant to, any inquiry or proceeding under this Act.

Proposed Amendment: Section 133C of the Act to be renumbered as sub-section (1) thereof and after sub-section (1) so renumbered, the following sub-section shall be inserted with effect from the 1st June, 2016:

(2) Where any information or document has been received in response to a notice issued under sub-section (1) the prescribed Income Tax authority may process such information or document and make available the outcome of such processing to the Assessing Officer.

Purpose: The proposed amendment seeks to expedite verification and analysis of the

information and documents received. Further, it also intends to provide legal backing for processing information so called for, and making the outcome of the same available to the AO for necessary action.

Clause 67: Amendment of Section 147

In Explanation 2, after clause (c) the following clause is proposed to be inserted, w.e.f 1-6-2016,

(ca) where a return of income has not been furnished by the assessee or a return of income has been furnished by him and on the basis of information or document received from the prescribed income tax authority, under sub-section (2) of Section 133C, it is noticed by the Assessing Officer that the income of the assessee exceeds the maximum amount not chargeable to tax, or as the case maybe, the assessee has understated the income or has claimed excessive loss, deduction allowance or relief in the return.

Purpose: This amendment is resultant of the amendment to Section 133C. Explanation 2 to Section 147 has been amended to provide for reopening of cases by the AO on the basis of information so received.

Clauses 87 & 89: Rationalisation of payment of advance tax payment schedule u/s. 211 & interest u/s. 234C:

Current Position: As per the existing provisions of Section 211(1), the advance tax payment schedule for a company is in four instalments, viz, 15%, 45%, 75% and 100% by June 15th, September 15th, December 15th, and March 15th respectively. In case of non-corporate assessees, it is in three instalments, viz, 30%, 60% and 100% by Sept 15th, December 15th and March 15th.

Proposed Amendment: The difference in the schedule of advance tax payments for corporates and non-corporates is sought to be removed, and the same schedule as that of corporate assessees is to be made applicable to all assessees. However, eligible assessee in respect of eligible business referred to in Section 44AD opting for computation of profits on presumptive basis, will have to pay the entire advance tax in one instalment on or before 15th March of the Financial Year.

Purpose: This amendment is based on the recommendation of the Expenditure management commission, along with the fact that in majority of the cases, advance tax is paid online. Having one payment schedule shall facilitate forecasting of revenue collections during a financial year with greater accuracy.

Impact: Thus, all non-corporate assessees not covered by the presumptive tax provisions of Section 44AD will now have to pay advance tax in four instalments. Eligible assessees covered by the presumptive tax scheme under Section 44AD will pay the entire advance tax in one instalment. Professionals proposed to be covered under the new Section 44ADA will pay the advance tax in four instalments as the aforesaid provision includes only presumptive scheme of Section 44AD.

Consequential amendment to Section 234C: Wherein interest for deferment of advance tax to be charged in sync with the aforesaid proposed change in Section 211. It is also proposed that for assessees having income under the head "Profits & Gains of Business or Profession" for the first time, interest u/s. 234C shall not be chargeable, on fulfilment of conditions specified therein. These amendments will take effect from 1st June, 2016.

CA Samir Gandhi*

A New Documentation Norm in Transfer Pricing

Introduction

Globalisation has benefited economies worldwide and it impacts countries' corporate income tax regimes too. With pace of globalisation and liberalisation, economies became more integrated and so did multinational corporations. These developments opened up opportunities for multinational corporations to greatly minimise their tax burden. Taxation is at the core of countries' sovereignty, but the interaction of domestic tax rules in some cases leads to gaps and frictions. The international standards have sought to address these frictions in a way that respects tax sovereignty, but the gap still remained. Over time, tax treaties and existing domestic laws revealed weaknesses creating opportunities for Base Erosion and Profit Shifting ('BEPS') and hence, OECD recently released fifteen final Action Plans in relation to BEPS initiative in October, 2015. As a member of the G20 and an active participant in the BEPS project, India is committed to the BEPS project outcome and its implementation.

One of the cornerstones of the OECD's Action Plans is a requirement to furnish country-by-country ('CbC') report as detailed in the Action Plan 13. In order to implement Action 13 of the OECD's BEPS project, the Finance Bill 2016 proposed to introduce a specific reporting regime. Presently, Section 92D of Chapter X to the Income-tax Act, 1961 read with Rule 10D, stipulates maintenance of appropriate information and documentation by persons entering into international transaction or specified domestic transactions in the prescribed manner. However, with the propositions made by Mr. Arun Jaitley in the Union Budget, a new norm with regard to requisites for maintenance of transfer pricing documentation has been laid down.

The rationale advocating introduction of such specific reporting regime is to enhance transparency among the global tax jurisdictions, enable taxpayers to articulate consistent and uniform transfer pricing positions, aid tax authorities in assessing transfer pricing risks and discern companies engaged in transfer pricing and other practices that have culmination of artificially shifting substantial amounts of income to the tax-advantaged environments.

Proposed Insertions & Amendments to the Income-tax Act, 1961

The Bill proposes to amend section 92D with insertion of sub-section (4) to the said section

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requiring furnishing information and documents as prescribed under section 286. The proposition to insert section 286 mandates every reporting entity defined therein to comply with the requirements of CbC reporting.

The said provisions shall be effective from April 01, 2007 and will apply from assessment year ('AY') 2017-18 onwards. Such provisions shall apply to an international group (i.e., a group that operates in two or more jurisdictions) having consolidated revenue exceeding the prescribed threshold, whereby the current threshold mandated by OECD is Euro ('€') 750 million equivalent to INR ('` ') 5,395 crore at current exchange rates. The threshold is required to be computed based on exchange rate as on the last day of previous year. For instance, CbC reporting for the previous year 2016-17 shall apply only if the consolidated revenue of the international group in the financial year 2015-16 exceeds ` 5,395 crore.

Section 286 mandates the following entities given below to furnish the CbC report:

- An Indian parent entity is required to furnish CbC report in respect of the group by the due date of furnishing return of income for the relevant financial year. Accordingly, an Indian parent company will be required to furnish the CbC report by November 30, following the end of previous year commencing from 2016-17 onwards.
- It also provides for an alternate reporting entity resident in India (i.e., entity other than parent entity, designated by an international group) to furnish CbC report on behalf of such international group by the timeline stated in the aforementioned para.
- Further, an entity in India of an international group having overseas resident parent shall be required to provide details of the country of residence of the parent in the form, manner and date which are yet to be prescribed. However such entity be required to furnish the CbC report if the parent of the group is resident:

  a) In a country with which India does not have an arrangement for exchange of the CbC report; or

  b) there is a failure of the country in exchanging the said information with India even though there is an agreement for information exchange.

It is important to note that the said compliance requirements shall not be applicable where the alternate reporting entity so designated by the international group has furnished the CbC report with its tax authority and the same can be obtained by the Indian tax authorities under information exchange agreement with that tax jurisdiction.

In addition to the CbC report, Memorandum to the Bill provides that details for maintenance of the Master File too shall be prescribed later on as amendment under the Rules to the Income -tax Act, 1961.

Accordingly, the Indian documentation requirements will be categorised into following:

- Local file
- Master file
- CbC Report

Details required to be furnished in the CbC Report

The content for the said report as prescribed under section 286 are leveraged on recommendation of the OECD's BEPS project report. It necessitates report to encapsulate the following mentioned below:

Requisite details with regard to each country or territory in which group operates	Requisite details of constituent entities in the international group
Aggregate Revenue	List of entities in each tax jurisdiction
Profit / Loss before Tax	
Income tax Paid	Tax jurisdiction of incorporation of the constituent entity if different from that of residence
Income tax Accrued	
Stated Capital	Nature and details of business activities
Accumulated Earnings	
Number of Employees	Any other information as may be prescribed
Tangible Assets – Other than Cash & Cash Equivalents	

Penal Provisions

The proposed regulations provide for stringent but graded penalty in context of defaulting non-compliance. The amendments under section 271AA and insertion of section 271GB proposes a varied range of penalty from ` 5,000 to ` 5,00,000 for reason like non-furnishing of CbC report, failure to furnish report before the prescribed authority, provision of inaccurate information etc., other causes stated therein. However, in accordance with the amendments proposed under section 273B, the reporting entities are given leeway to offer reasonable cause of defence for non-levy of said penalties as iterated under the Bill.

Conclusion

The information required to be furnished before the prescribed authorities is crucial and integral in nature. The revised reporting stipulations shall have huge ramifications on the international group with enhanced transparency and mobility of information across various tax jurisdictions globally. Such standardised report shall serve as an analytical tool for the tax authorities, thereby resulting into increased litigation as well. However, expectation are that the same shall be used for electing cases under risk based assessment and not for the purpose of making adjustment or formulatory apportionment of the global profits earned by the multinational corporations.

> This is my belief: that through difficulties and problems God gives us the opportunity to grow. So when your hopes and dreams and goals are dashed, search among the wreckage, you may find a golden opportunity hidden in the ruins.
>
> *— A. P. J. Abdul Kalam*

CA Bhavna Doshi

Indirect Tax Proposals – A Perspective

Taxation is used by nations as a tool for economic growth and development especially, for development of specific thrust areas identified for specific attention. Take example of China which used Tax Free Zones effectively to attract foreign investment to enhance domestic employment which led to it gaining status of manufacturing "bowl" of the world. Another example is that of Vietnam which is using tax regime for Information Technology Enabled Services Sector to generate employment and income for the new age population.

Our tax proposals for the Fiscal 2016-17 are also framed with the objective of using tax as a tool for specific objective of "reducing poverty and inequality in our society" as stated by the Union Finance Minister in his Budget Speech. This is one of critical aspect of an economy in growth path. Rising disparity in income levels and the urban-rural divide could have serious consequences for our nation and could severely affect growth of our economy slated to grow at the rate of 7.5% in the next fiscal.

Critical sectors in this growth trajectory are agriculture, infrastructure, digital/information technology, affordable housing and rural entrepreneurship. New and enhanced investment in these sectors coupled with effective implementation targeted at improving efficiency and productivity could have multiplier effect on employment generation, income levels and quality of life of rural India. Take the case of agriculture and rural economy. Special focus in this segment could bring about dramatic change in its growth like the one that took place in information technology sector a decade ago or 'green revolution' and the 'white revolution' several decades ago. Special tax exemptions helped growth of information technology sector which led to enhancement of share of services in our GDP and employment generation besides several other benefits including India being recognized as IT 'hub' of the world.

One may challenge this position on the ground that agriculture sector enjoys tax exempt status in any case since independence so what will the measures of current Finance Bill achieve? True, the farming community does not and will continue, not to pay, income tax but, they do bear the burden of indirect taxes. How does a Government rebate these indirect taxes to the farming community? Difficult to achieve directly but, can be achieved indirectly through putting more money in their hands through providing cheaper finance, market access to their products, productivity enhancing guidance, alternate source of income through entrepreneurship and so on.

The current Finance Bill seeks to achieve this through tax mobilization in the form of Krishi Kalyan Cess @ 0.5 % on taxable services. So, it is indirect transfer of resources from service providers to the rural economy. The Cess will be used for financing several initiatives for improving farm productivity and welfare of farmers. In addition, concessions in central excise duty, customs duty and service tax are provided to reduce costs of products and services used by this segment of population and to encourage food processing industry, a value added economic activity,for the farming community.

Information Technology is also proposed to be used for these initiatives. It is a boon and a bane at the same time. While availability of information and digital connectivity can help to enrich rural sector, it also creates greater "perception" of divide.

Taxation is only one of the measures to address this and several non-tax measures too will be required to meet the rising aspirations of the sector. Transparency and effective management of the funds put in the hands of rural economy is the key. Why not have professionals as CEOs of the panchayats and municipal bodies, the vehicles for transformation of the rural economy, answerable to the local population, and the elected representatives as members of advisory boards?

We, as a nation, are awaiting the game changer reform in the indirect taxes with consolidation of several taxes which could reduce costs of goods and services and compliance burden. There was no roadmap in this regard given the current sensitivities around the proposed Goods and Services Tax.

Not many changes are, therefore, proposed in the field of indirect taxes, law and rules, except for addressing hard pressing issues either with a view to make the existing provisions more rational like lowering of interest rate payable by tax payers, powers of arrest or to bring about clarity and reduction in litigation like amending formula for determining extent of denial of Cenvat credit in cases of common services or where a tax payer provides exempt service and is engaged in activities which do not constitute 'services' per se or to resolve specific disputes like the one relating to taxation of co-mingled gas supplied through pipelines across states through amendment in Central Sales Tax Law.

Pendency of tax disputes and the time taken in the courts is one of the areas impacting India's ranking in ease of doing business. This is sought to be addressed through special Indirect Tax Dispute Resolution Scheme to reduce litigation and pendency of court cases.

"Make in India" is a major initiative of Government to boost domestic manufacturing and enhance employment within the country. Domestic manufacture serves both domestic demand and global demand. Export market is not so robust currently given difficult global economic situation but, the domestic consumption demand is expected to be high with several Gvernment initiatives. A spur in manufacturing sector could bring about dramatic change in overall development of the country. This initiative is supported on tax side through calibration of customs duties and central excise duties and service tax for specific sectors identified for enhanced domestic production. Key identified sectors are electronics and hardware, agriculture and food processing, affordable housing, mineral oils, defence production, aircraft maintenance.

A lot more was expected in terms of simplification of law, rules and administration to make it easy to do business; several grey areas where clarifications were required. One of the biggest challenges that businesses face relates to the double taxation one, at the central level and another, at the state level in respect of activities which are deemed to be sales under the Constitution attracting State VAT and, at the same time, which are also sought to be regarded as service by the central administration. The double taxation one, under central excise duty and another, under service tax of software on media is sought to be addressed through amendment to grant deduction of cost of software on which service tax is paid from the value on which excise duty is to be paid. But, the debate is given additional stimulus and new dimension with the proposal to add "assignment by the Government of the right to use the radio frequency spectrum and subsequent transfer thereof" as declared service under Service Tax Law. The issues in this regard are dealt with, in detail, in an article on the subject in this issue.

Ground level challenges are many and cost of compliance is too high. Refunds remain a challenge; high handed attitude and inertia to take a decision in favour of taxpayer by a Commissioner or Commissioner (A) even in cases strongly in favor of taxpayers, initiating action or threatening action against tax payers for inadvertent errors duly rectified by tax payer voluntarily, varied treatment or interpretations adopted by different jurisdictional officers affecting business competitiveness, apathy to the cost of compliance of a tax provision and so on continue to bother and contribute to India's low ranking in 'ease of doing business'. We do hope that these too will be addressed in days to come, GST or no GST.

CA Rajkamal Shah

Analysis of amendments in Finance Bill 2016 – Service Tax

Changes with immediate effect

1. Rate of Tax & Cess

- The rate of service tax and Swachh Bharat Cess (SWC) remain unchanged at 14% and at 0.5% respectively, on the value of services.
- With the objective of promoting improvement of agriculture, Krishi Kalyan Cess (KKC) is levied at the rate of 0.5% on value of all or any of the taxable services with effect from 1-6-2016. However, unlike SWC, CENVAT credit of KKC can be utilized for payment of the same.
- Consequently, effective rate on taxable services will be 15% with effect from 1-6-2016. Effective **alternate tax rates** as prescribed under the rules for following specified services will also be enhanced by KKC with effect from 1-6-2016.
  - Air Travel Agents
  - Life Insurance Services
  - Purchase or sale of foreign currency including money changing
  - Distribution of Lottery Tickets

2. Exemptions restored or granted with retrospective effect

2.1 Construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration services provided in respect of **canal, dam or other irrigation works to entities** set up by an Act of Parliament or a State Legislature or established by the Government with 90% or more participation by way equity or control, to carry out any function entrusted to a municipality under Article 243W of the Constitution during the period **1-7-2012 to 29-01-2014 (both inclusive).**

Service provider will be entitled to refund of service tax paid on above referred services provided during the period 1-7-2012 to 29-1-2014. An application for such refund is to be made within 6 months from the date of enactment of Finance Bill, 2016. [Section 101 of the Act]

This amendment is on account of relaxation in condition of equity participation of the State Legislature or Parliament to the extent of 90% instead of 100% from 1-2-2014. Now the effectively, the entities having 90% participation shall be eligible for the exemption right from introduction of negative list based taxation i.e. 1-7-2012.

2.2 Construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration services

provided during the period 1-4-2015 to 29-2-2016 to the Government, a local authority or a governmental authority in respect of –

(a) **a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;**

(b) **a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;** or

(c) a residential complex predominantly meant for self-use or the use of their employees or members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities, Person who holds in any post in pursuance of the provisions of Constitution, Chairperson or a member or a Director in a body established by the Central Government or State Government or local authority ;

Above exemption is available in respect of contracts entered prior to 1-3-2015 and applicable stamp duty has been paid prior to such date.

Service provider will be entitled to refund of service tax paid on above referred services provided during the period 1-4-2015 to 29-2-2016 (both inclusive). An application for such refund is to be made within 6 months from the date of enactment of Finance Bill, 2016. [Section 102 of the Act]

The exemption in respect of service provided to Government, local authority or Government local authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration in relation to non commercial / educational / clinical or cultural institution and the residential complex stated above was previously available in Entry 12 of Notification No. 25/2012 – ST and withdrawn from 1-4-2015. This is now restored for the contracts entered into prior to 1-3-2015 and shall be available upto 31-3-2020. Under entry 12A *(Notification No. 9/2006- ST).*

2.3 Construction, erection, commissioning, or installation of original **works pertaining to an airport or port** provided during the period 1-4-2015 to 29-2-2016 (both inclusive). This exemption is available in respect of contracts entered prior to 1-3-2015 and applicable stamp duty has been paid prior to such date where applicable subject to the condition that such work is certified by Ministry of Civil Aviation or the Ministry of Shipping in the Government of India that the contracts entered into prior to 1st March 2013.

Service provider will be entitled to refund of service tax paid on above referred services provided during the period 1-4-2015 to 29-2-2016. An application for such refund is to be made within 6 months from the date of enactment of Finance Bill, 2016. [Section 103 of the Act]

The exemption in respect of service by way of construction, erection, commissioning, installation, of original works relating to airport or port was previously available in Entry 12 of Notification No. 25/2012 – ST and withdrawn from 1-4-2015. This is now restored for the contracts entered into prior to 1-3-2015 and shall be available upto 31-3-2020. Under entry 14A (Notification No.9/2006-ST).

3. Exemption Withdrawn – metro and mono rail

Exemption to construction, Erection, Commissioning or Installation of original works pertaining to mono rail and metro in respect of contracts entered on or after 1-3-2016 is withdrawn.

The exemption in respect of above services for which contracts were entered into before 1-3-2016 (on which appropriate stamp duty is paid) shall continue.[Entry 14(a)of Notification 25/2012-15]. Further, the exemption in respect

of above services for railways continues. (Notification 9/2016-ST)

4. New exemption for housing projects

Construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration services in respect of a civil structure or any other original works pertaining to:

4.1 'In-situ Rehabilitation (resettlement in the original place) of existing slum dwellers using land as a resource through 'private participation' under Housing for All (Urban) Mission / Pradhan Mantri Awas Yojana, only for existing slum dwellers.

4.2 'Beneficiary-led individual house construction / enhancement under Housing for All (Urban) Mission / Pradhan Mantri Awas Yojana. [Entry 13(ba) and (bb)].

"Beneficiary led" under Housing For All (Urban) Mission/ Pradhan Mantri Awas Yojana is targeted to achieve individual house construction/ enhancement for low income group of family (LIG) having comprising of husband, wife, unmarried sons and / or unmarried daughters, not having pakka house.

4.3 Construction, erection, commissioning or installation of original works pertaining to low cost houses up to a carpet area of 60 sq.mt per house in a housing project approved by the competent authority under:

- "Affordable housing in partnership" component of the housing for All (Urban) Mission / Pradhan Mantri Awas Yojana.
- Any housing scheme of a State Government.

Comment:

Earlier housing projects framed under the Central Government Schemes were exempt. Now SRA projects and the projects mentioned above are exempt from payment of service tax. However the term "affordable housing" is not defined which may lead to confusion and controversies.

[Entry 14(ca)]

5. New exemptions

5.1 Educational services provided by IIM to their students (effective from 1-3-2016)

Exemption is provided by insertion of entry 9B in mega exemption notification for services provided by Indian Institutes of Management, to their students, by way of specified educational programmes. It has been clarified that Services provided by the Indian Institutes of Management (IIM) by way of 2 year full time Post Graduate Programme in Management (PGPM) (other than executive development programme), admissions to which are made through Common Admission Test conducted by IIMs, 5 year Integrated Programme in Management and Fellowship Programme in Management are being exempted from service tax. **TRU circular further states that "In view of this, the exemption being given to the above programmes of IIMs is clarificatory in nature and in view of the same, liability to pay service tax in respect of the said programmes for the past period will also become infructuous.**

5.2 Exemption to packaged and customized software recorded on media

Packaged software recorded on media where retail sale price is required to be affixed on the package of such media under Legal Metrology Act, 2009 is liable to excise duty only. Such software is exempted from service tax.

Customized Software recorded on media not required to bear retail sales price is exempted from service tax to the extent of value of medium along with freight and insurance.

(Notification No.11/2016-ST)

Comment

Current controversies of levy of Excise duty and Service tax on customize software is resolved to some extent. Required changes are made under Central Excise Act also.

6. Point of Taxation Rules and Section 67A of the Act

- In order to align Point of Taxation Rules, 2011 with section 67A, sub-section (2) is inserted in section 67A, namely,"(2) The time or the point in time with respect to the rate of service tax shall be such as may be prescribed." Consequently amendment is carried out in POT rules vide notification No.10/16-ST dated 01.03.2016.
- Under Point of taxation Rules – 2011 (POTR), in respect of payment of tax in case of new services, it is provided that the same shall apply in case of new levy on services also. Further, the new levy or tax shall be payable in all cases other than,
  - (a) to the extent invoice is issued and payment received against such service before it becomes taxable;
  - (b) if the payment is received before the service becomes taxable and invoice is issued within fourteen days of the date when services taxed first time.

With this, statutory recognition is now given to Point Of Taxation Rules and dichotomy between the POTR and S.67A appears to have been resolved.

7. Transportation of goods by an aircraft or a vessel from a place outside India up to the customs station of clearance in India

a) To provide level playing field to Indian Shipping lines vis-a-vis foreign shipping lines, it is being proposed to impose Service Tax on services provided by shipping lines registered outside India by way of transportation of goods by a vessel from outside India up to the customs station in India with effect from 1st June, 2016 so as to complete the credit chain and enable Indian Shipping Lines to avail and utilize input tax CENVAT credit of Inputs, input services & capital goods.

This sought to be achieved by omission of entry [section 66D (p)(ii)] in the Negative List which covers services by way of transportation of goods by an aircraft or a vessel from a place outside India up to the customs station of clearance with effect from 1.06.2016 (Clause 146 of Finance Bill 2016). In case of service provided by a shipping company from outside India which issue invoice on Indian business entity, such entity will be required to pay service tax on reverse charge. In case such entity is a service provider or manufacturer, it shall get credit subject to compliance with CENVAT Credit Rules. In case the invoice is issued by an Indian agent of the foreign shipping company, such agent will be liable to pay service tax on forward charge basis. It is clarified that service tax levied on such services shall not be part of value for custom duty purposes.

In addition, CENVAT credit of eligible inputs, capital goods and input services is being allowed to Indian service provider for providing the service by way of transportation of goods by a vessel from the customs station of clearance in India. Consequential amendments are being made in CENVAT Credit Rules, 2004 from 1.3.2016 [Not. No. 23/2004-CE (N.T.), as amended by Sl. Nos. 2(b) and 5(h) of notification No. 13/2016-C.E. (N.T.) dated refers].

However, the above will not apply in case of shipment by aircraft as such services by an aircraft remains to be exempted by way of exemption notification [Not. No. 25/2012-ST, as amended by notification No. 09/2016-ST dated 1st March, 2016 refers].

(Clause 146 of the Bill)

8. Refund of CENVAT Credit [Notification No. 27/2012 – CE (NT)]

The time limit for filing an application for refund under Rule 5 for service provider shall be one year from the following:

(a) date of receipt of payment in convertible foreign exchange, where provision of service has been completed prior to receipt of such payment, or

(b) date of issue of invoice, where payment for the service has been received in advance prior to the date of issue of the invoice

With this the controversy of eligible date of application of refund has now ended. In case of manufacturer, the refund application shall be filed before expiry of the period specified in Section 11B of Central Excise Act, 1944.

[Notification No 14 / 2016 – CE (NT)]

9. Indirect Tax Dispute Resolution Scheme, 2016

i. The Government has proposed to introduce Indirect Tax Dispute Resolution Scheme, 2016, **in respect of appeals pending before Commissioner (Appeals) as on 01/03/2016.** The scheme shall come into force from 1.6.2016.

ii. The appellant, can file a declaration of disputed tax on or before 31/12/2016 to designated authority which is nor below the rank of authorized Assistant Commissioner by the commissioner for the purpose of the scheme for resolution of dispute.

iii. The declarent has to pay duty/tax, interest and 25% of penalty imposed, within 15 days of the receipt of acknowledgement from designated authority and intimate the details along with proof of such payment within 7 days of making such payment. The designated authority within 15 days of the receipt of such proof shall pass an order of discharge of dues. Thereafter, the proceedings against the declarent will be deemed to be disposed off and he will also get immunity from prosecution.

iv. "Indirect tax dispute" means a dispute in respect of any of the provision of the Act which is pending before the Commissioner Appeals as an appeal against the order under challenged as on 1.3.2016.

v. The said order of discharge shall be conclusive and no matter relating thereto shall be reopened thereafter in any proceeding before any authority or court. The said order shall not be deemed to be an order on merits and have no binding effect. No refund of the amounts paid in pursuance of declaration will be allowed.

vi. However, the above scheme shall not apply to pending appeals in respect of following cases:

- Search and seizure proceedings;
- Prosecution of any offence under the Act which has been instituted before the 01/06/2016;
- Narcotic drugs or other prohibited goods;
- Any office punishable under Indian Penal Code or Narcotic Drugs and Psychotropic Substances Act, 1985 or the Prevention of Corruption Act, 1988; or
- Detention order passed under the Conservation of Foreign Exchange and Prevention of Smuggling Act, 1974.

Changes effect from 1.4.2016

1. Reverse Charge Mechanism: [changes in Notification No.30/2012-ST and service tax rules]

- Service provided by mutual fund agents/ distributors to mutual fund or an asset management company – no reverse charge applicable now

  The service provided by mutual fund agents/distributors to mutual fund or an asset management company is withdrawn from taxability under reverse charge mechanism. Hence, the service provider i.e. the mutual fund agents or distributor to a mutual fund are liable to pay service tax. The mutual fund agents and distributors shall now be eligible for CENVAT credit used for providing the output service.

- Legal services provided by 'senior advocate' - no reverse charge applicable now

  Presently taxable legal service provided by 'senior advocate', as defined under section 16 of The Advocates Act, 1961, is covered under reverse charge mechanism. Now, senior advocates are liable to pay service tax as service providers. Legal services provided by a firm of advocates or an advocate other than senior advocate are continued to be taxable under reverse charge mechanism. Legal service by an advocate or partnership firm of advocates is exempt if provided to –

  - An advocate or partnership firm of advocates providing legal services (not in case of service provided by a senior advocate);
  - Any person other than a business entity; or
  - A business entity with the turnover upto ` 10 Lakhs in the preceding financial year

As per Advocates Act 1961, the senior advocates are appointed by junior advocates. The junior advocates will be liable to pay service tax as charged by senior advocates in their bills. Junior advocates may include the charges of senior advocates in their bills to the litigant parties. These parties are required to pay service tax on junior advocate's bill under reverse charge. **Thus, there will be double payment of tax**. The litigant may get CENVAT credit if he is a manufacturer or service provider but not in case of a trader.

[Notification No. 18/2016-ST r. w. Notification No. 9/2016 - ST]

2. Exemption withdrawn

2.1 Exemption in relation to a person represented on an arbitral tribunal to an arbitral tribunal is now withdrawn. Such person will now have to pay service tax on forward charge basis.

2.2 Passenger transportation with or without accompanied belongings by ropeway, cable car or aerial tramway [Entry 23(c)].

2.3 Presently, 'support services' (as defined in FA) provided by Government or local authorities to business entities are taxable under reverse charge mechanism. Effective from 01/04/2016, the liability to pay service tax on any service (excluding renting of immovable property and services by department of post, life insurance and agency service, service in relation to aircraft or vessel and transport of goods or passengers) provided by Government or local authorities to business entities having turnover exceeding ` 10.00 lakhs in the previous financial year shall be on the service recipient under reverse charge basis. [Notification Nos. 16/2016-ST and 17/2016-ST]. In other cases service tax shall be liable to be paid by the government or local authorities.

Corresponding amendments are made in by deleting the definition of ' 'support services' and provisions relating to relating to person liable to pay service tax in STR.

3. New Exemptions

Following entries are inserted in Exemption Notification No.25/2012-ST vide Notification No. 09/2016-ST:

3.1 New entry 9C is inserted wherein Services of assessing bodies empanelled centrally by Directorate General of Training, Ministry of Skill Development & Entrepreneurship will be exempted from service tax.

3.2 Vocational training courses under Deen Dayal Upadhyaya Grameen Kaushalya Yojana: New entry 9D is inserted, wherein services provided by way of skill/vocational training by Deen Dayal Upadhyay Grameen Kaushalya Yojana training partners will be exempted from service tax.

3.3 General insurance services provided under "Niramaya Health Insurance" scheme launched by National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability. [Entry 26(q)]

3.4 Life insurance service provided by way of annuity under the National Pension System (NPS) regulated by Pension Fund Regulatory and Development Authority (PFRDA) of India. [Entry 26C]

3.5 Services provided by Employees Provident Fund Organisation (EPFO) to employees. [Entry 49]

3.6 Services provided by Insurance Regulatory and Development Authority of India (IRDA) to insurers. [Entry 50]

3.7 Services provided by Securities and Exchange Board of India (SEBI) for protecting the interests of investors in securities, promoting the development of and regulation of the securities market.[Entry 51]

3.8 Cold chain knowledge dissemination services provided by National Centre for Cold Chain Development under Ministry of Agriculture, Cooperation and Farmer's Welfare. [Entry 52].

4. Modifications in existing exemption entries with effect from 01/04/2016

4.1 Exemption limit for services by a performing artist in folk or classical art forms of music, dance or theatre is enhanced from ` 1 lakh to ` 1.5 lakhs per performance.

4.2 Services provided by Biotechnology Industry Research Assistance Council (BIRAC) approved biotechnology incubators to the incubatees subject to fulfillment of prescribed conditions

[Notification No. 12/2016-ST read with Notification No. 32/2012-ST].

5. Abatement (Notification No.26/2012-ST)

5.1 Transport of goods by rail:

Transport of goods by rail by Indian Railway: For services provided by transportation of goods by rail, abatement of 70% is granted with the condition that no CENVAT credit would be available on inputs, capital goods or input services. Now in the condition mention at serial no. 2 in column (4) input service is removed as follows:

Old Provision	Proposed Provision
CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004	CENVAT credit on inputs and capital goods, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004

5.2 Transport of passengers by Rail:

For transportation of goods by rail by any person other than Indian Railway abatement is restricted to 60% unlike the abatement of 70% granted to Indian Railway. The said abatement

is inserted in the table at serial no. '2A' after SI No. 2

(1)	(2)	(3)	(4)
"2A	Transport of goods in containers by rail by any person other than Indian Railways	40	CENVAT credit on inputs and capital goods, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.";

5.3 Similar to transportation of goods by rail, CENVAT credit of input service for transportation of passenger by rail will be entitled w.e.f. 01.04.2016. Amended for the same is made at SI. No. 3, in column (4) for conditions as follows:

Old Provision	Proposed Provision
CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004	CENVAT credit on inputs and capital goods, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004

5.4 Changes in abatements – Transport of used household goods by Goods Transport Agency and foremen to Chit Fund:

The GTA now bifurcated into household goods and other than household goods, wherein for transportation of used household goods abatement is allowed at 60% against 70% allowed to other goods.

a) In SI. No. 7, in column (2), for the entry, the following shall be substituted, namely :-

Old Provision	Proposed Provision
Services of goods transport agency in relation to transportation of goods.	Services of goods transport agency in relation to transportation of goods other than used household goods

New SI No. 7A & 8 is inserted after SI No. 7

(1)	(2)	(3)	(4)
"7A	Services of goods transport agency in relation to transportation of used household goods.	40	CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken by the service provider under the provisions of the CENVAT Credit Rules, 2004.
8	Services provided by a foreman of chit fund in relation to chit	70	CENVAT credit on inputs, capital goods and input services, used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004.";

5.5 Services provided by foreman of Chit fund

Abatement of 30% for services provided by foreman to a chit fund in relation to chit is re-introduced, which was deleted last year. Thus w.e.f. 01.04.2016 services provided by foreman to a chit fund under the Chit Funds Act, 1982 are proposed to be taxed at an abated value of 70% [i.e., with abatement of 30%], subject to the condition that CENVAT credit of inputs, input services and capital goods has not been availed. Presently no such abatement is allowed for such services.

Particulars	Existing	Proposed
Abatement on shifting of used household goods by a Goods Transport Agency is being rationalized at the rate of 60%,without input tax credit, with effect from 01.04.2016.	4.2%	5.6%
The rate of service tax on the services of a foreman to a chit fund being rationalized with an abatement of 30%, without input tax credit, with effect from 01.04.2016.	14% of amount	9.8% of amount

5.6 Transport of goods by vessel

Condition of non-availment of input service is removed with respect to Transport of goods in a vessel. In SI. No. 10, in column (4), for the entry, the following shall be substituted, namely:-

Old Provision	Proposed Provision
CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004	CENVAT credit on inputs and capital goods, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004

5.8 Tour operator services

Abatement under Services by Tour operator has been rationalized and consolidated at one place: SI. No. 11 and the entries relating thereto, the following shall be substituted, namely:-

(1)	(2)	(3)	(4)
"11	Services by a tour operator in relation to,- (i) a tour, only for the purpose of arranging or booking accommodation for any person	10	(i) CENVAT credit on inputs, capital goods and input services other than input services of a tour operator, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii) The invoice, bill or challan issued indicates that it is towards the charges for such accommodation. (iii) This exemption shall not apply in such cases where the invoice, bill or challan issued by the tour operator, in relation to a tour, includes only the service charges for arranging or booking accommodation for any person but does not include the cost of such accommodation.
	ii) tours other than (i) above	30	(i) CENVAT credit on inputs, capital goods and input services other than input services of a tour operator, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii) The bill issued for this purpose indicates that it is inclusive of charges for such a tour and the amount charged in the bill is the gross amount charged for such a tour.";

Particulars	Existing	Proposed
Abatement rate being rationalized at 70% in respect of services by a tour operator subject to certain conditions, with effect from 01.04.2016.	3.5%/5.6% of amount charged	4.2% of amount charged

Abatement of 90% cannot be claimed in such cases where the invoice, bill or challan issued by the tour operator, in relation to a tour, only includes the service charges for arranging or booking accommodation for any person and does not include the cost of such accommodation. Abatement rates in respect of services by a tour operator in relation to a tour other than in 11 (i) above, is being rationalized from 75% and 60%to 70%.Consequently, the definition of "package tour" as provided in the relevant notification is being omitted.

5.9 Uniform Abatement with respect to construction of complex, building or civil structure

Sl. No. 12 and the entries relating thereto, the following shall be substituted, namely:-

(1)	(2)	(3)	(4)
"12	Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate by the competent authority	10	(i) CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004 (ii) The value of land is included in the amount charged from the service receiver.";

Particulars	Existing	Proposed
The abatement rate at 70% in respect of services by way of construction of residential complex etc. being rationalized, with effect from 01.04.2016.	3.5% /4.2%	4.2%

Comment

In concession of 25% for carpet area of the unit less than 2000 or amount charged is less than rupees 1 crore has been deleted. A uniform abatement at the rate of 70% is now being prescribed for services of construction of complex, building, civil structure, or a part thereof, subject to fulfillment of the existing conditions.

5.10 Renting of motor-cab service

Paragraph BA is inserted so as to clarify that for the purpose of exemption under renting of motor cab cost of fuel should be included in the consideration charged for providing renting of motor cab services.

5.11 Transport of passenger by Air Conditioned Stage Carriage

Services provided air conditioned stage carriage will be made liable to levy of service tax. Abatement of 60% is granted for the same and is inserted in serial no. 9A, pertaining to transport of passenger, in column (2), after item (b), with effect from 1stJune, 2016, namely :-

"(c) a stage carriage";

Particulars	Existing	Proposed
Negative List entry that covers 'service of transportation of passengers, with or without accompanied belongings, by a stage carriage' being omitted and tax proposed to be levied on service of transportation of passengers by air conditioned stage carriage, at the abatement of 60% without input tax credit, with effect from 01.06.2016.	NIL	5.6%

6. Service Tax Rules, 1994

6.1 Option of payment of service tax on receipt basis, where aggregate value of taxable services is fifty lakh rupees or less in previous year, is extended to One Person Company (OPC) and Hindu Undivided Family (HUF). Similarly, facility of quarterly payment of service tax is extended to OPC and HUF.

6.2 Every assessee is now required to submit annual return for the financial year by 30th Nov of the succeeding year. The form and the manner of such return shall be notified by separate notification. The central government shall have power to exempt such assessee or class of assessees from this requirement and also to extend the date of submission as may be deemed necessary. The assessee may revise the annual return within a period of one month from the date of submission of such return. In case of the annual return filed after due date, the same shall be liable to pay an amount of ` 100 per day for the period of delay subject to maximum of ` 20,000/-

The above amendments are applicable from 01/04/2016. [Notification No. 19/2016]

Changes effective from enactment of Finance Bill:

Service provided by selling or marketing agent of lottery tickets - no reverse charge applicable now

Amendment in Explanation 2 to the definition of Service with respect to lottery –

Section 65B (44)[effective from date of enactment of Finance Bill]: The word "on behalf of State Government" is inserted in the explanation. The aforesaid TRU circular dated 29.02.2016 states as under:

"Section 4(c) of the Lotteries (Regulation) Act, 1998 provides that the State Government shall sell the tickets either itself or through distributors or selling agents. Thus, as per the provisions of the Lotteries (Regulation) Act, 1998, the transaction between the State Government and the distributors or selling agents is on principal to agent basis. Any contract contrary to the aforesaid legal provisions is ultra vires the provisions of Indian Contracts Act, 1872 and thus not legally enforceable.

Explanation 2 in section 65B(44) is proposed to be amended to clarify that activity carried out by a lottery distributor or selling agents of the State Government under the provisions of the Lotteries (Regulation) Act, 1998 (17 of 1998), is leviable to service tax."

The said activity is now removed from exclusion clause from the definition of "service" (effectice from the enactment of the Finance Bill)

Negative list of services

Education Services and service related to education are proposed to be omitted from negative list of service and granted exemption under mega exemption notification [Clause (l)]: as amended. Consequently, meaning of 'education institution' for the purpose of entry 9 of said notification is defined in clause (oa) of para 2. Similarly, the definition of 'approved vocational courses' (clause (11) of section 65B) is omitted from Finance Act and incorporated in the mega exemption notification (clause (ba) of paragraph (2).

Declared Service

Clause (j) is inserted containing "assignment by the Government of the right to use the radio-frequency spectrum and subsequent transfers thereof". It is clarified that assignment by Government of the right to use the spectrum as well as subsequent transfers of assignment of right to use is a service leviable to service tax and not as sale of intangible goods.

Comment

This amendment may lead to confusion and litigation if the states also start levy VAT on "right to use" of spectrum and radio frequency. The moot question is that whether by way of amendment of the Finance Act can direct the levy eligible to service tax on an erana which is predominantly of the state.

Normal time limit to issue show cause notice is increased from 18 months to 30 months – section 73

In cases where service tax not levied or paid or short levied or short paid or erroneously refunded, for cases not involving fraud, collusion, suppression, etc. department has power to issue show cause notice within a period of 18 months from the date of filing of ST-3 return and in case where return is not filed 18 months period starts from the due date of filing such return. It is now proposed to be enhanced the said time limit of 18 months to 30 months.

Other Amendments in the Act

Increase in monetary limit for power to arrest - section 89

- CBEC *vide* its circular no. 1010/17/2015-CX dated 23.10.2015 revised its limit for arrests in Service tax for evasion of Service tax or misuse of CENVAT credit is equal to or more than rupees one crore (though section was not amended to increase the limit). It is now proposed to amend the section and revised it from ` 50 lakh to rupees two crore. Thus the monetary limit for power to arrest in service tax or lunching prosecution has been increased from rupees one crore to two crore.
- Section 90 and 91 is being accordingly amended so as to restrict the arrest power only in case where tax has collected service tax but not deposited it with exchequer.

- Section 93A of the Finance Act, 1994 is being amended so as to enable allowing of rebate by way of notification as well as rules.

Change in rate of interest

Section 75 of the Act provides for separate rate of interest in normal case and in case of failure to pay the amount before the due date after being collected. The amended rates of interest under section 75 or, as the case may be section 73B, are as under:

Situation	Interest rate for other than small assessee*	Interest rate for small assessee*
Collection of any amount as service tax but failing to pay the same on or before due date of payment	24% per annum	21% per annum
Delay in payment of service tax due but not collected by service provider	15% per annum	12% per annum
Delay in payment of amount collected in excess of the tax assessed or determined and payable under section 73A of the Act.	15% per annum	12% per annum

*small assessee means assessee whose value of taxable services in the last preceding financial year does not exceed ` 60 lakhs.

[Notification No.13 and 14/2016 – ST]

Penalties

If the penalty proceedings under sections 76 and 78 against the company are concluded by paying the prescribed percentage of demand within the specified time limit, then penalty proceedings under section 78A against director, manager, secretary or other officer of such company shall also be deemed to be concluded. [Explanation to Section 78A]

Rebate of Service Tax for exporter of excisable goods for the period from 01.07.2012 to 03.02.2016:

Notification No.1/2016-ST dated 03.02.2016, amending notification no. 41/2012-ST {published *vide* G.S.R. 519 (E)} dated 29.06.2012, providing rebate of taxable service that have been used beyond factory or any other place or premises of production or manufacture of final product, for their export. Now it is proposed to amend the said notification no.41/2012-ST retrospectively w.e.f. 01.07.2012. Rebate of all such service tax which has been denied shall be granted, **provided an application for claim is made within the period of one month from the date of enactment of Finance Bill.**

Changes effective from 1.6.2016

Transport of passengers by air conditioned stage carriers

Service of transportation of passengers by air-conditioned stage carrier would become taxable. Abatement of 60% is provided with condition of non-availment of CENVAT credit. Service of stage carrier to be removed from negative list of service and non air-conditioned stage carrier is included under mega exemption notification. Sub-clause (i) of clause (o)is proposed to be omitted and non air-conditioned stage carrier service is incorporated as clause (bb) in entry under the mega exemption notification no.25/2012-ST. [Entry 23BB]

New exemption

Transportation of goods by an aircraft (air freight on imports) from a place outside India up to the customs station of clearance in India is exempted after being removed from the Negative List. [Entry 53].

Conclusion

The Finance Bill appears to have proposed changes to mitigate the hardship phased by the assessee and also to reserve certain controversial issues under service tax. Overall the finance minister has done a commendable job which needs to be appreciated.

CA Hasmukh Kamdar

CENVAT Credit Rules, 2004

Notification No. 13/2016 CE NT dated 1-3-2016 w.e.f. 1-4-2016. (Except stated otherwise)

1. Wagons under sub-heading 8606 92 of the Central Excise Tariff and Equipment and appliance used in an office located within a factory are included in the definition of capital goods so as to allow CENVAT credit on the same.

2. CENVAT credit on inputs and capital goods used for pumping of water, for captive use in the factory, is now allowed even where such capital goods are installed outside the factory.

3. All capital goods having value up to rupees ten thousand per piece are now included in the definition of inputs. This would allow an assessee to take whole credit on such capital goods in the same year in which they are received.

4. Exempted service redefined w.e.f. 1-3-2016

Service by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India is now excluded from the definition of "exempted service". This would allow shipping lines to take credit on inputs and input services used in providing the said service.

5. Input redefined

All capital goods having value up to rupees ten thousand per piece are now included in the definition of inputs. This would allow an assessee to take whole credit on such capital goods in the same year in which they are received.

6. Input Service Distributor redefined

ISD will include an outsourced manufacturing unit for the purposes of distributing CENVAT credit of input services to it. Rule 7 for distribution accordingly modified.

7. Jigs, fixtures, moulds & dies etc. can be directly sent to job worker

Manufacturer of final products is being allowed to take CENVAT Credit on tools of Chapter 82 of the Central Excise Tariff in addition to credit on jigs, fixtures, moulds & dies, when intended to be used in the premises of job worker or another manufacturer who manufacturers the goods as per specification of manufacturer of final products. It is also being provided that a manufacturer can send these goods directly to such other manufacturer of job worker without bringing the same to his premises.

8. Job work permission to remove from Job workers factory – valid for 3 years

Presently, the permission given by an Assistant Commissioner or Deputy Commissioner to a manufacturer of the final products for sending

inputs or partially processed inputs outside his factory to a job-worker and clearance therefrom on payment of duty is valid for a financial year. It is being provided that the same would be valid for three financial years.

9. Infrastructure cess paid by vehicle manufacturer will not be cenvatable.

10. CENVAT credit on right to use any natural resources prescribed: Rule 4(7)

It is being provided that CENVAT credit of Service tax paid on amount charged for assignment by Government or any other person of a natural resource such as radio-frequency spectrum, mines etc. shall be spread over the period of time for which the rights have been assigned. It is also being provided that where the manufacturer of goods or provider of output service further assigns such right to use assigned to him by the Government or any other person, in any financial year, to another person against a consideration, balance CENVAT credit not exceeding the service tax payable on the consideration charged by him for such further assignment, shall be allowed in the same financial year. It is also being provided that CENVAT credit of annual or monthly user charges payable in respect of such assignment shall be allowed in the same financial year.

11. Rule 6 simplified to reverse the CENVAT Credit on common input & input services in accordance to the respective turnover of exempted Final goods & Output service vis-a-vis total turnover – as per well established principles of CENVAT scheme.

The existing Rule 6(3A) was meant to apportion credit on inputs and input services used exclusively in dutiable goods/services and at the same time disallow credit on inputs/input services used exclusively in exempted goods/services. But when the formula is applied it disregards concept of common input/input service & works out reversal of eligible CENVAT credit. The order of Tribunal in 2014-TIOL-1825-CESTAT-MUM wherein it was observed that if the formula leads to an anomalous situation, the remedy lies in amending the provisions of the Statute and the judiciary is helpless.

The proposed amendment retains the essence of the CENVAT principle as allowed in past, as it allows the taxpayer to avail full credit on inputs and input services which are exclusively used in the manufacture of excisable goods and provision of taxable services.

Similarly, the taxpayer will not be eligible for exclusive credit relating to inputs and input services for exempted goods and exempted services.

The manufacturer or the provider of the output service shall exercise one of the two options, namely

(a). Pay an amount equal to six per cent of value of the exempted goods and seven per cent of value of the exempted services, subject to a maximum of the total credit taken, or

(b) Pay an amount as determined under sub-rule (3A).

The maximum limit prescribed in the first option would ensure that the amount to be paid does not exceed the total credit taken. The purpose of the rule is to deny credit of such part of the total credit taken, as is attributable to the exempted goods or exempted services and under no circumstances this part can be greater than the whole credit.

Sub-rule (3A) is being amended to provide the procedure and conditions for calculation of credit allowed and credit not allowed and directs that such credit not allowed shall be paid, provisionally for each month.

As per sub-rule 3A now, what is left with the taxpayer is only the "common credit" attributable to (i) dutiable goods and exempted goods and (ii) taxable services and exempted services. The amendment considers that proportion of common credit attributable to dutiable goods or taxable services to be treated as eligible common credit and requires reversal of the balance credit which will be treated as ineligible common credit.

This is achieved by the following steps:

1.	Take full credit on all inputs/input services	(T)
2.	Identify credit on inputs/input services used exclusively in manufacture of exempted goods/ services	(A)
3.	Identify the credit on inputs/input services used exclusively in dutiable goods / taxable services. (Referred to as non exempted goods/services)	(B)
4.	Identify the common input/input service credit	C = T-(A+B)
5.	Identify the credit not eligible on common inputs/input services based on turnovers	(D)
6.	Total credit to be paid back/reversed provisionally on monthly basis	=A+D

7. Repeat the exercise at the end of financial year to determine final figures & take credit or pay differential amounts by 30th June for preceding previous year. In case of delay thereafter along with 15% p.a. interest.

8. A new sub-rule (3AA) is inserted to provide that a manufacturer or a provider of output service who has failed to follow the procedure of giving prior intimation, may be allowed by a Central Excise Officer, competent to adjudicate such case, to follow the procedure and pay the amount prescribed subject to payment of interest calculated at the rate of fifteen per cent, per annum.

9. A new sub-rule (3AB) is inserted as transitional provision to provide that the existing rule 6 of CCR would continue to be in operation up to 30-6-2016, for the units who are required to discharge the obligation in respect of financial year 2015-16.

10. Sub-rule (4) is amended to provide that where the capital goods are used for the manufacture of exempted goods or provision of exempted service for two years from the date of commencement of commercial production or provision of service, no CENVAT credit shall be allowed on such capital goods. Similar provision is being made for capital goods installed after the date of commencement of commercial production or provision of service.

11. Sub-rule (7) is amended so as to provide that credit taken on inputs and input services used in providing a service by way of "transportation of goods by a vessel from customs station of clearance in India to a place outside India shall not be required to be reversed by the shipping lines. It may be mentioned here that this service presently qualifies as an "exempted service" on account of Rule 10 of Place of Provision of Supply Rules. Service by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India is excluded from the definition of "exempted service" by amending rule 2(e) of the rules as discussed above. Amendment in sub rule (7) coupled with the corresponding amendment in the definition of Exempted Service is aimed at allowing credit of eligible inputs, input services and capital goods for providing the said service and providing Indian shipping lines a level playing field vis-a-vis the foreign shipping lines. The credit available may be used by Indian shipping lines to pay service tax on the services of transportation of goods by a vessel from outside India to the customs station of clearance in India, which would become taxable w.e.f. 1st June, 2016 after enactment of Finance Bill 2016.

While the principles relating to reversal of credit still remain unchanged, it has recognised the concept of "common credit" for the first time and has cleared the ambiguity which existed on the credit of common input services which will prevent litigation in the future.

12. Distribution of input service credit by ISD is redefined in consonance with the CENVAT principles for allowing eligible credit to eligible unit to the extent eligible. Rule 7-CCR.

Rule 7 of the Rules dealing with distribution of credit on input services by an Input Service Distributor is being completely rewritten to allow an Input Service Distributor to distribute the input service credit to an outsourced manufacturing unit also in addition to its own manufacturing units. Outsourced manufacturing unit is being defined

to mean either a job-worker who is required to pay duty on the value determined under the provisions of Rule 10A of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, on the goods manufactured for the Input Service Distributor or a manufacturer who manufactures goods, for the Input Service Distributor under a contract, bearing the brand name of the Input Service Distributor and is required to pay duty on value determined under the provisions of section 4A of the Central Excise Act, 1944.

Presently, Rule 7 provides that credit of service tax attributable to service used by more than one unit shall be distributed pro rata, based on turnover, to all the units.

It is now being provided that an Input Service Distributor shall distribute CENVAT credit in respect of service tax paid on the input services to its manufacturing units or units providing output service or to outsourced manufacturing units subject to, *inter alia*, the following conditions.

- Credit attributable to a particular unit shall be attributed to that unit only.
- Credit attributable to more than one unit but not all units shall be attributed only to those units and not to all units.
- Credit attributable to all units shall be attributed to all the units.

Credit shall be distributed *pro rata* on the basis of turnover of preceding financial year as is done in the present rules. It is also now provided that an outsourced manufacturing unit shall maintain separate account of credit received from each of the unit of the input service distributors and shall use it for payment of duty on goods manufactured for Input Service Distributor concerned.

The credit of service tax paid on input services, available with the Input Service Distributor as on 31st of March, 2016 shall not be distributed to an outsourced manufacturing unit.

Further, provisions of Rule 6 of CENVAT Credit Rules, 2004 relating to reversal of credit in respect of inputs and input services used in manufacture of exempted goods or for provision of exempted services, shall apply to the units availing the CENVAT credit distributed by input Service Distributor and not to the Input Service Distributor.

13. Rule 7B is inserted in CENVAT Credit Rules, 2004 so as to enable manufacturers with multiple manufacturing units to maintain a common warehouse for inputs and distribute inputs with credits to the individual manufacturing units. It is also being provided that a manufacturer having one or more factories shall be allowed to take credit on inputs received under the cover of an invoice issued by a warehouse of the said manufacturer, which receives inputs under cover of an invoice towards the purchase of such inputs. Procedure applicable to a first stage dealer or a second stage dealer would apply, mutatis mutandis, to such a warehouse of the manufacturer.

14. Presently, an invoice issued by a manufacturer for clearance of inputs or capital goods is a valid document for availing CENVAT credit. It is now provided that an invoice issued by a service provider for clearance of inputs or capitals goods shall also be a valid document for availing CENVAT credit. [Amendment in Rule (9) (a) (i)]

15. Rule 9A of the Rules is amended to provide for filing of an annual return by a manufacturer of final products or provider of output services for each financial year, by the 30th day of November of the succeeding year in the form as specified by a Notification by the Board.

16. The existing sub rule (2) of Rule 14 prescribes a procedure based on FIFO method for determining whether a particular credit has been utilised. The said sub-rule is omitted. Now, whether a particular credit has been utilised or not shall be ascertained by examining whether during the period under consideration, the minimum balance of credit in the account of the assessee was equal to or more than the disputed amount of credit.

CA Jayesh M. Gogri

Effects of Union Budget 2016 on Customs Legislations

INTRODUCTION

There are plethora of amendments introduced in the Customs field along with revision of effective rates of duty applicable till date. This article shall specifically concentrate on the landmark features which were introduced by the Government of India through Finance Bill, 2016 with regards to Customs. Certain prominent alterations made in the Customs Act, 1962 ("**Act**") and Customs Tariff ("**Tariff**") (hereinafter collectively referred as "**Customs**") are as stated below and can be traced through the Notifications[1] of 1st March, 2016.

INCREASE IN NUMBER OF TRIBUNALS

The Government is ceaselessly making efforts to eradicate all the burdensome backlog of cases. In this Budget, Government has proposed a thought of establishing 11 (Eleven) new Benches of Customs, Excise and Service Tax Appellate Tribunal (CESTAT) so that justice can be rendered faster.

AMENDMENTS TO THE ACT

1. Exemption from Duty

Section 25 of the Act granted discretionary power to the Government for exempting certain duties, if Government is of the opinion that such exemption of tax is required in public interest. Finance Bill, 2016 has amended this section, stating that such exemption if notified by the Government shall come into effect on the date of such publication in the official gazette and shall not be required to be published or offered for sale on the date of its issue by the Directorate of Publicity and Public Relations of the Board, New Delhi as was a requirement prior to the amendment. Sub Section 5 of Section 25, which elaborated this process has now been deleted. Therefore, the amendment aimed to omit the requirement of publishing and offering for sale any notification issued, by the Directorate of Publicity and Public Relations of CBEC.

This amendment is considered as a progressive step as the notification issuing Government makes the notification available on their website and there is no requirement of involving the Directorate of Publicity and Public Relations of CBEC for publication of the same. Therefore, the redundant provisions are dispensed with.

2. Extension of time limit to issue Show Cause Notice:

Section 28

The notice to be served to defaulter for duties

1. Tariff: No.11/2016-Customs to No.23/2016-Customs; Non – Tariff: No.30/2016-Customs (N.T.) to No.33/2016-Customs (N.T.)

not levied or not paid or short-levied or short-paid, the officer in-charge has been granted an extension of a year from the original Section for providing the notice of Show- Cause (SCN). Therefore, the in-charge officer shall have two years at his disposal for serving the notice on the person chargeable with the duty or interest from the relevant date.

Due to various reasons, the officers were not able to issue SCN within the stipulated period of one year. Also, there is provision in this Section, which provides grace period up to Five years in extraordinary circumstances. However, the same can be invoked only if the asseessee is involved in certain *mala fide* activities like: wilful misstatement, fraud, collusion, suppression of facts or willful contravention of law to evade duty. In such cases, the onus is on the Department to prove *mala fides* on the part of the assessee. In order to raise SCNs beyond one year, though Departmental officers used to allege such *mala fides* rampantly, it was difficult to prove such allegations resulting in failure of such SCNs raised belatedly.

3. Interest rates reduced

Section 28AA

Interest rate in case of delayed payment of duty has been reduced from 18% to 15%.

4. Deferred Payment

Section 47 of the Act lays down the procedure for payment of duty on goods used for home consumption.

The amendment has provided additional benefit of deferred payment to certain class of importers for any duty or charges laid down by the government on them. The insertion of 47(1) shall permit certain class of importers to make deferred payment of duty and additionally there shall be negative or reduced rate of interest upon the issuance of notification by the relevant department.

Similarly, the deferred payment, for duty or charges bestowed upon them, has been permitted for certain class of exporters by insertion of **Section 51(1)** in the Act. These classes of exporters shall be notified by the government from time to time.

5. Exemption of Duty during transit of certain goods

Conveyance of goods mentioned in the import manifest or import report shall be permitted to be transported without payment of duty. The amendment has introduced certain criteria for transaction of goods without payment of duty. The authorized officer may lay down certain conditions as may be deemed fit for availing the advantage for non-payment of the duty.

6. Warehouse

Budget has given significant importance to the provisions relating to warehouse under Chapter XI of the Act. The physical control pertaining to private/public warehouses have been eased out and warehouse keepers shall be made more responsible *via* this amendment. The concept of special warehouses has been introduced in cases where the specific goods require physical control of the Government. .

The definition of the warehouse under **Section 2 (43)**[2] of the Act has undergone a change and has inserted the provision of **Section 58 A** in relation to licensing of special warehouse. The Act has a well established procedure for licensing of public warehouse and private warehouse under **Section 57** and **Section 58** respectively for deposits of dutiable goods. In addition to these provisions, a new Section 58A provides for special warehouses..

2. **Section 2 (43) – "warehouse"** means a public warehouse licensed under Section 57 or a private warehouse licensed under Section 58 or a special warehouse licensed under Section 58A.

These special warehouses will store specific goods under physical control of the department. The public and private warehouses will be controlled by warehouse keepers themselves under authority

Warehousing Station

Further, the **Section 2 (45)** which defined the term warehousing station[3] and **Section 9**[4] which lays down the provision in relation to warehouse station has been deleted. Section 9 had elaborately laid down the power of the concerned officer to declare the places to be warehousing stations at which alone public/ private warehouses may be set up.

Therefore, private/public warehouses can be established at any place, as there is no need of having a declared warehouse station.

However, post removal of requirement pertaining to "warehousing station", power to grant licensee for a public/private warehouse has been shifted from Assistant Commissioner of Customs or Deputy Commissioner of Customs, to Principal Commissioner or Commissioner of Customs.

Period for which goods can be stored in warehouse

Section 61 of the Act has specifically stated the period for which the goods can halt or stay at any warehouse.

i. Capital goods intended for use in any 100% (Hundred percent) export oriented undertakings (EOU), till the expiry of 5 years

ii. Goods other than capital goods intended for use in any 100% EOU, till the expiry of 3 years.

The proposed amendment has widened the avenue of goods for residing in the warehouse. As per sub-clause (1) proposed to be substituted, warehousing period in case of:

i. Capital goods intended for use in any 100% EOU/STP/EHTP/warehouse in which manufacturing is permitted, till their clerance from the warehouse

Goods other than capital goods intended for use in any 100% EOU/STP/EHTP/warehouse in which manufacturing, till their consumption/ clearance from the warehouseafter the date of order permitting deposit of goods in warehouse.

Prior to the amendment goods intended to be used for export oriented undertaking only were permitted. The scope has broadened the facility for goods which can easily be placed in the warehouse. Now, the goods used for electronic hardware technology park (EHTP) unit or software technology park (STP) unit or any warehouse wherein manufacture or other operations have been permitted under **Section 65,** till their clearance from the warehouse can remain in the warehouse or till the consumption or clearance from the warehouse.

Responsibilities of the owner and custom officers over the warehouse:

As per **Section 62,** customs officer was the managerial incharge for the inflow and outflow of goods and the entire control over the warehoused goods vested upon him. Further, in case, the owner of the warehouse fails to make payment within 10 (Ten) days from the due date to the warehouse keeper as obliged under **Section 63** of the Act then the warehouse keeper is permitted to sell the warehoused good.

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3. Means a place declared as a warehousing station under section 9.
4. **Section 9 of the Act: Power to declare places to be warehousing stations** – The Board may, by notification in the Official Gazette, declare places to be warehousing stations at which alone public warehouses may be appointed and private warehouses may be licensed.

These two onerous sections have been deleted while additional responsibilities have been carved out for warehouse keeper under Section 73 of the Act.

Responsibilities of Warehouse Keeper

The warehouse keeper has to be vigilant in following the legislation with respect to storage and transit of goods. After the amendment, the strict liability shall apply to warehouse keeper and the goods stored in the warehouse shall be considered in the custody of licensee or warehouse keeper. The licensee shall be liable for payment of duty, interest, fine and penalties without prejudice to any other action that may be taken against the licensee for improper removal of goods.

Section 73 has raised additional accountability on the warehouse keeper with regards to goods kept in the warehouse and he can't evade the responsibilities conferred by the Act.

BAGGAGE RULES

Baggage Rules, 1998 shall be superseded by the Baggage Rules, 2016. These novel rules, shall come into effect on 1st April, 2016, propose the applicability of the Customs Baggage Declaration Regulations, 2013 only to those passengers who carry dutiable or prohibited goods. Amidst all these new rules, government also proposes to simplify the provisions relating to restriction of baggage for international passengers. This rule shall be relaxed so as to enable the international passenger with more free baggage allowance. The filing of baggage declaration will be required only for those passengers who carry dutiable goods.

TARIFF AMENDMENTS

1. National Dialysis Services Programme

Under National Health Mission Government has proposed to exempt certain parts of dialysis equipment from basic customs duty, excise/countervailing duty and special additional duty to provide dialysis services in all district hospital.

Further, the exemption on customs duty is proposed to be granted on braille paper to give it equal standing with other assistive devices like rehabilitation aids and other goods used by differently abled (Divyang) persons who attract nil basic customs duty.

2. Make in India

This flagship event of the Government has carved its way in the Budget as well. The Finance Bill, 2016 introduced certain inputs to reduce costs and improve competitiveness of domestic industry in sectors like Information technology hardware, capital goods, defence production, textiles, mineral fuels & mineral oils, chemicals & petrochemicals, paper, paperboard & newsprint, maintenance repair and overhauling of aircrafts and ship repair. Moreover, government has taken a number of steps to reduce the cargo release time and the transaction costs of EXIM trade.

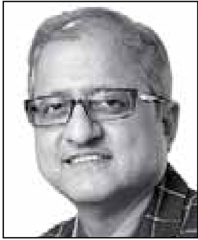
3. The Customs Tariff Act, 1975

Government has proposed to amend the First Schedule to the Customs Tariff Act, 1975 so as to make it exhaustive and it shall include editorial changes in the Harmonized System of Nomenclature (HSN).

CONCLUSION

This gripping fever of Budget has come to an end but its impact shall prolong till the next budget. This Budget has done wonders in the custom related field.

In toto, the amendments introduced in customs legislation are progressive and have achieved to overcome the static nature of the legislations. These amendments have tried to provide 'ease' of doing business in India, speed in litigation resolution, and simplify the procedures.



CA Ninad Karpe

Budget and Education

When the Hon'ble Finance Minister, Mr. Arun Jaitley, rose to present the Union Budget on 29th February 2016, there was a sense of cautious optimism that he would bring some urgency to improve the Education and Skilling sector in India.

Has he focused on this area? Has he done enough to solve the issue of access and quality? Will his Budget proposals bring about a positive momentum?

The Budget proposals for Education & Skilling are stated below.

- The Finance Minister has proposed to bring focus on quality in Sarva Shiksha Abhiyan and also proposed the opening of 62 new Navodaya Vidyalayas.
- A new agency – HEFA (Higher Education Financing Agency) – will be formed with a seed capital of ` 1,000 crore. This agency will focus on improvement of infrastructure in the Higher Education sector and will raise funds through the CSR route and other sources.
- One of the long-felt aspirations of the industry is to see some of our Indian Higher educational institutions feature in the top 100 of the world. None of the Indian universities or institutions figure in the prestigious Times lists of top 100 Universities in the world or any other global list. The present Government has shown a desire to change this, which has been supported in the Budget. A regulatory architecture will soon be provided to ten public institutions to emerge as world-class teaching and research institutions.
- To bring about standardisation, a National Board for Skill Development Certification will be set up in partnership with the industry and academia. This is part of the Government's impetus on skill initiatives, following the steps taken in the previous year (National Skills Mission, setting up of Sector Skill Councils etc.) and will be helpful for vocational institutes seeking funds / growth opportunities.
- It has also been proposed to have courses on Entrepreneurship education and training through massive open online courses.
- In a major move, which is likely to become a huge game-changer, the Government has proposed a Digital depository for school leaving certificates, college degrees, academic awards and mark sheets. This is part of the Government's steps towards digitisation, and will become a one-stop place for all education related

e-certificates. It will also help employers in the process of verification. This move is similar to the move made many years ago of shifting share certificates from the physical format to the digital format. It has eliminated all the earlier ills of fake share certificates. When the Depository for education certificates is operational, it will solve many problems – the most important being that of fake certificates.

- Allocations have been increased substantially.

Key Announcements	Planned Outlay (2016-17)	Planned Outlay (2015-16)
Higher Education Financing Agency	` 1,000 crs.	Nil
Ministry of Skill Development & Entrepreneurship	` 1,804 crs.	` 1,500 crs.
– Allocation under PM's Kaushal Vikas Yojana	` 1,700 crs.	Nil
Plan allocation to HRD ministry (14% growth YoY)	` 20,158 crs.	` 17,672 crs.
– Dept of School Education	` 4,913 crs.	` 2,972 crs.
– Dept of Higher Education	` 15,245 crs.	` 14,700 crs.

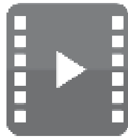
The proposals in the Budget augur well for the Education and Skilling sector. There have been increased allocations across all segments. And the true game changer is the proposal for a Depository.

Given the Budgetary constraints, the Finance Minister has displayed the importance he accords to this sector and hopefully, it will give the right momentum to this sector in the long-term.

"Great works are to be done, wonderful powers have to be worked out, we have to teach other nations many things… This is the motherland of philosophy, of spirituality, and of ethics, of sweetness, gentleness, and love. These still exist, and my experience of the world leads me to stand on firm ground and make the bold statement that India is still the first & foremost of all the nations of the world in these respects."

"Education is the manifestation of the perfection already in man. Religion is the manifestation of the Divinity already in man. Therefore the only duty of the teacher in both cases is to remove all obstructions from the way. Hands off! as I always say, and everything will be right. That is, our duty is to clear the way. The Lord does the rest."

— *Swami Vivekananda*



New Videos on BEPS

BEPS and Business

- Tax Challenges of Digital Economy under BEPS
- Permanent Establishment Issues under BEPS
- Transfer Pricing under BEPS
- Impact of BEPS on Multinational Corporations

BEPS and Tax Disputes

- Resolving International Tax Disputes post BEPS
- Treaty Abuse and Anti Avoidance Rules under BEPS
- Exchange of Information - Will they suffice to curb Tax Avoidance?
- Harmful Tax Competition and Base Erosion
- Tax Disputes and their Resolution under BEPS?
- BEPS and International Tax Compliance/Disputes

BEPS and Countries

- India's Response to BEPS
- BEPS and Indian Tax Policy
- BEPS and Indian Tax Practice
- Impact of BEPS on Emerging and Developing Economies
- Impact of BEPS on Developed Economies
- Impact of BEPS on UN Model Treaty

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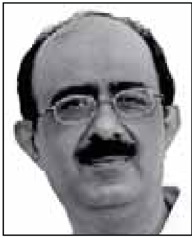


CA Dinesh Kumar Tejwani

DIGITAL INDIA SERIES
DigiLocker : A step towards paperless governance

DigiLocker stands for Digital Locker and is part of the Digital India Programme. "DigiLocker is a secure cloud based platform for storage, sharing and verification of documents and certificates." It is launched by the Department of Electronics and Information Technology (DeitY)

Each citizen today has to physically keep and safeguard various documents issued by government. The most common ones are PAN Card, Passport, Voter ID, Driving Licence. In addition, one has to keep degrees and certificates from educational institutions. These documents are frequently required to be submitted to various authorities e.g. opening of bank account, demat account, prospective employer etc. DigiLocker is aimed at doing away with such paper documents and moving towards electronic documents. The comparison table below shows the advantages of paperless governance

Current Challenge	DigiLocker Solution
Physical paper document	Electronic Document
Submission of multiple paper copies	Online sharing
Physical signature for certification	Self Certification via eSign
Restricted availability at physical location	Anywhere anytime availability
Fake, counterfeit documents	Authentic documents

Objective

The main objective of this programme is to avoid use of physical paper and promote use of electronic documents for use by Government department and agencies while interacting with citizens

- Digital empowerment of citizens by providing them with secure, on the cloud digital locker allowing them anywhere, anytime access
- Provide authenticity to documents and minimise fake documents. This is possible as a registered issuer directly pushes documents in the users digital locker
- Minimise use of paper by encouraging use of electronic documents
- Reduce overhead of Government departments
- Self-certification of documents via eSign facility

Users of Digital Locker

- **Resident Citizens:** Residents can upload and store their legacy documents. Electronically sign and share the documents with requesters. Receive documents uploaded by Issuers
- **Issuer:** Issuers are the Government agencies, which can upload a document to the residents locker. Example: RTO for driving licence, universities for graduation degrees etc.
- **Requester:** A registered requester can retrieve a document of citizen securely.

Few future scenarios

Passport: Currently you have to carry a large number of documents in support of date of birth, address proof etc. while applying for a passport. In future, while electronically applying for passport, applicant may directly attach link to documents from DigiLocker.

PAN Card: Currently an individual needs to provide documentary proof of date of birth, identity and address. Income tax department can directly request access to these documents from Digilocker. Hence complete process of application can become online.

Signing up for a DigiLocker

Any person having valid Aadhar number and mobile can sign up for DigiLocker. However the mobile number must be linked with the Aadhar number. The link for signing up is https://digilocker.gov.in/public/register.

While registering, when valid Aadhar number is entered, a One Time Password is sent via SMS to the linked mobile number. On entering the valid OTP, account gets created. Registration is possible via website or mobile app.

In case, the mobile number is not linked to Aadhar, an alternate way of registering is by way of scanning fingerprint on a prescribed biometric device.

Issued and Uploaded Documents

Issued Documents: These are electronic documents directly pushed into the locker by issuing authorities.

Uploaded Documents: These are documents uploaded by the user into the locker. Total 10 MB size is available for each user for storage of uploaded documents. These documents can be of pdf, jpeg and png type. Since issuance of documents has started only recently and that too from limited agencies, the old legacy paper documents will still be required. Once you upload a document, you can tag it to a document type e.g. PAN Card, driving licence etc. Hence whatever be your file name, it can be easily identified by its document type.

Signing and Sharing

While authenticity of issued documents is built into the system, uploaded documents in PDF formats still need to be self-certified for sharing purposes. This is possible through eSign facility.

eSign is Online Electronic Signature Service. This permits a user to digitally sign a document via Aadhar e-KYC based authentication. This way one can avoid hardware based token for using digital signature. Currently eSign facility is being provided by eMudra, nCode and C-DAC.

To register for eSign facility, you just need to provide your Aadhar number and OTP. By making online payment, you get eSign digital signature for the given period. You also get free software to sign PDF files offline based on OTP.

DigiLocker will use eSign facility for authenticating uploaded documents.

Sharing of Issued documents will be though a Uniform Resource Identifier. URI is generated by the issuer for each document pushed into the locker. Each URI is unique and gets translated into URL: Uniform Resource Locator for pulling document from the repository

Current Statistics

(As per official website https://digilocker.gov.in)

Registered user	11.06 lakh
Documents uploaded	18.52 lakh
Issued Documents	50.70 lakh
eSigned Documents	2.32 lakh
Requester Organisation	3
Issuer Organisation	8

Maharashtra, Uttar Pradesh and West Bengal are the top states in terms of registrations.

There are 8 Issuers listed as of date and 5 of them have issued documents.

Kerala eDistrict: The most active issuer so far has issued 14.46 lakh documents which include Domicile Certificates, Income certificates, Residences Certificates, Solvency Certificates etc.

NIELIT New Delhi: National Institute of Electronics and Information Technology has issued over 5.95 Lakh NDLM (National Digital Literacy Mission) Certificates.

Mee Seva Telangana: Has issued 5.78 lakh certificates including OBC certificates, income certificates and residence certificates.

Some of the issuers, who have registered but are in the process of initiating the process include

- Department of Registration and Stamps, Pune
- Union Public Service Commission
- NSDL e-Governance Infrastructure Ltd.

Security Measures in DigiLocker

Digilocker uses 256 Bit SSL Encryption for information transmitted during any activity. Data is backed up in secure environment. If a user has logged in and there is prolonged period of inactivity, the session is automatically terminated. DigiLocker application has been audited by recognized audit agency

DigiLocker vs. Google Drive

You may wonder, how DigiLocker is different from online storage tools we commonly use i.e. Google Drive, OneDrive, DropBox etc.

- DigiLocker is governed by the Information Technology Act 2000, whereas private online storage sites are governed by US/respective country laws
- DigiLocker is directly linked to Aadhar, hence offers more security
- There are privacy concerns as well. Although Google Drive terms of use state that it does not use drive data for marketing purposes. However it claims to have a worldwide licence to use, host, store, reproduce, modify, create derivative works. An example would be use of translation service
- While all above comparisons about security and privacy are true for uploaded documents, DigiLocker stands out in terms of Government agencies directly issuing documents into the locker

Regulatory framework

Ministry has released draft rules under the Information Technology Act 2000, called "Information Technology (Controller of Digital Locker) Rules, 2016 ". These rules were put up in public domain for public consultation till Feb. 3, 2016

The Rules provide for administration of digital locker system by the Controller of Digital Locker through DigiLocker Service providers. Some of the salient aspects of draft rules are:

- Appointment of Controller of Digital Locker
- Licensing of DigiLocker Service providers
- Controller to specify terms and conditions, maximum fees, procedure and eligibility for Service Providers
- Audit and Security guidelines

Roping in Private Sector

The draft rules have provision for appointment of private sector service providers. Currently DigiLocker is being provided by National e-Governance Division under Department of Electronics and Information Technology. To expand reach of DigiLocker programme, Government intends to rope in private sector

Since, important documents of citizens are to be stored, privacy and security is going to be a big concern. Towards this end, the draft rules have provided for a watchdog "Controller of Digital Locker" who will authorise service provider only after satisfying about security standards and conduct security audits periodically through external agencies.

The rules also provide for grievance officer for resolving citizen complaints.

Should you use DigiLocker?

At this moment, it may seem to be of little use to most of us, still it makes sense to create account and upload important documents in DigiLocker. Even now you can share your documents via a simple link in e-mail.

As more issuers and requesters join the system, it will be extremely easy and convenient to submit documents and certificates to government agencies through DigiLocker.

B.V. Jhaveri, *Advocate*

DIRECT TAXES
Supreme Court

Reopening of assessment: If no assessment order is passed, there cannot be a notice for reassessment inasmuch as the question of re-assessment arises only when there is an assessment in the first instance

M/s. Standard Chartered Finance Ltd. vs. CIT [Civil Appeal No(s).________ /2016] (Arising out of Special Leave Petition (C) No(s). 13512/2012) Dated 9th February, 2016

The issue for consideration relates to the Assessment Year 1997-98 under the Interest Tax Act, 1974. On the return filed by the appellant/assessee for this Assessment Year, no assessment order was passed. However, much after the last date of the Assessment Year is over, the Assessing Officer sought to reopen the assessment by issuing notice under Section 10 of the Act and thereafter proceeded to re-assess the interest chargeable under the aforesaid Act. The matter was carried in appeal by the assessee. The main contention of the assessee was that when there was no assessment order even passed in the original proceedings there was no question of reopening the so-called assessment and make the reassessment. The Commissioner of Income Tax (Appeals) accepted the aforesaid contention and set aside the re-assessment order. This order was upheld by the Income Tax Appellate Tribunal as well. However, in further appeal filed by the Revenue before the High Court, the High Court reversed the view taken by the Tribunal holding that even if there was no original assessment order passed under Section 10 of the Act, there could be reassessment. The High Court held that the judgment of the Supreme Court in Trustees of H.E.H. The *Nizam's Supplemental Family Trust vs. CIT [2000] 242 ITR 381 SC* would not govern the case at hand. On appeal by the assessee the Supreme Court reversing the High Court decision held as under:

"We are of the opinion that the High Court has wrongly not acted upon the ratio laid down in Trustees of H.E.H. The Nizam's Supplemental Family Trust which squarely applies in the instant case in favour of the assessee. The ratio of the said judgment is that in those situations where there is no assessment order passed, there cannot be a notice for reassessment in as much as the question of reassessment arises only when there is an assessment in the first instance."

Note:

1) The aforesaid judgment is given under the Interest-tax, 1974.

2) Refer Explanation 2(b) to Section 147 of the Income-tax Act, 1961.

Deduction u/s. 80HHC

Jagraon Exports vs. CIT, Ludhiana – In Civil Appeal No. 5759 of 2012 dated 18th February, 2016.

The issue in these appeals pertains to the question whether the proceeds generated from the sale of scrap would be included in the total turnover. In the recent decision of this Court in *Commissioner of Income Tax vs. Punjab Stainless Steel Industries & Ors. reported in [2014] 364 ITR 144 (SC)* it has been held that sale proceeds generated from the sale of scrap would not be included in the total turnover for the purpose of deduction under Section 80HHC of the Income-tax Act, 1961.

S.12AA: Non disposal of an application for registration before the expiry of six months as provided u/s. 12AA(2) results in deemed grant of registration

CIT vs. Society for the Promotion of Education, Allahabad – [Civil Appeal No. 1478 of 2016, dated 16th February, 2016]

In *Society for the Promotion of Education, Adventure Sport & Conservation of Environment vs. Commissioner of Income Tax (2008) 216 CTR (All.) 167*, the Allahabad High Court held that non disposal of an application for registration before the expiry of six months as provided u/s. 12AA(2) would result in deemed grant of registration. However, this was reversed by the Full Bench of the Allahabad High Court in *CIT vs. Muzafar Nagar Development Authority (2015) 372 ITR 209.* The appeal filed by the department in the case of Society for the Promotion of Education came up before the Supreme Court. The Supreme Court held as under:

(i) The short issue is with regard to the deemed registration of an application under Section 12AA of the Income-tax Act. The High Court has taken the view that once an application is made under the said provision and in case the same is not responded to within six months, it would be taken that the application is registered under the provision.

(ii) The learned Additional Solicitor General appearing for the appellants, has raised an apprehension that in the case of the respondent, since the date of application was of 24-2-2003, at the worst, the same would operate only after six months from the date of the application.

(iii) We see no basis for such an apprehension since that is the only logical sense in which the Judgment could be understood. Therefore, in order to disabuse any apprehension, we make it clear that the registration of the application under Section 12AA of the Income-tax Act in the case of the respondent shall take effect from 24-8-2003.

(iv) Subject to the above clarification and leaving all other questions of law open, the appeal is disposed of with no order as to costs.

Note 1: Though the Supreme Court left "all other questions of law open", the impact of the verdict is that the law laid down in *Society for the Promotion of Education, Adventure Sport & Conservation of Environment vs. Commissioner of Income Tax (2008) 216 CTR (All) 167* that there is a deemed registration is approved and the law laid down by the Full Bench in *CIT vs. Muzafar Nagar Development Authority (2015) 372 ITR 209* is no longer good law.

Note 2: The CBDT has issued Instruction No. 16 of 2015 dated 6-11-2015 in which it has taken a stern view of the fact that the time limit of six months specified in s. 12AA(2) of the Income-tax Act 1961 for passing an order granting or refusing registration under s. 12AA are not being adhered to by the Commissioners of Income Tax (Exemptions). The CBDT has directed the Chief Commissioners to monitor that the Commissioners are adhering to the time limit and to take suitable administrative action in the case of laxity.

Jitendra Singh & Sameer Dalal
Advocates

DIRECT TAXES
Tribunal

1. Depreciation Allowance – Section 32 of the Income tax Act – Rate – routers and switches being input / output devices – integral part of computer – Entitled to higher rate of depreciation at sixty per cent (60%). A.Y.: 2011-12

IBAHN India (P.) Ltd. vs. Dy. CIT – [ITA No.: 4932 / Mum / 2015; Order dated: 11-1-2016; Mumbai Tribunal]

The assessee for the year claimed depreciation at the rate of sixty per cent (60%) on routers and switches etc., on ground that said components formed integral part of computer. Assessing Officer held that assessee was eligible for depreciation at the rate of fifteen per cent (15%) on routers and switches etc.

On appeal the Tribunal held that all the input and output devices, which support in the receipt of input and outflow of the output are to be regarded as part of computer. CPU alone, cannot be considered as synonymous to the expression, 'Computer'. Thus, the computer has to necessarily include the input and output devices within its scope, subject to their exclusive user with the computer. Hence, the routers and switches in being integral part of Computer, entitled to depreciation at the rate of sixty per cent (60%).

The decisions has considered the decision in the cases of:

Dy. CIT vs. Datacraft India Ltd. [(2010) 40 SOT 295 (Mum.) (SB)]

Routermania Technologies (P.) Ltd. v. ITO - [(2007) 16 SOT 384 (Mum.)], were considered.

2. Rectification of mistake – Section 154, of the Income-tax Act, 1961 - Tax cannot be levied on assessee at a higher amount or at a higher rate merely because he, under a mistaken belief, offered income for taxation at a higher amount or that rate. A.Y.: 2008-09

Asstt. CIT vs. Rupam Impex – [ITA No.: 472 / Rjt. / 2014; Order dated: 21-1-2016; Rajkot Tribunal]

The assessment in case of the assessee was completed under section 143(3) of the Act. Subsequently, the assessee noted certain mistakes and accordingly filed an application seeking rectification of assessment order on ground that incorrect figures of net profit and depreciation where mentioned while making computation of income due to which there was over assessment of its income. The Assessing Officer rejected said application on the ground that the assessee had himself computed the income on the basis of incorrect figures and such mistake cannot be rectified.

On appeal the Tribunal noted that the figures set out in the assessment order are admittedly incorrect. The fact that mistake had occurred was beyond doubt and apparent. The Tribunal held that fact that mistake is attributed to the error of the assessee does not obliterate the fact of mistake or legal remedies for a mistake having crept in. It is only elementary that the income liable to be taxed has to be worked out in accordance with the law as in force. In this process, it is not open to the Revenue authorities to take advantage of mistakes committed by the assessee. Tax cannot be levied on an assessee at a higher amount or at a higher rate merely because the assessee, under a mistaken belief or due to an error, offered the income for taxation at that amount or that rate.

3. Tax Deduction at Source – Section 194 C / 194-I of the Income-tax Act, 1961 – assessee-company, engaged in business of cargo handling, made payments for transportation of goods – Goods were required to be transported were first stuffed in containers given by transporter and then it was transported to agreed place – Assessee was deducting tax at source under section 194C of the Act from payments made for transportation of goods – Assessing Officer opined that payments were to be treated as payments for hire of containers on which tax ought to have been deducted at source under section 194-I – Held, the use of containers was only incidental to transporting of cargo thus, assessee was right in deducting tax at source under section 194C of the Act. A.Y.'s: 2008-09 & 2009-10.

Asstt. CIT vs. Pushpak Logistics (P.) Ltd – [ITA Nos.: 479 & 480 / Rjt. / 2013; Order dated: 29-1-2016; Rajkot Tribunal]

The assessee was engaged in the business of cargo handling for shipments. In the course of its activity, the assessee engaged the services of transporter of goods from shore to the ship, and *vice versa*. The goods required to be transported were first stuffed in the containers given by the transporter and then it was transported, by sea, to the agreed place. The billing for transportation was done on the basis of the size of the container, and, once the goods reached the destination, the containers were to be returned to the transporter. The assessee was deducting tax at source under Section 194C of the Act from the payments made for transportation of goods. The A.O. opined that the definition of rent under Section 194-I of the Act also covered rent for equipment and proceeded to treat the payments made to transporter as payments for hire of containers on which tax ought to have been deducted at source under section 194 I of the Act and he accordingly concluded that there was a short deduction of tax at source under Section 201 of the Act.

On appeal Tribunal held that assessee had made payment for transportation of goods from ship to the shore and *vice versa*. The use of containers was incidental to the whole process of transportation of goods between ship and shore and it cannot be considered as a standalone transaction. The tax could be deducted under Section 194-I only there is a simplictor rental of the equipment. The Tribunal noted that the use of containers is only incidental to transportation of, or loading and unloading of, cargo. Thus, the payments cannot, be treated as constituting payment for rent of containers and assessee had rightly deducted tax under Section 194 C of the Act.

CA Sunil K. Jain

DIRECT TAXES

Statutes, Circulars & Notifications

NOTIFICATIONS

Section 282 of the Income-tax Act, 1961 – Service of notice generally – Procedure, formats and standards for ensuring secured transmission of electronic communication

Sub-section (1) of section 282 of the Income Tax Act, provides that the service of a notice or summon or requisition or order or any other communication under the may be made by delivering or transmitting a copy thereof, to the person therein named ; (a) by post or by such courier services as may be approved by the Board; or (b) in such manner as provided under the Code of Civil Procedure, 1908 for the purposes of service of summons; or (c) in the form of any electronic record as provided in Chapter IV of the Information Technology Act, 2000 or (d) by any other means of transmission of documents as provided by rules made by the Board in this behalf.

The board vide Income-tax (18th Amendment) Rules, 2015 has notified rule 127 for Service of notice, summons, requisition, order and other communication on 2nd December 2015 which states that: For communications delivered or transmitted electronically—

(i) email address available in the income-tax return furnished by the addressee to which the communication relates; or

(ii) the email address available in the last income-tax return furnished by the addressee; or

(iii) in the case of addressee being a company, email address of the company as available on the website of Ministry of Corporate Affairs; or

(iv) any email address made available by the addressee to the income-tax authority or any person authorised by such income-tax authority."

The Principal Director General of Income tax (Systems) has specified the procedure, formats and standards for ensuring secured transmission of electronic communication as under:

a. The email address of the assessee to be used for the purpose of electronic communication shall be as specified in rule 127 of Income tax rules.

b. The assessee may furnish a letter to the Assessing Officer providing any other email address The email address so provided shall be the primary email address for the purpose of issuing electronic communication under this notification once such letter is received by

the AO. Otherwise, the existing email as per (a) above would be the primary email.

c. The email address to be used by the AO for the purpose of electronic communication under this notification shall be his official designation based email address under the domain @ incometax.gov.in (hereinafter referred to as "designation email").

d. The AO shall issue all statutory notices/ questionnaires including notice u/s. 143(2) and notice u/s. 142 (1) of the Income Tax Act 1961 from his designation email address to the assessee's email address.

e. For the purpose of electronic communication, the AO shall attach the scanned copy of the notice under section 143(2) or 142(1) bearing his/her signature in PDF format to the email being sent to the assessee.

f. In response to the notice, assessee shall, using his primary email address, submit the details called for, to the designation email address of the AO.

- All supporting documents shall be submitted as attachment in Portable Document Format (PDF) to the email being sent to the AO.
- In case the total size of the attachments exceed 10 MB then the assessee shall split the attachment and send in as many emails as may be required to adhere to the limit of attachment size of 10 MB per email. However, in each such attachment, assessee shall specifically clarify the corresponding Notice Number and date in the footer to which the attachment relates and number the pages in continuation for all attachments to ensure proper linkage,

g. Any email, in response to the notice issued by the AO, received from the primary email address of the assessee shall be considered as a valid response to the notice.

h. For the purpose of keeping an audit trail of notices/questionnaire issued by AO to assessee and the assessee's response with supporting documents as attachments, a copy of the email shall be marked to e-assessment@incometax.gov.in with the subject line as under:

- Subject in email From AO to assessee – should be in the format: "PAN (eg-XXXXX1234X) - AY (eg-AY. 2013-14) - Notice u/s. ____-N" (N is the serial number of the notice. e.g. Notice u/s. ____-1, Notice u/s. ____-2 etc.).
- Subject in email from assessee to AO- should be in the format: "PAN (e.g. - XXXXX1234X) - AY (e.g. - AY. 2013-14)-Reply-N" (N is the serial number of the notice eg. Reply-1, Reply-2 etc.).

i. In case of non-delivery of email on the primary email address, the notices shall be sent to other email addresses of the assessee available with the department as mentioned in sub-rule (2) of rule 127.

j. In a case where a notice is not sent by email due to any reason including technical reasons such as email failure or mailbox full etc., but sent by other valid mode of service as prescribed in the IT Act 1961, the same shall constitute valid service. The AO shall record reasons in writing for not serving notice by email.

- A copy of the email error message as received by the AO will be forwarded to the email ID e-assessment@incometax.gov.in with the Subject line in email as: "PAN (e.g.- XXXXX1234X)- AY (eg. AY 2013-14)-Error"

k. In a case where a reply by taxpayer is not sent by email due to technical reasons

such as email failure or mailbox full etc., but sent or delivered physically to the AO, the same shall be treated as adequate compliance.

- A copy of the email error message as received by the taxpayer will be forwarded to the email ID e-assessment@incometax.gov.in with the Subject line in email as: "PAN (eg-XXXXX1234X) - AY (eg. AY. 2013-14) - Error"

l. All emails sent or received as per this procedure shall be stored in the ITD database and the communication status shall be displayed in the assessee's "My Account" on the E-filing portal - https://incometaxindiaefiling.gov.in which can be accessed by the assessee after login (if the taxpayer has registered with the E-filing website]

m For the purpose of this notification, the time and place of dispatch and receipt of electronic record or electronic communication shall have the same meaning as provided in section 13 of the Information Technology Act.

n. The AO shall pass the order and attach the scanned copy of the order u/s. 143(3) bearing his/her signature in PDF format to the email sent to the assessee and/or cause the order u/s. 143(3) to be served as specified in section 282 of the Income Tax Act 1961.

o. The AO shall place a hard copy of all emails and supposing documents on the relevant assessment file for record purposes.

The aforementioned procedure is applicable to the assessment proceedings in respect of select non-corporate assessees as a part of the pilot project on paperless assessment proceedings and can be extended to other assessees or other proceedings as may be notified by the Board subsequently.

(Notification No.2/2016 - dt 3-2-2016)

Gold Monetization Scheme – 2015 Comprising of revamped Gold Deposit Scheme and revamped gold metal loan scheme linked together

The Central Government, with a view to provide different options to the people to monetize the privately held stock of the gold, hereby notifies the 'Gold Monetization Scheme – 2015' comprising the 'Revamped Gold Deposit Scheme' and the 'Revamped Gold Metal Loan Scheme', which are hereby linked together as announced in the Union Budget 2015-16 and accordingly, the Provisions contained in the Gold Deposit Scheme 1999 and the Gold Metal Loan Scheme-1998 shall be applicable to Gold Monetization Scheme-2015, subject to amendments from time to time.

This scheme shall be called the Gold Monetization Scheme -2015 comprising the 'Revamped Gold Deposit Scheme' and the 'Revamped Gold Metal Loan Scheme' linked together and shall come into force from the date of launch of the Scheme. It provides the Definition, Who can operate the scheme, All designated banks will be eligible to implement the Scheme and who are eligible to make a deposit. Gold Savings Account, Transfer of Gold to the Refiners, Legal Agreement, Tenure, Interest rates, Redemption, Utilization, Tax Exemption, Gold Reserve Fund and period of the scheme etc.

Tax exemptions, same as those available under Gold Deposit Scheme would be made available to the customers, in the Gold Monetization Scheme – 2015, as applicable.

(Notification F. No.20/6/2015-FT (PT.7), dated 3-2-2016)

Income-tax (Second Amendment) Rules, 2016 – Amendment in rules 10THB, 10THC 10THD and Form No. 3CEFB : Govt. company engaged in mere supply of electricity can also opt for safe harbour rules

The Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, called the Income-tax (2nd Amendment), Rules, 2016 and shall come into force from the date of their publication in the Official Gazette.

In the Income-tax Rules, 1962 certain insertions / substitutions have been made in rule 10THA, 10THB, 10THC, and10THD. It further Provide that in respect of eligible specified domestic transactions, other than the transaction referred to in clause (iv) of rule 10THB, undertaken during the previous year relevant to the assessment year beginning on the 1st day of April, 2013 or beginning on the 1st day of April, 2014 or beginning on the 1st day of April, 2015, Form 3CEFB may be furnished by the assessee on or before the 31st day of March, 2016.".

(Notification No. SO 502(E) [No.5/2016 (F.No. O.142/7/2014-TPL)], dated 17-2-2016)

Section 80CCD of the Income-tax Act, 1961 – Deduction – Contribution to Pension Scheme of Central Government – Notified Pension Scheme

As per sub-section (1) of section 80CCD of the Income-tax Act the Central Government notified the 'Atal Pension Yojana (APY)' as a pension scheme for the purposes of the said section. This notification shall come into force from the date of its publication in the Official Gazette.

(Notification - SO 529(E) [No. O.7/2016 (F.No.173/394/2015-ITA-I)], dated 19-2-2016)

Section 10(46) of the Income-tax Act, 1961 – Exemptions – Statutory body/ authority/board/commission – Notified body or authority

As per clause (46) of section 10 of the Income-tax Act the Central Government notified for the purpose of the said clause, the Competition Commission of India, in respect of the following specified income arising to the said Commission, namely:—

(a) Amount received in the form of Government grants;

(b) Fees received under the Competition Act, 2002; and

(c) Interest accrued on Government grants and interest accrued on fees received under the Competition Act, 2002.

This notification shall be effective subject to the following conditions, namely: —

(i) the Competition Commission of India does not engage in any commercial activity;

(ii) the activities and the nature of the specified income of the Competition Commission of India shall remain unchanged throughout the financial years; and

(iii) the Competition Commission of India shall file return of income in accordance with clause (g) of sub-section (4C) of section 139 of the Income-tax Act, 1961.

This notification shall be applicable for the specified income of the Competition Commission of India for the financial years 2016-2017 to 2020-2021.

(Notification No. SO 530(E) [No.8/2016 (F.No.196/32/2014-ITA-I)], dt. 19-2-2016)

CIRCULARS

Actionable Information Monitoring System (AIMS) – NMS Cycle-4 cases made available in AIMS

Around 58.95 lakh cases were selected under NMS Cycle 4 pertaining to AY 2014-15. Emails and SMSs were sent to taxpayers registered with e-filing portal. In 11.77 lac cases, taxpayers have filed the Return of income and these cases have been closed. All these cases (including the cases closed with closure remark) have now been pushed to Actionable Information

Monitoring System (AIMS) and made available to the jurisdictional assessing officers. Earlier NMS Cycle 3 cases were pushed under AIMS module in 28 February 2015. EFS Instruction No. 49 was issued detailing the functionalities available under AIMS which is available at the following link on i-taxnet: Resources → Downloads → ITD Instructions (Instructions EFS/CIB) → EFS Instruction 49.

The following options have been made available to the assessing officers under AIMS module.

a. View ITS data.

b. Issue system generated letters.

c. Update that the assessee is not traceable.

d. Update that the assessee is not compliant.

e. Propose closure.

f. Issue notice u/s. 148.

Board has directed to issue necessary instructions to the field formations to effectively utilise NMS and AIMS of EFS module to achieve the targets for the widening of the tax base.

(Letter F.No.DGIT(S)/DIT(S)-2/AIMS/14/2015 dt 27-1-2016)

Section 237 of the Income-tax Act, 1961 – Refunds – Issue of refunds – Procedure to be followed in other cases where notice under section 245 has been issued for ITRs processed in Financial Year 2015-16

Regarding issue of refunds up to ` 5,000/-, and refunds in cases where outstanding arrears are up to ` 5,000/-, without any adjustment of outstanding arrears the CBDT has directed .that following procedure is to be adopted in other cases, which are not covered by the aforementioned relaxation, and where notice under section 245 has been issued to the taxpayer:—

(a) In cases where the taxpayer has contested the demand, CPC would issue a reminder to the jurisdictional Assessing Officers about the contention of the taxpayer, asking them to either confirm, or make appropriate changes, to the demand, within thirty days. In case no response is received from the jurisdictional Assessing Officer, within the stipulated period of thirty days, CPC would issue the refund without any adjustment. The responsibility of non-adjustment of refund against outstanding arrears, if any, would lie with the Assessing Officer.

(b) In cases where there is no response from the taxpayer, CPC would issue a reminder to the taxpayer, asking to either agree or disagree with the demand, and submit response on the e-filing portal, within thirty days. In case no response is received from the taxpayer, within the stipulated period of thirty days, CPC would adjust the demand, along with applicable interest u/s 220(2), against the refund due and issue the balance refund, if any, to the taxpayer.

CBDT has directed that all Assessing Officers may to follow the aforementioned procedure in respect of pending refund cases, not covered by the earlier OM dated 14th January 2016.

(Office Memorandum [F. No.312/109/2015-OT], dated 29-1-2016)

Section 190 of the Income-tax Act, 1961 – Administration of TDS – Redressal of taxpayer grievances raised due to TDS mismatches

The taxpayers are facing problems due to mismatch of TDS/other taxes due to the non-reporting of TDS and uploading the TDS details improperly by their deductors. As a result, demand notices are being sent to the taxpayers due to non-availability of the tax credits for claim ITR.

The demand created prior to 1-4-2010 was uploaded manually. There may have been mistakes in uploading the demand (e.g. already paid demand was wrongly uploaded without

giving credit for taxes paid, same demand was uploaded more than once, demand created u/s. 143(1) was again included in demand created u/s 143(3) etc. Since the details of these assessments are not available in CPC (ITR), CPC (ITR) is not in a position to resolve any grievance in such cases. Further, more than 90% of demand entries in CPC FAS involve demand of less than ` 1 lakh. In order to handle these cases, the CBDT issued circular No. 8/2015 directing the AOs to give credit for taxes paid on the basis of evidence furnished by the taxpayer.

In this regard, Directorate has from time to time issued instructions to the field officers about the procedures to be followed in such cases. Since the number of demand entries is very large, therefore, taxpayers remain dissatisfied. Accordingly, Chairman, CBDT has desired that the standard operating procedure as per Circular No. 8/2015 may be strictly followed by all Assessing Officers and immediate steps need to be taken to reduce the grievances of the taxpayers.

(CBDT - Letter, dated 15-2-2016)

Section 133 of the Income-tax Act, 1961 – Income-tax authorities – Power to call for information – Guidelines on procedure to be followed for seeking information from Financial Intelligence Unit – India (FIU-Ind) and confidentiality to be maintained in handling such information

FIU-IND is an intelligence organization under Ministry of Finance and provides information to designated agencies as per the established protocol of sharing of information. Information is provided by FIU-IND under section 66 of the Prevention of Money Laundering Act, 2002. It has been informed by the FIU-IND that it is in receipt of numerous letters and notices under section 133(6), of Income Tax Act from various field units of CBDT calling for information regarding bank accounts, assets etc. of the assessees which are required for recovering tax arrears.

Financial Intelligence Unit-India (FIU-IND) is the designated authority under Prevention of Money laundering Act, 2002 (PMLA) to receive information from different reporting entities. Accordingly, it has a database of, inter alia, bank accounts and transactions therein, transaction in securities, insurance premium paid on policies etc. FIU-IND shares information spontaneously and on request basis with, inter alia, CBDT under section 66 of PMLA. Also, Central Board of Direct Taxes (CBDT) and FIU-IND have executed Memorandum of Understanding (MOU) for exchange of information. On the basis of these, Income Tax Authorities under CBDT can seek information from FIU-IND for both domestic bank accounts etc. as well as those from foreign countries. Such information may be extremely useful for recovery from bank accounts hitherto unknown to Income Tax Authorities or bringing to tax the transactions that might have been done through undisclosed bank account(s).

CBDT observed that while sending requests to obtain information from FIU-IND a simple letter by the AO/TRO/CIT is sent to this office without filling in & signing the Annexures I & II prescribed as per CBDT letter dated 29-9-2011 where the procedure for seeking information from FIU-IND has been prescribed. The field authorities have been directed to go through this letter and Annexures I & II which are to be filled in and signed by the concerned Pr. CIT. It is reiterated that requests to FIU-IND may be made only through this Directorate as the FIU-IND will not entertain direct requests from the Field Authorities/Officers.

All the Income Tax Authorities in field formation have asked to note that information received from FIU-IND is confidential and utmost confidentiality must be maintained in handling and with respect to custody of such information. It should be protected from unauthorized use and proliferation. The information received from FIU-IND, domestic as well as foreign,

needs to be treated as intelligence and the same be further developed by the department's own investigation. Accordingly, FIU-IND will not be mentioned as the source of information in any place or occasion or document like assessment order/correspondence etc., except when required by a competent court of law.

(Letter F. No.1 (153)/DIT(R)/I.T. Demand CATE./2015-16/170-4, dated 15-2-2016)

Section 80-IA of the Income-tax Act, 1961 – Deductions – Profits and Gains from infrastructure undertakings – clarification of term 'initial assessment year' in Section 80-IA(5)

Section 80-IA of the Income-tax Act, as substituted by the Finance Act, 1999 with effect from 1-4-2000, provides for deduction of an amount equal to 100% of the profits and gains derived by an undertaking or enterprise from an eligible business in accordance with the prescribed provisions. Sub-section (2) of section 80-IA further provides that the aforesaid deduction can be claimed by the assessee, at his option, for any ten consecutive assessment years out of fifteen years (twenty years in certain cases) beginning from the year in which the undertaking commences operation, begins development or starts providing services etc. as stipulated therein. Sub-section (5) of section 80-IA further provides as under —

> "Notwithstanding anything contained in any other provision of this Act, the profits and gains of an eligible business to which the provisions of sub-section (1) apply shall, for the purposes of determining the quantum of deduction under that sub-section for the assessment year immediately succeeding the initial assessment year or any subsequent assessment year, be computed as if such eligible business were the only source of income of the assessee during the previous year relevant to the initial assessment year and to every subsequent assessment year up to and including the assessment year for which the determination is to be made".

In the above sub-section, which prescribes the manner of determining the quantum of deduction, a reference has been made to the term 'initial assessment year'. It has been represented to CBDT that some Assessing Officers are interpreting the term 'initial assessment year' as the year in which the eligible business/ manufacturing activity had commenced and are considering such first year of commencement/ operation etc. itself as the first year for granting deduction, ignoring the clear mandate provided under sub-section (2) which allows a choice to the assessee for deciding the year from which it desires to claim deduction out of the applicable slab of fifteen (or twenty) years.

The board examined and opined that it is abundantly clear from sub-section (2) that an assessee who is eligible to claim deduction u/s. 80-IA has the option to choose the initial/ first year from which it may desire the claim of deduction for ten consecutive years, out of a slab of fifteen (or twenty) years, as prescribed under that sub-section. It clarified that once such initial assessment year has been opted for by the assessee, he shall be entitled to claim deduction u/s. 80-IA for ten consecutive years beginning from the year in respect of which he has exercised such option subject to the fulfillment of conditions prescribed in the section. Hence, the term 'initial assessment year' would mean the first year opted for by the assessee for claiming deduction u/s. 80-IA. However, the total number of years for claiming deduction should not transgress the prescribed slab of fifteen or twenty years, as the case may be and the period of claim should be availed in continuity.

The Assessing Officers have been, directed to allow deduction u/s. 80-IA in accordance with this clarification and after being satisfied that all the prescribed conditions applicable in a particular case are duly satisfied. Pending litigation on allow ability of deduction u/s. 80 IA shall also not be pursued to the extent it

relates to interpreting 'initial assessment year' as mentioned in sub-section (5) of that section for which the Standing Counsels/D.R.s suitably instructed.

(Circular No.1/2016 [F.No.200/31/2015-ITA-I], dated 15-2-2016)

Section 285BA of the Income-tax Act, 1961 – Statement of Financial Transaction or reportable account, Obligation to furnish – Clarification for implementation of FATCA and CRS

Currency: For the upcoming reporting in March 2015 and May 2016, all reporting has to be done in INR. For the reporting in 2017, Form 61B and Schema will be suitably modified to include a field for capturing type of currency.

New Fixed Deposit account as Preexisting Account: In banking system, there are procedures where Fixed Deposit (FD) can be opened by an existing customer who is having an existing saving bank account with the same financial institution, without any additional documentation. These fixed deposits are assigned separate account numbers from the existing saving bank account. Therefore, they are classified as new accounts by the banks. During stakeholders consultations, representatives of financial institutions informed that in such cases, no additional documentation are obtained for these fixed deposits accounts as they are intrinsically related to existing saving bank account and all KYC documents are available for the existing saving bank account. In these cases, where no additional documentation are required for certain FD accounts, financial institution may treat the new FD account as pre-existing account subject to the following conditions:

a. The saving bank account is opened on or before 30-6-2014 in the case of Foreign Account Tax Compliance Act (FATCA) and 31-12-2015 in the case of Common Reporting Standard (CRS);

b. The due diligence requirements have already been carried out or are in the process of being carried out for the pre-existing saving bank account and

c. the accounts are treated as linked or as a single account or obligation for the purposes of applying any of the due diligence requirements and reporting.

The above situation will also be applicable to Auto sweep facility linked to existing saving bank account.

Global Custodian and Local Custodian: It was submitted by financial institutions that majority of the accounts opened in India by foreign investors, including Foreign Port folio Investor (FPI), are contracted through Global Custodians (GCs) who in turn appoint or contract with Local Sub-custodians in India to facilitate registration and investments of these foreign investors in India. Query was received whether Local Sub-custodian may apply due diligence procedure only on the GCs and not on the GCs end-clients. It has been decided that Local Sub-custodian are required to carry out the due diligence on the accounts held by GC end-clients. However, for carrying out due diligence, the Local Sub-custodian may rely on the KYC/FATCA/CRS documentation done by GC for the account holders including the self-certification. Further, it may be clarified that the obligations for due diligence and reporting remain that of the Local Custodian who should also be able to access all documents in relation to an account holder.

HUF: Several queries have been received regarding due diligence of HUF accounts. The issue is whether due diligence may be conducted either only on the Karta or on all coparceners along with Karta. In this regard, it has been decided that for the purpose of compliance, an HUF account shall be treated as an entity account. The due diligence of HUF accounts will be same as prescribed under PMLA/ KYC procedures.

NBFC: Queries have been received regarding reporting by NBFC whether they are depository institution or investment entity. In this regard, it has been decided that an NBFC which accepts

deposit in the course of a banking business or a similar business as mentioned in the definition of depository institution will be considered as Depository Institution and will report accordingly. An NBFC which is working as investment entity will report accordingly.

Procedure for furnishing the report: Presently the procedure for registration and submission of report under FATCA and CRS is as per Notification No. 4 dated 4th September, 2015 issued by the Principal Director General of Income Tax (Systems) which is available on the website of Income tax Department incometaxindia.gov.in. However, the procedure for registration and submission of report is being revised and the same will be made available on the website referred above as and when rolled out.

(Letter [F. No.504/090/2007-FTD-I], dated 19-2-2016)

Section 139A of the Income-tax Act, 1961 – Permanent Account Number – Jurisdiction of pans of trusts submitting ITR-7 for Assessment Years 2014-15 and 2015-16 as on 28-1-2016

Post cadre-restructuring, it has been observed by CBDT that number of PANs of Trust are lying in non-exemption Charges or are not lying in their proper jurisdiction. Such requests have also been received from some CsIT (Exemption). To facilitate the migration of PAN to their appropriate jurisdiction i.e. Exemption Charges, RCC-wise details of jurisdiction of Trust cases submitting ITR-7 for AYs 2014-15 and 2015-16 as on 28-1-2016 have been extracted. The same is informed to be available with Sh. Vikrant Khanna, AD(S), Mob. 9013850919. email id: adl.systems.delhi@incometax.gov.in. It directed that PCIT/CIT(Exemption) may contact AD(S) to obtain the excel sheet and the password to view the same so that PAN migration, as appropriate, can be done well in advance of the time barring date.

(Letter F. No.DGIT(S)/DIT(S)-3/AST/CIT Exemption Juris/98/2015-16, dt. 22-2-2016)

Clarification regarding nature of share Buy-back transactions under income-tax Act, 1961 – regd: As per provisions of Section 46A of the Income-tax Act, 1961 ('Act'), applicable with effect from 1-4-2000, any consideration received by a shareholder or a holder of other specified securities from any company on purchase of its own shares/other specified securities shall be, subject to provisions contained in section 48, deemed to be capital gains. Further, sub-clause (iv) of clause (22) of section 2 of the Act excludes any payment made by a company on purchase of its own shares In accordance with the provisions contained in section 77A of the Companies Act from the ambit of 'dividend'. Finance Act, 2013 subsequently introduced section 115QA (w.e.f. 1-6-2013) to provide that any amount of distributed income by a company on buyback of unlisted shares shall be charged to tax and the company so distributing its income shall be liable to pay additional income-tax at the rate of twenty percent of the distributed income.

The Board noted that the provisions of law regarding buy-back of shares since introduction of dividend distribution tax ('DDT') under section 115- O of the Act w.e.f. 1-4-2003 till 31-5-2013 are being interpreted in a conflicting manner by the tax authorities and taxpayers, thereby giving rise to disputes on this issue. It has been contended that subsequent to introduction of section 115QA in the Act and placing reliance on a decision of the Authority for Advance Ruling (AAR No. P of 2010), income-tax authorities, in some cases have sought to re-characterize the purchase consideration received on account of buy-back of shares, undertaken prior to 1-6-2013, as dividend and accordingly, subjecting the amounts so distributed by the companies to DDT.

The matter examined by board and noted that between the period 1-4-2000 till 31-5-2013 as mentioned in para 1 above, provisions of section 46A read with section 2(22)(iv) of the Act clearly

provide that the income arising to a shareholder on buy-back of shares was to be treated as income from capital gains and not dividend income. Further clarity on this issue emerges on perusal of Circular No. 779 dated 14-9-1999 of CBDT, which in Para 28 has mentioned following reasons for introducing section 46A in the statute.

Accordingly, the CBDT now clarified that consideration received on buyback of shares between the period 1-4-2000 till 31-5-2013 would be taxed as capital gains in the hands of the recipient in accordance with section 46A of the Act and no such amount shall be treated as dividend in view of provisions of section 2(22)(iv).

With a view to bring about further clarity on this issue as a step towards non-adversarial tax regime, the CBDT directed that as a matter of general principle, no fresh notice for assessment/reassessment/non-deduction of TDS at source shall be issued where buyback of shares has taken place prior to 1-6-2013 and the case is covered under section 46A read with section 2(22)(iv) of the Act. In cases where notices have already been issued and assessment proceedings are pending, tax authorities shall complete the assessment keeping in view the above legal position.

(Circular No. 03/2016 - 26 February, 2016)

PRESS RELEASES

Section 92CC of the Income-tax Act, 1961 – Transfer Pricing – Advance Pricing Agreement (APA) – Signing of 7 more unilateral APAs

The Central Board of Direct Taxes (CBDT) entered into 7 more unilateral Advance Pricing Agreements (APAs) with taxpayers (22nd January, 2016). This takes the tally of APAs signed so far to 39 (38 unilateral and one bilateral). In the current fiscal year, which is the third year of APA programme, 30 agreements have been signed so far. Before the end of the financial year, more such agreements are expected to be signed. The 7 APAs signed today pertain to various sectors of the economy like investment advisory services, software development services and IT enabled Services. The agreements signed today also include one of the few agreements to be reached in the manufacturing sector.

The APA Scheme was introduced in the Income-tax Act in 2012 and the "Rollback" provisions were introduced in 2014. The scheme endeavours to provide certainty to taxpayers in the domain of transfer pricing by specifying the methods of pricing and setting the prices of international transactions in advance. Since its inception, the APA scheme has attracted tremendous interest from taxpayers for using this mechanism to achieve tax certainty upto nine years.

(Press Release, Dated 22-1-2016)

Section 92CC of the Income-tax Act, 1961 – Transfer Pricing – Advance Pricing Agreement (APA) – CBDT signs two bilaterial advance pricing agreements (APAs) with united kingdom

The Central Board of Direct Taxes has entered into two bilateral Advance Pricing Agreements (APAs) with United Kingdom. With this signing, CBDT has concluded three bilateral APAs the first one being a bilateral APA signed with Japan in December, 2014. The two bilateral APAs were signed with two Indian group entities of a UK based Multi-National Company (MNC). The APAs have been entered into soon after the Competent Authorities of India and United Kingdom finalised the terms of the bilateral arrangement under the Mutual Agreement Procedure (MAP) process contained in the India-UK DTAA.

The APAs cover the period 2013-14 to 2017-18 and also have a "Rollback" provision for 2 years (2011-12 and 2012-13). Transfer pricing disputes on the same transaction were recently resolved

under MAP for each of these two companies for the years 2006-07 to 2010-11. With the signing of the bilateral APAs, the two Indian companies have been provided with tax certainty for 12 years each (5 years under MAP and 7 years under APA). The two APAs are also significant because they address the issues of payment of management & service charges and payment of royalty. These transactions generally face prolonged and multi-layered transfer pricing disputes.

(Press Release, Dated 1-2-2016)

Section 90 of the Income-tax Act, 1961 – Double Taxation Agreement – Resolution of more than 100 cases of transfer pricing disputes with USA under mutual agreement procedure (MAP)

Central Board of Direct Taxes to boost investment sentiments among MNCs has signed the landmark Framework Agreement with the Revenue Authorities of USA in January, 2015. This agreement was finalised under the Mutual Agreement Procedure (MAP) provision contained in the India-USA Double Taxation Avoidance Convention (DTAC). The agreement seeks to resolve about 200 past transfer pricing disputes between the two countries in the Information Technology (Software Development) Services [ITS] and Information Technology enabled Services [ITeS] segments. More than 100 cases have already been resolved and some more are expected to be resolved before the end of this fiscal. Prior to resolution of disputes under the Framework Agreement the US bilateral APA programme was closed to India. The success of the framework Agreement in short period of one year has led to the US Revenue Authorities opening up their bilateral APA programme to India. The USA is expected to begin accepting bilateral APA applications shortly.

The MAP programmes with other countries like Japan and UK are also progressing well with regular meetings and resolution of past disputes. The CBDT is confident that a combination of a robust APA programme and a streamlined MAP programme would be helpful in creating an environment of tax certainty and encourage MNCs to do business in India.

(Press Release, Dated 28-1-2016)

Government sets up tax policy research unit and tax policy council

The Tax Administration Reform Commission (TARC) have in their First Report, identified handling of tax policy and related legislation as one of the areas which needs structural modifications. Observing that currently, this is handled in the two Boards i.e. CBDT and CBEC, independently in the Tax Research Unit (TRU) and Tax Policy and Legislation (TPL) wings, the proposals of the Boards reach the Finance Minister in separate channels. To bring consistency, multidisciplinary inputs, and coherence in policy making, TARC has recommended that a Tax Council supported by a common Tax Policy and Analysis (TPA) unit should be established to cater to needs of both direct and indirect taxes. Comprising tax administrators, economists, and other specialists such as statisticians, tax law experts, operation research specialists and social researchers should be set-up for both the Boards. Considering the above, the Government has created a Tax Policy Research Unit (TPRU) and Tax Policy Council.

Tax Policy Research Unit (TPRU)

The Tax Policy Research Unit (TPRU) will be a multi disciplinary body with the following objectives:—

(i) Carry-out studies on various topics of fiscal and tax policies referred to it by CBDT and CBEC and will provide independent analysis on such topics;

(ii) Will also prepare and disseminate policy papers and background papers on various tax policy issues;

(iii) Will assist Tax Policy Council chaired by FM in taking appropriate tax policy decisions; and

(iv) Liaise with State Commercial Tax Departments.

For this purpose the TPRU may also interact with various research institutions, wherever necessary. The TPRU will prepare for every tax proposal an analysis covering the following three points:—

- The legislative intent behind the proposal, i.e., why this proposal is being framed and what is the policy objective.
- Expected increase or decrease in tax collection through the proposal; and
- The likely economic impact (positive or negative) through the proposal (other than the effect on tax collection)

Tax Policy Research Unit (TPRU) shall comprise of officers from the Central Board of Direct Taxes (CBDT) and Central Board of Excise and Customs (CBEC) as well as economists, statisticians, operational researchers, legal experts. Member (L&V), CBDT and Member (Budget), CBEC will be the link officer between TPRU and CBDT and CBEC. The unit will be headed by an officer of the level of Chief Commissioner at functional level alternatively from CBDT and CBEC for a fixed tenure, who will directly report to Revenue Secretary.

Tax Policy Council

With an aim to have a consistent and coherent approach to the issue of tax policy and having regard for need to have an interdisciplinary approach , a Tax Policy Council under the Union Finance Minister with 9 other members as given below is constituted;

1	Finance Minister	Chairman
2	MOS (F)	Member
3	Dy Chairman, NITI Aayog	Member
4	MOS (I/C) Commerce and Industry	Member
5	Finance Secretary	Member
6	Secretary, DEA	Member
7	Revenue Secretary	Member
8	Secretary, Commerce	Member
9	Secretary, DIPP	Member
10	Chief Economic Advisor to FM	Member

The Chairman, CBDT and Chairman, CBEC shall be special invitees.

The Tax Policy Council will look at all the research findings coming from Tax Policy Research (TPRU) Unit and suggest broad policy measures for taxation. The Council will be advisory in nature, which will help the Government in identifying key policy decisions for taxation.

(Press Release, Dated 2-2-2016)

Small Savings Schemes – Interest rates on said schemes to be recalibrated w.e.f. 1-4-2016

The National Savings Schemes (NSSs) regulated by the Ministry of Finance offer complete security of investment combined with high attractive returns. These schemes also act as instruments of financial inclusion especially in the geographically inaccessible areas due to their implementation primarily through the Post Offices, which have reach far and wide.

The small savings interest rates are perceived to limit the banking sector's ability to lower deposit rates in response to the monetary policy of the Reserve Bank of India. In the context of easing the transmission of the lower interest rates in the economy, the Government also has to take a comprehensive view on the social goals of certain National Small Savings Schemes. Accordingly, it has been decided that the following shall be implemented with effect from 1-4-2016 with regard to National Savings Schemes:

1. The Sukanya Samriddhi Yojana, the Senior Citizen Savings Scheme and the Monthly Income Scheme are savings schemes based on laudable social development or social security goals. Hence, the interest rate and spread that these schemes enjoy over the G-sec rate of comparable maturity viz., of 75 bps, 100 bps and 25 bps respectively have been left untouched by the Government.

2. Similarly the spread of 25 bps that long-term instruments, such as the 5 year Term Deposit, 5 year National Saving Certificates and Public Provident Fund (PPF) currently enjoy over G-Sec of comparable maturity, have been left untouched as these schemes are particularly relevant to the self-employed professional and salaried classes. This will encourage long-term savings.
3. The 25 bps spread that 1 yr., 2 yr. and 3 yr. term deposits, KVPs and 5 yr. Recurring Deposits have over comparable tenure Government securities, shall stand removed w.e.f. April 1, 2016 to make them closer in interest rates to the similar instruments of the banking sector. This is expected to help the economy move to a lower overall interest rate regime eventually and thereby help all, particularly low-income and salaried classes.
4. The interest rates of all small saving schemes would be recalibrated w.e.f. 1-4-2016 on a quarterly basis as given under, to align the small saving interest rates with the market rates of the relevant Government securities;

Sr. No.	Quarter for which rate of interest would be effective	Date on which the revision would be notified	Rate of interest to be based on FIMMDA month end G-Sec. rate pertaining to
1.	April to June	15th March	Dec. – Jan. – Feb.
2.	July to September	15th June	Mar. – Apr. – May.
3.	October to December	15th September	Jun. – Jul. – Aug.
4.	January to March	15th December	Sep. – Oct. – Nov.

5. The compounding of interest which is biannual in the case of 10 yr. National Saving Certificate (discontinued since 20-12-2015), 5 yr. National Saving Certificate and Kisan Vikas Patra, shall be done on an annual basis from 1-4-2016.
6. Premature closure of PPF accounts shall be permitted in genuine cases, such as cases of serious ailment, higher education of children etc. This shall be permitted with a penalty of 1% reduction in interest payable on the whole deposit and only for the accounts having completed five years from the date of opening.
7. In pursuance to the decision as mentioned in Para 4 above, the rates of interest applicable on various small savings schemes for the quarter from April to June 2016 effective from 1-4-2016 would be notified in March, 2016.

The above changes have been brought with the objective of making the operation of National Saving Schemes market-oriented in the interest of overall economic growth of the country, even while protecting their social objectives and promoting long term savings.

(Press Release, Dated 16-2-2016)

Section 90 of the Income-tax Act, 1961 – Double Taxation Agreement – CBDT Resolves disputes of ` 5,000 crore under mutual agreement procedure (MAP) of tax treaties

Double Taxation Avoidance Agreements (DTAAs) i.e. Tax Treaties signed by India with various countries contain an Article to relieve taxpayers from double taxation through a Mutual Agreement Procedure (MAP). Internationally, the MAP is an important mechanism to resolve tax disputes between countries. The MAP program is led by one or more Competent Authorities designated by the signatory countries to resolve tax disputes under the provisions of each treaty. In the last two years, increased focus on MAP has resulted in resolution of large number of disputes relating to double taxation.

Since 1st April, 2014 till date, the Central Board of Direct Taxes has resolved 180 cases under MAP. The total amount of income locked up in dispute in these cases is approximately ` 5,000 crore. The resolved cases pertain to various sectors of the economy like software services; IT enabled services, manufacturing, consultancy services, etc. The countries with which cases have been resolved are USA, Japan, United Kingdom and China.

MAP has emerged as an effective alternative tax dispute resolution mechanism. Its use to resolve disputes has provided comfort to foreign investors and also reduced the number of cases under litigation. This is one of the actions taken by CBDT to ensure a fair and judicious dispute resolution regime to encourage foreign investment.

(Press Release, Dated 16-2-2016)

Preamble to 2016 U.S. model Income Tax Convention

On February 17, 2016, the Treasury Department released a revised 2016 U.S. Model Income Tax Convention (the 2016 Model), which is the baseline text the Treasury Department uses when it negotiates tax treaties. The U.S. Model Income Tax Convention was last updated in 2006 (the 2006 Model). This preamble highlights the significant features of the 2016 Model.

Many of the 2016 Model updates reflect technical improvements developed in the context of bilateral tax treaty negotiations and do not represent substantive changes to the 2006 Model. The 2016 Model also includes a number of new provisions intended to more clearly implement the Treasury Department's longstanding policy that tax treaties should eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance. For example, to protect against treaty abuse, the 2016 Model contains rules that would deny treaty benefits on deductible payments of highly mobile income that are made to related persons that enjoy low or no taxation with respect to that income under a preferential tax regime. In addition, new Article 28 (Subsequent Changes in Law) obligates the treaty partners to consult with a view to amending the treaty as necessary when changes in the domestic law of a treaty partner draw into question the treaty's original balance of negotiated benefits and the need for the treaty to reduce double taxation. The 2016 Model also includes provisions to reduce the tax benefits of corporate inversions by denying reduced withholding taxes on U.S. source payments made by expatriated entities to related foreign persons.

In addition to these new provisions, the 2016 Model includes a number of technical improvements and certain policy changes to longstanding Article 22 (Limitation on Benefits), which is intended to prevent so-called "treaty shopping" by third-country residents that are not intended beneficiaries of the treaty. The 2016 Model also includes a rule (located in new paragraph 8 of Article 1 (General Scope)) that is a revised version of the so-called "triangular permanent establishment" rule that has been included in some of the United States' income treaties since the 1990s. The new version of the rule addresses income treated by a residence country as attributable to a permanent establishment and subject to little or no tax, as well as income that is excluded from the tax base of the residence country and attributable to a permanent establishment located in a third country that does not have a tax treaty with the source country.

Draft versions of these new model treaty provisions, as well as proposed changes to Article 22 (Limitation on Benefits), were released on May 20, 2015 (the May 2015 draft) for public comment. The Treasury Department carefully considered all the comments it received and made a number of significant modifications to the proposed model treaty provisions in response to those comments. This preamble discusses the most significant changes made in response to comments. The 2016 Model also contains rules to make more efficient and

effective dispute resolution mechanisms between tax authorities through the use of mandatory binding arbitration.

(Press release dt 17-2-2016) may be referred for complete details)

INSTRUCTIONS

Actionable Information Monitoring System (AIMS) – Addition of new address functionality for NMS cases in AIMS module

NMS cases are pushed under AIMS module for further action by field formations. This module provides a functionality to issue system generated letters to the non-filers. Previously the letter generation functionality only used address as per PAN database. A new functionality has been deployed which allows generation of letters at addresses mentioned in Return of Income and Annual Information Return.

(EFS - Instruction No.52 [F.No. DGIT (S)/DIT(S)-2/AIMS/14/2015], dated 10-2-2016)

Section 154 of the Income-tax Act, 1961 – Rectification of Mistake – Apparent from records – Following prescribed time-limit in passing order under section 154(8)

Sub-section (8) of section 154 of the Income-tax Act, stipulates that where an application for amendment is made by assessee/deductor/collector with a view to rectify any mistake apparent from record, the income-tax authority concerned shall pass an order, within a period of six months from the end of the month in which such an application is received, by either making the amendment or refusing to allow the claim. It has been brought to the notice of the Board that the said time-limit of six months has not been observed in deciding some applications. In such cases, the field authorities often take a view that since no action was taken within the prescribed time-frame, the application of the taxpayer is deemed to have lapsed, thereby not requiring any action.

It has been directed now that the aforesaid time-limit of six months is to be strictly followed by the Assessing Officer while disposing applications filed by the assessee/deductor/collector under section 154 of the Act. The supervisory officers should monitor the adherence of prescribed time-limit and suitable administrative action may be initiated in cases where failure to adhere to the prescribed time frame is noticed.

(Instruction No.1/2016 [F.No. 225/305/2015-ITA.II], dated 15-2-2016)

Section 154 of the Income-tax Act, 1961 – Recitification of Mistake – Apparent from records – Passing Rectification Order under section 154

Instances have come to the notice of the Board that in some cases rectification order under section 154 of the Income-tax Act is being passed by the Assessing Officer on AST System without giving copy of the order to the taxpayer concerned. This is causing grievance to the taxpayers as they remain unaware of such orders and consequentially, are unable to pursue the matter further, either in appeal or rectification, if required.

Sub-section (4) of section 154 of the Act mandates that rectification order shall be passed in writing by the Income-tax authorities. The Board directed that all rectification applications must be disposed of after passing an order in writing, to be duly served upon the taxpayer concerned and not by merely making necessary rectification on the AST System.

(Instruction No.2/2016 [F.No. 225/305/2015-ITA.II], dated 15-2-2016)

Section 139A of the Income-tax Act, 1961 – Permanent Account Number – Processing of core field updation requests – Identification of duplicate pans allotted to a person and resolution by RCC

As per current process, PAN holder who wants to update core field and address details of the

PAN allotted to him/her can file request for update through service providers (NSDL/ UTIITSL). Details received from SPs in this regard in text file format are now uploaded in the system automatically through central schedulers removing manual intervention of the RCC. Request for updation in respect of core field updation and address updation are received in separate files from PAN service providers NSDL and UTIITSL.

2. Requests for address updation received through service providers (NSDL/UTIITSL) are updated through system schedulers while uploading the text files. However, requests received in respect of core field updation are displayed in ITBA-PAN application to RCC users from where RCC user can review change request received on a particular PAN. As per AIS Instruction No. 58, review/audit of each and every core field updation request is compulsory to be undertaken by RCC. There is defined process wherein RCC can mark core field updation request either for re-confirmation of respective Service Provider of changes in PAN data sought by PAN holder or ask for photocopy of the change request application and POI/ POA and PDOB documents from the Service Provider. RCC has to physically review and take a decision to allow update request on the basis of photocopies provided by the Service Provider. On confirmation by Service Provider core field update request is executed in the system.

3. As per new procedure put in place in ITBA-PAN application, once the decision has been taken by the RCC user to update PAN data on the basis of update request it will be queued for duplicity check in the system. After the duplicity is resolved by RCC, the request is scheduled for update by the system and thereafter, PAN details will be updated by the system.

4. During the process of duplicity resolution as described in para 3 above, RCC can accept update request accessible to RCC through link "PAN->Menu->List of Identified Duplicates->Core Update" and to proceed with the update of PAN for the selected request if after comparing the request details with the details of identified duplicate PAN it is found that the existing PAN where updates are requested and duplicate PAN identified by system do not belongs to same person. On clicking on "Accept Update" button a success message is displayed and request for update is queued for update in PAN data through schedulers. After successful execution of the PAN update scheduler, PAN details are updated as per the request.

5. However, if after comparing the request details with the details of identified duplicate PAN it is found by the RCC that the existing PAN where updates are requested and duplicate PAN identified by system belongs to same person then the PAN update request is to be marked duplicate and it can be done by selecting one of the identified duplicate PAN provided in the grid and clicking on "Mark Duplicate" button. Output files will be generated through schedulers for use of PAN Service Provider without intervention of the RCC.

6. PAN service providers have been asked to re-verify the duplicate marked requests by RCC with the help of earlier PAN applications available with them or other PAN service provider. If it is found that duplicate PAN exists then applicant will be asked to approach respective AO for surrender of duplicate PAN otherwise PAN service provider will send the change request with force flag under new serial number which will be updated in the system without intervention of the RCC.

This new process will help identification and surrender of duplicate PAN allotted to a person so that further use of the same duplicate PAN allotted to a PAN holder could be stopped. Detailed procedure, screen shots and navigation information is available in ITBA-PAN user manual which is available on ITBA portal page under "Online Training on ITBA" link which may be referred by the RCC.

(Instruction No.3 - Instructions/0001/2016], dated 24-2-2016)

CA Tarunkumar Singhal & Sunil Moti Lala, *Advocate*

INTERNATIONAL TAXATION
Case Law Update

A. AUTHORITY FOR ADVANCE RULINGS ('AAR')

1. Consideration received for on-board fabrication and installation of Floating Production Storage and Offloading facility under Change order was taxable in India under section 44BB of the Act despite working performed outside India as the change order was a mere extension of the Original Contract and therefore warranted similar tax treatment. Entire consideration received was taxable under section 44BB without splitting the same on the basis of travel of FPSO outside or in India as section 44BB did not provide for such splitting up.

Aker Contracting FP ASA – AAR No 867 of 2010

Facts

1. Aker Contracting FP ASA ('the applicant'), was a company incorporated in Norway, engaged in the business of providing Floating Production Storage and Offloading ('FPSO') facilities (a floating production system used in the offshore oil and gas industry). It entered into a contract with RIL on May 9, 2007 ('Original Contract') to provide FPSO facilities at assigned oil and gas fields in connection with extracting, prospecting / production of mineral oil for which it was paid consideration on a day rate release rental basis. Further, as per the Original Contract, the applicant was to receive USD 18.79 million for mobilization of the vessel from Singapore to the offshore location in India. The applicant offered the FPSO and mobilization consideration to tax under section 44BB of the Act.

2. On July 27, 2008 the applicant signed a Change order amending the scope of work in the original contract and did not offer the consideration received as per the Change order to tax on the ground that the Change order provided for additional scope of work out of which a substantial portion was performed outside India. Accordingly, the applicant raised the following questions before the Authority for Advance Rulings:

- Whether the consideration received by the Applicant under the Change order for undertaking fabrication of new living quarters onboard the FPSO facility, expediting the delivery of topside modules and increasing productivity at the Singapore yard, performing scope of work to avoid the dry docking period and mobilizing its commissioning team was

in the nature of business profits or fees for technical services ('FTS') under the Income-tax Act, 1961 ('the Act')?

- If the said sum was in the nature of business profits, whether the consideration would be taxable in India even though it pertains to work performed wholly outside India?
- Whether the consideration received by the Applicant for installation of the buoy and moorings was in the nature of business profits or FTS and whether it was to be computed with regard to section 44BB of the Act?
- Whether the amount received by the Applicant in Question 1 above was to be computed having regard to section 44BB of the Act?
- Whether the consideration received by the Applicant attributable to the mobilization of the FPSO to the extent of the distance travelled outside India was taxable in India?
- Whether the consideration received by the Applicant on account of insurance receipts for loss of hire were chargeable to tax in India?

Ruling

1. In regard to the contention of the applicant that the Change order was independent of the Original Contract and therefore to be considered on a different footing and that the consideration received pursuant to the Change order was capital in nature, the AAR noted that in the Original agreement "work" means the chartering out of the FPSO and all activities to be performed by the Contractor including the preparation of the FPSO for chartering and that clause 25 of the Original contract, pertaining to changes, provided that no change would impair or invalidate the contract and that the Change order had a direct relationship to the scope of work provided for in the Original contact. It also noted that the argument of the consideration received pursuant to the Change order being capital in nature was not taken in the application made and was a different stand taken for the first time. It held that the fabrication of new living quarters was a clause present in the Original contract, the consideration received for mobilization and commission was inextricably linked with the original contract as per which the contractor was to make the equipment suitably equipped with necessary tools etc and therefore the Change order did not alter the character of the consideration received by the Applicant and therefore originated from the Original Contract. Accordingly, the AAR held that the argument of the amount received being capital in nature was without any merit.

2. The AAR held that since the consideration received as per the Change order was similar to the consideration received as per the Original Contract (which was offered to tax under section 44BB of the Act), the applicant would be governed by section 44BB of the Act. Relying on the decision of the Court in *Sedco Forex Intentional (299 ITR 238)* and the AAR in Geofizyka Torun Sp zo (186 Taxman 213) and Bergen Oilfied Services AS (11 taxmann.com 96), it held that section 44BB, relating to non-resident assesses who provided services and facilities in connection with, or supply of plant and machinery on hire used for prospecting / extraction / production of mineral oils in or outside India, was a complete code in itself and that there was no scope to split revenue attributable to activities in India and outside India and therefore rejected the contention of the Applicant that consideration received outside India did not accrue or arise in India / was not deemed to accrue or arise in India and therefore not attracting section 44BB of the Act.

3. With regard to the contention of the applicant that the consideration received as per the Change order was not taxable under the DTAA between India and Norway, the AAR

held that since the scope of work under the Change order remained the same as the Original Contract and therefore was to be treated in a similar manner and offered to tax in the same manner as which the consideration received pursuant to the Original contract had been offered to tax.

4. The AAR held that the consideration received on account of loss of lease rentals on account of insurance policy signed outside India was not taxable in India.

5. Accordingly, it held that the consideration received pursuant to Change order and for installation of STP buoy and moorings in India was in the nature of business profits taxable under section 44BB of the Act.

2. Settlement amount for giving up right to sue is a capital receipt not chargeable to tax. Since the cost of acquisition of the said right was not determinable the computation mechanism failed and no income was chargeable to tax.

Lead Counsel of Qualified Settlement Fund (QSF), In re – [2016] 65 taxmann.com 197 (AAR – New Delhi)

Facts

1. The applicant is an Indian company whose shares were listed on Bombay Stock Exchange and the National Stock Exchange. Its American Depository Shares were listed in the New York Stock Exchange. Pursuant to an admission from its former Chairman regarding misstatements contained in the accounts of the applicant, the price of its shares took a fall. During 2009, a large number of suits were filed against the company as well as its Indian and Foreign Auditors, in various jurisdictions in the US, claiming damages. The class action suits were referred for mediation, under which the applicant proposed to pay USD 125 million to the Qualified Settlement Fund as a proposed settlement. The Indian and foreign auditors were to pay USD 15.5 million and USD 10 Million respectively.

2. During 2011, the US Court approved the settlement. As per the terms of the settlement the applicant and the Indian auditors were to deposit the agreed amounts in a segregated account in India. The Foreign auditor was to deposit the agreed sum in an initial escrow account in New York. Post approval, the amounts had to be transferred from the initial escrow accounts to a final escrow accounts and treated as a Qualified Settlement Fund which was to be distributed to the claimants after deducting relevant expenses.

3. Prior to the transfer of funds, the applicant and the auditors approached the AAR to determine whether the amount payable was chargeable to tax in India and consequently liable to TDS under section 195 of the Act, and if so, at what rate.

4. Ruling in favour of the Revenue, the AAR held that the settlement amount constituted 'income from other sources' in the hands of the Qualified Settlement Fund under Article 23 of the India –US Double Tax Avoidance Agreement and therefore the applicants were required to withhold taxes under section 195 of the Act.

5. Against the Ruling, a writ was filed before the Honourable High Court wherein the Ruling was set aside and remanded the matter back to the AAR to examine whether the settlement payment were in the nature of revenue or capital and then determine chargeability.

Ruling

1. The AAR observed that the settlement amount was in lieu of surrender of right to sue against the applicant and the auditors. The right to sue amounts to a capital asset under section 2(14) of the Act and therefore it held that the settlement was a capital receipt. Since the cost could not be computed and the right could not be transferred owing to public policy, the AAR held that the settlement amount was not taxable under section 45.

2. The AAR, disagreeing with its earlier ruling held that the amount was neither taxable under section 45 or section 56 of the Act and held that since TDS was already deducted under section 195 of the Act pursuant to the earlier ruling, the payee was to claim a refund under the Act.

B. HIGH COURT JUDGMENTS

3. Purchase of software for onward resale to end users being a copyrighted article does not amount to royalty as it was in the nature of purchase of goods

Principal Commissioner of Income-tax v M Tech India Pvt Ltd – TS-19-HC-2015

Facts

1. The assessee, M Tech India Pvt Ltd, a Value Added Reseller ('VAR') entered into a VAR agreement with two entities viz. Track Health Pty Ltd, Australia and Speed Miners, Malaysia for the purchase of software related to healthcare and hospitality for the onward resale to end-users in India. At the time of making such payment, the assessee did not deduct any taxes at source since it was in the nature of purchase of goods. The AO disallowed the payment under section 40(a)(i) of the Act on account of such non-deduction of tax at source.

2. Aggrieved, the assessee filed an appeal before the CIT(A) and submitted that it had made similar purchases in the previous year without deducting taxes at source which were allowed as a deduction in computing its taxable income and that it was a reseller of products and therefore the payments for acquiring the products could not be considered as royalty. The CIT(A) accepted the contention of the assessee and deleted the disallowance made by the AO. Aggrieved, the Revenue preferred an appeal before the Tribunal wherein, the Tribunal upheld the order of the CIT(A) and ruled in favour of the assessee.

3. Accordingly, the Revenue filed an appeal before the Honourable High Court.

Judgment

1. The Court, after carefully analyzing the facts of the case, observed that the agreements entered into by the assessee expressly indicated that the assessee was appointed to market and sell the product in India and therefore was appointed as a reseller of the software. It also noted that the AO, in previous years, had accepted the transactions in question to be that of a purchase of software and that the only question relevant was whether the impugned amount could be taxed as royalty.

2. It held that where an assessee acquires the right to use a software, the payment so made would amount to royalty. However, in cases where the payment was for the purchase of software as a product, the consideration paid could not be considered to be for the use or right to use the software and that where software was sold as a product, it would amount to a sale of goods. Consideration paid for purchase of goods could not be considered as royalty and it was necessary to make a distinction between payment for the acquisition of a right to use a patent or copyright and a payment to acquire a patented or copyrighted product the latter being a purchase of product which was so in the given case. Reliance was placed on the decision of the Apex Court in *Tata Consultancy Services vs. State of Andhra Pradesh (2004) 271 ITR 401(SC)* and the decision of the Court in *DIT vs. Infrasoft Ltd. (2014) 220 Taxman 273 (Del).*

3. Further, the Court rejected the Revenue's reliance on the decision of the Court in *CIT vs Samsung Electronics Co Ltd (2012) 345 IR 494* (Kar) holding that the co-ordinate bench in *DIT v Infrasoft* had unequivocally dissented from the said judgment on the same issue.

4. Partnership firm is a 'person' under the India-UK DTAA. The firm being an enterprise of a Contracting state was taxable only in that State and therefore profits in India were not taxable. Accordingly, the reassessment proceedings were quashed.

Maersk Line UK Ltd & Anr v DDIT (IT) – TS-36-HC-2015 (Cal)

Facts

1. The petitioners, a UK based partner and a Netherlands based partner were two partners of a partnership firm known as P&O Nedllyod ('PONP') to whom notices under section 148 of the Act were issued which were the subject matter of the writ petition.

2. The Revenue was of the view that PONP being a partnership firm based in the UK was a fiscally transparent entity and hence outside the ambit of the India-UK Double Tax Avoidance Agreement ('DTAA') as a result of which its income was exigible to tax under the domestic laws whereas the income of the partners was exempt under section 10(2A) of the Act.

3. The Petitioners submitted that distinction made between a partnership and its partners regarding the same income could not be drawn for the purpose of taxing the partnership in India and that the subject income was already accepted as Nil in the hands of the partners which could not be taken to be income chargeable to tax in India in the hands of the firm. It also submitted that the partners had fiscal domicile offshore and the income of the firm was taxed in the hands of the respective partners in their respective countries of residence.

4. The Revenue contended that the writ petitions should be adjourned pending the decision of the Apex Court in the case of the Petitioners for previous years and that the partnership firm in the UK being transparent to the tax laws of that country should not be regarded as a person under the DTAA and therefore should be taxed as per the Act.

Judgment

1. The Honourable High Court referred to Article 3(2) of the DTAA wherein it was stated that a partnership which is treated as a taxable unit under the Act shall be treated as a person for the purposes of the Convention as well as Article 9(5) which provided that the provisions of taxability of income on shipping shall also apply to income derived from participation in a pool, a joint business or an international operating agency.

2. With regard to the contention of the Revenue that the firm was a fiscally transparent entity in the UK, it relied on the decision of *P&O Nedlloyd & Ors vs. ADIT (2014) 269 ITR 282 (Cal)* dealing with the similar issue wherein it was held that the firm was a person covered under the DTAA being an enterprise of a Contracting state, taxable only in that state.

3. It held that the firm being an enterprise of the UK had fiscal domicile in the UK and therefore its income from operation of ships in international traffic was not exigible to tax under domestic law. Accordingly, the notices under section 148 of the Act were set aside.

5. Where TDS under section 195 of the Act becomes refundable to the resident payer on account of the non-resident payee waiving the payment, the payer will be entitled to refund as well as interest on refund from the date of filing the refund claim and not from the date of deposit of TDS.

Sunflag Iron & Steel Co Ltd vs. CBDT – (2016) 66 taxmann.com 50 (Bom)

Facts

1. The petitioner, a steel manufacturing company entered into an agreement with a

German company for transfer of technical knowhow, pursuant to which it was required to make a payment of three installments amounting to ` 76.45 lakhs and had deducted taxes at source. Subsequently, the German Company was not able to fulfil its obligation and therefore agreed to waive the payment of the third instalment. The Petitioner filed an application claiming refund of the amount of TDS. The CBDT authorized the CCIT to refund the TDS and accordingly the said sum was refunded to the petitioner. The Petitioner then filed an application for interest on amount of refund due under section 244A of the Act which was rejected by the DCIT.

2. The Petitioner submitted that in view of the provisions of Section 2(7) read with sections 195, 200 and 201 of the Act, it would be an assessee as provided under the Act and that in any case in view of Section 160 & 163 of the Act, it would be a representative assessee of the German company and therefore the application of refund as well as interest thereon would be tenable. It was further submitted that since the third instalment was paid and subsequently waived the Revenue had no authority to retain the TDS and that the petitioner would be entitled to refund from the date of deposit of TDS to the date of refund.

3. The Revenue contended that only the German company could be construed to be an assessee for the purposes of the Act and therefore only the German company was entitled to make an application for refund and that the CBDT gratuitously granted the prayer of refund independent of the provisions of the Act. However, the claim for interest was to be made under 244A of the Act and therefore the rejection of the said claim was correct.

Judgment

1. The Honourable High Court referring to the relevant sections of the Act held that section 2(7)(b) of the Act included within the definition of assessee every person who was deemed to be an assessee under the Act and that 2(7)(c) included ever person who was deemed to be an assessee in default under the provisions of the Act. It held that the petitioner would fall under the purview of Section 2(7)(b) as it was a representative assessee within the meaning of Section 163 since it had a business connection with the German company and the income received by the German company was directly through the petitioners.

2. Further, it held that had the petitioner failed to deduct tax at source on the payments made to the German company it would deemed to be an assessee in default and therefore satisfied Section 2(7)(c) of the Act as well. Accordingly, it dismissed the contention of the Revenue that the petitioner was not an assessee and not entitled to apply for refund or interest under the Act and that the refund granted by the CBDT was as per Section 240 of the Act which had a wide application and therefore dismissed the argument of the Revenue that the refund granted was not in accordance with the provisions of the Act. Accordingly, it held that the petitioner was entitled to both the refund and interest thereon.

3. With regard to the period for which interest on refund was payable, the Court held that the Petitioner was entitled to interest from the date of filing the claim of refund to the date of payment and not from the date of deduction of tax. It observed that the law comes to the assistance of the vigilant and diligent and therefore the Revenue could not be fastened with the liability for a period earlier to the date on which the petitioners filed the refund claim.

6. There is no obligation to deduct tax at source on the resident / Indian company making payments to non-resident covered under section 172 of the Act. Thus, no disallowance can be made under section 40(a)(i) of the Act in such a case

CIT vs. VS Dempo & Co Pvt. Ltd. – (2016) 66 taxmann.com 93 (Bom)

Facts

1. The assessee was a company engaged in the business of mining and export of processed iron ore as well as construction. The assessee charged demurrage charges under the head export expenses to the profit and loss account on which no tax was deducted. The AO disallowed the said charges paid under section 40(a)(i) read with section 195 of the Act.

2. Aggrieved, the assessee filed an appeal before the CIT(A) wherein the disallowance under section 40(a)(i) of the Act was deleted. Subsequently, both the assessee and Revenue filed appeals before the Tribunal wherein both appeals were partly allowed.

3. Aggrieved, the Revenue filed an appeal before the Honourable High Court.

4. In a similar case before the Division Bench of the Court in the case of Orient (Goa) Pvt Ltd. it was held that section 172 of the Act was only applicable in respect of a non-resident carrying on shipping business and not to the resident payer and therefore the provisions of section 172 of the Act were not applicable and the demurrage charges were not to be allowed in the absence of deduction of tax at source. However, during the current appeal, the Court expressed its dissent with the ruling in the case of Orient (Goa) Pvt Ltd but observing law of precedence held that it was not open for a Division bench to take a contrary view to the view taken by another Division Bench and therefore constituted a Larger Bench to adjudicate on the matter.

Judgment:

1. The Larger Bench held that section 172 of the Act had application to shipping businesses of non-residents and would have application notwithstanding anything contained in the other provisions of the Act for the purpose of levy and recovery of tax with regard to any ship, belonging to or chartered by a non-resident which carries passengers. Livestock, mail or goods shipped at a port in India. It further noted that section 44B of the Act provided for computing profits and gains for shipping businesses in the case of non-residents and therefore concluded that section 172 is referable to section 44B of the Act.

2. The Court held that both section 44B and 172 of the Act open with a non-obstante clause and that section 44B provides for the computation and section 172 provides for the recovery and collection of taxes. The provisions of section 172 of the Act clearly provide the mechanism for levy, assessment and recovery and therefore there is no warrant in applying the provision of section 195 to the assessee.

3. It noted that the Division bench in Orient (Goa) Pvt Ltd did not take into account the entire scheme of Section 172 of the Act and also held that there was no scope of escape from levy of tax under section 172 of the Act since the taxes were to be paid before the ship left the port in India or pursuant to an arrangement to pay such taxes.

4. The Court held that there was no obligation to deduct tax at source on the resident / Indian company making payments to non-residents covered under section 172 of the Act and thus the decision in the case of Orient (Goa) was overruled.

7. Payment for data transmission services through a transponder is not royalty under the India-Thailand and India-Netherlands tax treaties. The retrospective amendment to Section 9(1)(vi) of the Act could not be read into the DTAA as no corresponding amendment has been made to the definition of royalty therein.

DIT vs. New Skies Satellite BV & DIT vs. Shin Satellite Public Co Ltd – TS-64-HC-2016 (Del)

Facts

1. New Skies Satellite BV and Shin Satellite Public Co Ltd ('the assessees) incorporated in Netherlands and Thailand respectively, were engaged in the business of providing digital broadcasting services to customers being Indian residents as well as non-residents. During the relevant year, the assessees received income from the lease of transponders of the satellites and had filed Nil returns claiming that the income was not taxable.

2. The AO held that the income was taxable as royalty both under section 9(1)(vi) of the Act and Article 12 of the respective DTAAs as the income arose out of the 'use' of a 'process'.

3. Aggrieved, the assessee filed an appeal before the Tribunal wherein the Tribunal relying on the decision of the Court in the case of Asia Satellite Telecommunication Company Ltd v DIT – 322 ITR 340 (Del), and held that receipts from provision of data transmission services do not constitute royalty.

4. The Revenue filed an appeal before the Honourable High Court challenging the order of the Tribunal. It was contended that the ruling of the Court in the case of Asia Satellite was undone by the retrospective amendment to section 9(1)(vi) and therefore the sum received by the assessees were taxable considering the amended definition under the Act which was also applicable to the definition of royalty under the DTAA.

Judgment

1. The Court noted that the applicability of retrospective amendments were determined by the actual substance of the amendment and not merely by its language and that the language in Explanations 4 to 6 to section 9(1)(vi) of the Act had the apparent characteristics of a retrospective amendment. Referring to the judgment in the case of TV Today Network Ltd – 221 Taxman 123 (Del) the Court held that the income received by the assessees was taxable under the Act. However, it observed that the issue of taxability of the assessees could be resolved without redressal of this issue in detail since the assessees did not press the line of argument as the ultimate taxability of the income would rest on the interpretation of the tax treaties.

2. The Court held that no amendment to the Act whether retrospective or prospective could be read in a manner so as to extend itself to the terms of an international treaty and that a clarificatory amendment which sought to overcome a judicial interpretation of law could not be allowed to have a retroactive impact on an international treaty between to sovereign states prior to the amendment. Referring to Article 39 of the Vienna Convention and Azadi Bachao Andolan, it held that unilateral amendment to treaties could not be entertained and that treaties were created via negotiation processes between sovereign states.

3. It held that mere amendment to Section 9(1)(vi) could not result in a change in the definition contained in the DTAA unless a similar amendment was brought about therein and that since the amendments vide Finance Act, 2012 would not affect Article 12 of the DTAA, the decision of Asia Satellite was still applicable. Accordingly, it held that the amount received by the assessees were not taxable under the respective DTAAs.

8. Under the India-UAE DTAA, permanent establishments ('PEs') specified in Article 5(2) would qualify as PEs only if the business of the enterprise is carried on partly or wholly through it – Fixed place of business carrying on auxiliary activities does not constitute a PE – In the absence of authority to conclude contracts no dependent agency PE could be constituted. Additionally, for the

purposes of determining installation PE, only the number of days of activities carried on by the assessee in India was to be considered and not the activities carried on by an independent contractor.

National Petroleum Construction vs. DIT (IT) – (2016) 66 taxmann.com 16 (Del.)

Facts

1. The assessee, a company incorporated in the UAE was engaged in the fabrication of petroleum platform, pipelines and other equipment as well as the installation of petroleum platforms, submarine pipelines at various sites. During the relevant year, it tendered and won a contract with ONGC for the design, engineering, procurement, fabrication of loaded offshore platform along with its installation and commission at ONGC's offshore facility. The activities relating to survey, installation and commissioning were performed entirely in India whereas the platforms were designed, engineered and fabricated in the UAE. For the purposes of conducting the pre-engineering and pre-construction surveys, the assessee appointed a third party viz. M/s Fugro Geonics Pvt Ltd. Acardia Shipping Ltd ('ASL') was appointed for providing technical and marketing support services. The assessee filed its return declaring its income on a presumptive basis by taxing gross receipts pertaining to its activities in India (net off verifiable expenses) @10 percent and the receipts pertaining to its activities outside India @ 1 percent.

2. The AO contended that the assessee had a fixed place PE in India in the form of a Project Office in Mumbai, that ASL was its Dependent Agent PE and that it also had an installation / construction PE in India. It was further contended that the entire contract was a turnkey contract which was not divisible and therefore the entire contract receipt was taxable in India and estimated the profits to be 25 percent of the consideration received from ONGC.

3. The DRP as well as the ITAT upheld the order of the AO. However, the ITAT held that the contract could be segregated into offshore and onshore activities and that the activities carried on outside India were not taxable in India.

4. Aggrieved, the assessee as well as the Revenue filed appeals before the Honourable High Court.

Judgment

1. The Court analyzed Article 5 of the India-UAE DTAA and held that the expression PE contained therein stipulated a fixed place of business from which the business of the enterprise was carried on. It noted that normally inclusive definitions are used to expand the width of the term defined but Article 5(2) specifically enlisted places of business that fall within the meaning of PE and that all classes of PEs in Article 5(2) would be construed as a PE subject to the fulfilment of condition in Article 5(1) i.e. the said classes of PE would be construed as a PE only if the business of the enterprise was carried on partly or wholly through it. In addition, the word permanent in the term 'Permanent Establishment indicates that there should be some degree of permanency attached to the fixed place of business before the same can be construed as a PE of an enterprise. Also, where Article 5(2)(h) and 5(2)(i) of the India-UAE DTAA are concerned, the permanence required is a specific period of 9 months. It also observed that Article 5(4) providing for a deeming fiction whereby dependent agents would be deemed to be PEs even though they do not fall under Article 5(1) / 5(2).

2. As regards the Revenue's contention that the Project Office in Mumbai constitutes a Fixed Place PE, the High Court held that since the Project office was used mainly as a communication channel the activities done therein would fall under the exclusionary clause under Article 5(3) as the activities were auxiliary

in nature. It held that there was no material to prove that the employees were engaged in the review of the engineering documents or had participated in the discussion or approval of designs submitted to ONGC.

3. The Honourable Court further held that the assessee did not constitute an installation PE in India since the duration of its activities in India did not exceed 9 months. It held that for the purpose of determining the existence of an installation PE, the actual activities carried on in India had to be considered and since the installation activities lasted from November 19, 2006 to April 27, 2007 it clearly did not satisfy the 9 month stipulation. Further, it held that activities at a site carried on by an independent contractor could not be considered while determining the activities of the assessee and that interruption in the activities exceeding substantial period representing a cessation of work was not to be included in the determination of the 9 month period.

4. With respect to ASL constituting a DAPE in India the Court observed from ASL's accounts that it carried on substantial business other than the services provided to the assessee and that it was not authorized to conclude contracts on behalf of the assessee and accordingly held that it did not constitute a DAPE of the assessee in India. It also held that the presence of the employees of ASL at a kick-off meeting with ONGC could not lead to the inference that it constituted a DAPE of the assessee.

5. The Court also pointed out that the computation mechanism adopted by the assessee was incorrect as there was no scope for allowing deductions while computing tax on a presumptive basis.

6. However, the Court held that since the assessee did not have a PE in India during the relevant years, no income of the assessee from the impugned projects could be attributed to the PE. Though academic, the Court upheld the finding of the Tribunal that the consideration of activities carried on outside India could not be attributable to the assessee's PE in India where the value of work done outside India was ascertainable.

9. Where in respect of marketing and administrative services rendered by AEs, the assessee adopted a revenue sharing model whereby assessee kept 75 percent of the revenue and paid 25 percent to its AEs, the upward adjustment was to be deleted since the model was supported by relevant documents.

CIT vs. ITC, Infotech India Ltd – (2016) 66 taxmann.com 106 (Cal)

Facts

1. The assessee was engaged in the provision of customized software solution development, IT facilities management and professional IT Services. During the year under consideration, it entered into international transactions with its wholly owned subsidiaries, namely 12A in the US and 12B in the UK, constituting its AEs, for which it adopted the cost plus method as the most appropriate method to establish the ALP choosing the wholly owned subsidiaries as the tested parties.

2. The business arrangement with its subsidiaries encompassed two revenue sharing models:

Model 1 – Wherein the agreements were executed between the assessee and its overseas customers for which the AEs provided the assessee with marketing and administrative support services. As per the agreement, the assessee retained 75 percent of the revenue and paid the subsidiaries the balance 25 percent for the said support services.

Model 2 – As per this model, the AEs entered into agreements with its customers and raised invoices directly on the customers and the

assessee raised invoices on the AEs for 75 percent of the revenue being the delivery engine for the customers.

It both the aforesaid models, the assessee undertook and assumed significant functions and risks and consequently undertook full responsibility for the delivery of all IT Development services to the customer.

3. The TPO held that the functional and risk profile of the assessee and its AEs differed in both the business models and that the assessee bore a higher risk in contracts directly with its customers as opposed to the contracts entered into by its AEs and therefore adopted a 15 percent revenue sharing model as opposed to the 25 percent for Business Model 1. Additionally, the TPO provided a 2 percent ad hoc adjustment to management charges paid to 12A thereby adopting a 13 percent revenue sharing rate.

4. Aggrieved, the assessee preferred an appeal before the CIT(A) wherein the adjustment was deleted, pursuant to which the revenue filed an appeal with the Tribunal. The Tribunal upheld the order of the CIT(A) and held that even though the contracts in the two business models were optically different, the functional and risk profile of both the assessee and its AEs remained the same and that the conduct of the assessee and AEs were to be given due cognizance.

5. Aggrieved, the Revenue filed an appeal before the Honourable High Court.

Judgment

1. The Court upheld the order of the Tribunal and also noted that the fact that 25 percent was retained for the AEs was accepted by the CIT(A) and Tribunal based on the documents submitted.

2. It held that there was no illegality or infirmity in the orders of the Tribunal and CIT(A) which were adequately supported by relevant documents.

10. Where the assessee was not an eligible assessee under section 144C(15)(b) of the Act, the draft assessment order passed was to be quashed

Honda Cars India Ltd vs. DCIT – TS-51-HC-2016 (Del) – TP

Facts

1. The assessee, a subsidiary company of Honda Motors Company Ltd, Japan was engaged in the business of manufacture and sale of passenger cars for which it purchased raw materials, spare parts etc from its holding company. Under a technical collaboration agreement, the assessee paid royalty to its holding company.

2. The international transaction with its AE was referred to the TPO. However, no TP addition was made to the returned income. Subsequently, the AO disallowed the entire payment made by the assessee for purchasing raw materials, spare parts etc vide a draft assessment order.

3. Aggrieved by the draft assessment order, the assessee filed a writ petition before the Honourable High Court contending that

a. It wasn't an eligible assessee as defined under section 144C(15)(b) since the TPO had not proposed any variation in income and therefore the drat assessment order was invalid

b. As per Circular No 3 / 2015, the disallowance under section 40(a)(i) was to be restricted to the net amount and not taken at the gross amount of purchases made

c. The assessment would be time barred as it was to be completed by March 31, 2015 whereas only the draft order was passed which was invalid as contended in point (a) above.

Judgment

1. With regards to contention (a) above, the Court held that section 144C(1) of the Act

provided that a draft assessment order was to made only for an "eligible assessee". "Eligible assessee" was defined to mean any person in whose case the TPO had made a variation to the returned income vide an order under section 92CA(3) of the Act or a foreign company. Noting that the assessee was not a foreign company the Court considered the first part of the definition. Relying on the decision of the Apex Court in *P. Kasilingam & Others vs. PSG College of Technology & Ors,* it held that the word "means" indicates that the definition is a strict definition with no alternative meaning and since the definition of eligible assessee contains the term means it was to be strictly construed. The Court held that since no variation was proposed by the TPO, the assessee did not fall under the first part of the definition either and therefore the draft assessment order passed was invalid.

2. The Revenue conceded contention (b) above and therefore the Court did not adjudicate on the issue.

3. With regard to the third contention and in light of the fact that the Court quashed the draft assessment order, it noted that the question of the assessment being time barred was left open and both parties were open to take adequate recourse under the law.

C) TRIBUNAL DECISIONS

11. Transfer Pricing – Selection of Comparables – Whether a company in the business of merchant banker and investment banker, is functionally not similar to that of function of non-binding advisory services – Held : Yes, Whether a company engaged in rendering of services as Portfolio Manager, are intimately different from that of the functions of non-binding advisory services rendered by the assessee to its AEs – Held : Yes; in favour of the assessee

Sparkles Dhandho Advisors Pvt. Ltd. vs. ITO 2016-TII-63-ITAT-MUM-TP Assessment Year: 2010-2011

Facts

The assessee is engaged in the business of non-binding investment advisory services. It had entered into various international transactions and to benchmark the same it had applied TNMM. The assessee had computed the average arithmetic mean @15.68% of the comparables against the assessee's margin of 25.42% and claimed that the ALP of the transactions was in the accepted range. During assessment, the TPO included three other comparables and considered the same for determining the ALP. The the Arithmetic Mean was determine at 39.97% and accordingly, adjustment was made. The DRP confirmed the same.

Decision

On appeal, the Tribunal held in favour of the assessee as follows:

1. On perusal of the orders of the Tribunal in the case of Lehman Brothers Advisors Private Limited, wherein adjudicated a similar issue, it is evident that Motilal Oswal Investment Advisors Pvt Ltd is held as a "merchant banker and investment banker", which is functionally not similar to that of function of non-binding advisory services. Therefore, after hearing both the parties in this regard, we are of the opinion that Motilal Oswal Investment Advisors Pvt Ltd is not a good comparable in this case. Accordingly, AO is directed to exclude the same from the comparables;

2. Regarding IDFC, it is demonstrated before us that the said company is engaged in rendering of services as Portfolio Manager, whose functions are intimately different from that of the functions of non-binding advisory services rendered by the assessee to its AEs. The fact of rejection of the same as a good comparable to a case of similar services as in the case of the assessee, assessee was also demonstrated by relying on the decision of the Tribunal in the case of Bain Capital Advisors

(India) Private Limited. In view of the above, we direct the AO to re-compute the arms length adjustment after excluding IDFC from the list of comparables;

3. Regarding ICRA, we remand this issue to the file of the AO / TPO to re-examine the functions of the said company in depth after supplying the information so collected by them u/s 133(6) of the Act. For this limited purpose, we remand this comparable to the file of the AO for fresh examination.

Cases followed:

i) *Bain Capital Advisors (India) P. Ltd - 2015-TII-231-ITAT-MUM-TP,*

ii) *Lehman Brothers Advisors Private Limited - 2015-TII-437-ITAT-MUM-TP.*

12. India – Israel DTAA – Article 12(3) – Sale of Machinery with Software – Whether Software component taxable as "Royalty" – Whether if hardware and software constituted one integrated system, part of the payment thereof cannot be earmarked towards sale of hardware and the other part towards "Royalty" for use of software as such, the amount received by the assessee can be segregated for tax computation purposes – Held : No; Whether if the dominant character and essence of the transaction entered into by the assessee is sale of machine and the software, independently, had no value for the customer, the revenue from such composite product be taxed in the hands of assessee as Royalty – Held : No; Whether if the assessee cannot be fastened with the tax liability taking shelter of provisions of tax treaty, then the same cannot be imposed by applying the provisions of the Act by disregarding and overriding the provisions of the treaty – Held : Yes; Whether when there was neither any transfer of copyright or any rights therein nor there was any infringement of copyright, in such case amount of sales consideration received by the assessee on account of sale of machine along with it operating software would constitute "Royalty" – Held : No; In Favour of the assessee

Galatea Ltd. vs DCIT 2016-TII-40-ITAT-MUM-INTL Assessment Year : 2010-11

Facts

1. The assessee is a company incorporated under the laws of Israel and is tax resident of Israel for the purpose of Indo-Israel DTAA.

2. The assessee company was involved in the business of developing, manufacturing and servicing machinery, equipment, tools, supporting software, accessories, equipments, products, parts and materials for the diamond, gems and jewellery industry. It is 100% subsidiary of M/s Sarin Technologies Ltd., Israel.

3. As a part of its business, the assessee company sold to its customers machines and operating software. In the invoice issued by the assessee company, the consideration was mentioned separately for the machine and operating software. Some of the customers deducted tax at source @ 10% from the payments made by them towards operating software and application software, treating the same as "Royalty" under article 12(3) of the Israel tax treaty.

4. The assessee was of the view that the aforesaid payments made by the customers did not constitute "Royalty", under the Israel tax treaty and the tax was wrongly withheld by the customers, it filed its return of income for the impugned assessment year at nil and claimed refund of the tax withheld / deducted by its customers.

5. The Assessing Officer treated the same as taxable in the hands of the assessee in India. Being aggrieved, assessee filed its objection before the DRP wherein no relief was given and, therefore, being aggrieved, the assessee approached the Tribunal. Assessee had no business connection in India and it had no P.E. in as part of Fact(i) India.

Decision

The Tribunal held in favour of the assessee as follows:

1. The Courts have held that where software is supplied predominantly as part of an equipment and if the software loses its identity and the equipment takes over the main objects of the transaction then it has to be treated as transaction of sale and purchase of machine and not as transaction for sale and purchase of software. It has already been established on the basis of facts before us that the transaction involved in this case was that of sale of diamond scanning machine. The customer had no interest in the software except to the extent of effective functioning of the machine. Thus, it has to be treated as transaction of sale of machine in the hands of the assessee and the amount bifurcated for software cannot be treated differently as consideration in the nature of "Royalty" as envisaged u/s 9(1)(vi) and since the assessee has no P.E. in India, as per admitted facts on record, the amount of profit arising on receipt of sale consideration of machine would not be liable to be taxed in its hands in India. We find that position of law on this aspect is clear. *Bombay HC in DIT vs. A.P. Mollar Maersk, 2015-TII-33-HC-MUM-INTL* reiterated the same position.

2. In terms of section 90(2), provisions of the Act or the treaty, whichever is more beneficial shall apply to the assessee. Further, amendment to the Act cannot be automatically read into the treaty unless the treaty is also amended. In the case of *CIT vs. Siemens Aktiongesellschaft*, this proposition has been reaffirmed by the Bombay HC after analysing the law in detail. The provisions of Indo-Israel treaty would be preferred over the provisions of the Act, since there is no amendment in the treaty and the Department is seeking to put more tax liability upon the assessee taking help of amendment made in section 9(1)(vi). The status of the provisions in the treaty is kept same as was in the pre-amended law as contained in the provisions of the Act.

3. According to the provisions of the treaty, as has been explained in various judgments, transfer of copyright is different from transfer of copyrighted article. Thus, in view of the facts of the case before us, even if payment for software is taxed separately from hardware, on a standalone basis, even then the same would not fall within the scope of Article-12(3) since there was merely transfer of a copyrighted article, and not the copyright or any rights contained therein. This position is substantially clarified once we go through various clauses of agreement entered into by the assessee with the customers called as End User License Agreement.

4. We can safely conclude that if the assessee cannot be fastened with the tax liability under the provisions of a tax treaty, then the same cannot be imposed by applying the provisions of the Act by disregarding and overriding the provisions of the treaty. In the case before us, it was the case of predominantly a transaction of sale of machine by the assessee to its customers and for the customers also it was in effect a transaction of purchase of machine only, and thus it was not a case of sale of software, as such. This issue was not there before the HC in these judgments. Therefore, this issue has not been addressed by the HC. Similarly, other case relied upon by the *CIT-DR of DDIT vs. Reliance Infocom*, it is noted that this judgment has based its decision mainly relying upon the aforesaid two judgments of Karnataka HC. Although, an argument was taken before the Bench in the said case that software was integral part of the hardware but on facts Bench held that the software supplied was not an integral part of equipment nor it was a case of embedded software. But in the case before us, we have

held on facts that it is a case of predominantly a transaction of sale and purchase of machine. The software had no independent identity. The substance of the transaction was supply of machine by the assessee and its usage by the customers in whatever manner it was possible i.e., with or without software. Thus, we find and respectfully state that all these judgments as have been relied upon by CIT-DR are not applicable on the facts of this case before us.

5. For the purpose of appreciating scope and meaning of Article 12(3) of Indo-Israel DTAA in the context of impugned transactions done by the assessee, we have also analysed the provisions of Copyright Act, 1957, in India to examine whether there was any transfer of copyright or rights therein, by the assessee to its customers in India. In this regard, we find that section 14 of the said Act explains and defines the meaning of term copyright. From the perusal of the above definition what we are able to gather is that none of the clauses is attracted when assessee has sold the machine along with its requisite software to operate and use the machine. The assessee has not given any right, whatsoever, to its customers to resell any copy of the software supplied along with machine, as has been discussed by us in detail in earlier part of this order. The other arguments made on behalf of the Revenue is that the Customers were supplied the software through email and other electronic medium and they has also made copies of the software programme for the purpose of loading it the machine and creating back-up files. It is noted that even this apprehension of the Revenue has been taken care of by the Copyright Act. Thus, it is clear that if customer makes requisite copies to enable it to use the software for exclusively its own purposes or makes back-up copies purely as a temporary protection against loss, in order only to utilize the computer programme for the purpose for which it was supplied, then section 52 clearly states that it shall not amount to infringement of the copyright. Thus, in the facts of this case which we have discussed in detail above, neither there was any transfer of copyright or any rights therein nor there was any situation giving rise to any type of infringement of copyright by the customers of the assessee. Thus, in our considered view account of sales consideration received by the assessee on account of sale of machine along with it operating software would not constitute "Royalty" within the meaning of article 12(3) of the Indo-Israel DTAA;

6. Apart from that, we find that SC has observed time and again in some of its judgments that where two views are available, then the view favourable to the assessee should be followed, in the interest of justice and harmony. We are reminded of a recent judgment of SC in *CIT vs. Vatika Township Pvt. Ltd., 2014-TIOL-78-SC-IT-CB,* wherein similar view has been reiterated by the SC by making the detailed observations on this aspect. Although, the stand of the Revenue has been that there were two views available on this issue but we find that in the facts of the case before us, the judgments quoted by the Revenue are not applicable and are distinguishable from the facts of the case before us. We further find that latest views coming from Delhi HC and other Courts are leaning more towards the views in favour of the assessee on the issue before us and, therefore, under such circumstances and in the interest of justice and fairness we have preferred to follow more recent judgments brought before us by the parties. Our approach is also in live with the guidance given by SC in the case of Vatika Township.

7. Before we part with, we shall like to clarify and reiterate at the cost of repetition that we have not examined the effect of subsequent amendment to section 9(1)(vi) and also whether the amount received for use of software would be "Royalty" in terms thereof for the reason that the assessee is covered by tax treaty the provisions of which are more beneficial and also for the reason that in this case transaction under consideration was predominantly and essentially of the character of sale and purchase of machine and not that of software. It is held that the amount received by the assessee was not liable to tax as "Royalty" and therefore addition made by the Assessing Officer is directed to be deleted.

13. India – Mauritius DTAA – Buyback transaction taxable as capital gains, exempt under India-Mauritius Tax Treaty; even if considered as dividend, tax withholding does not apply. In favour of the assessee

Goldman Sachs (India) Securities Pvt. Ltd. vs. ITO (International Taxation) [TS-72-ITAT-2016(Mum)] Assessment Year: 2011-12

Facts

1. The Taxpayer, an Indian resident company, is a wholly-owned subsidiary of a Mauritian company (Parent Co). The Taxpayer undertook a buyback on account of which shares of face value of INR10 per share were bought back at INR46.79 per share.

2. The Assessing officer considered the excess payment over face value value of share as distribution of accumulated profits to its only shareholder i.e., Parent Co and, hence, taxable as dividend. The Taxpayer did not pay DDT on such payment. It also did not pay DDT on such payment. It also did not withhold taxes on such payment.

3. Therefore, the Assessing officer considered this buyback transaction as a colorable transaction to avoid payment of DDT. Accordingly, the Taxpayer was treated as a TID (i.e., assessed in lieu of Parent Co) and was held liable to pay tax at the rate of 5% on gross payment under Article 10 of the DTAA, plus applicable interest. Since the Taxpayer had not paid any taxes, interest was also levied for delay in withholding taxes.

4. The CIT (Appeals) observed that :

a) The assessee had not distributed dividend in past years, despite having profits after tax. Also, the Board of Directors did not provide any justification for not recommending dividend.

b) By undertaking buyback, the Taxpayer had, in effect, remitted the accumulated profits to its sole shareholder, without paying DDT. A buyback transaction is normally contemplated for achieving consolidation of shareholding and change in value of holdings. Since, in this case, the Taxpayer had only a single shareholder, the buyback did not serve any commercial purpose. Accordingly, the CIT(A) stressed on the inclusive definition of dividend and stated that buyback transaction, in this case, should be brought under the scope of dividend and subjected to tax as deemed dividend.

c) The payment of dividend was given an artificial color of capital gains to enable evasion of taxes by taking the benefit of Article 13(5) of the DTAA, which provides for taxability in Mauritius and exemption in India. Accordingly, the CIT (Appeals) brought the amounts remitted into the ambit of income by construing that such income arises from shareholding or participation of profits of subsidiary.

d) Further, on buyback, the share capital of the Taxpayer h ad reduced, such transaction was construed as capital reduction. Exemption from dividend on capital reduction could only be availed of on payment of DDT. Since the Taxpayer had defaulted in payment of DDT, the Taxpayer was a TID and was subject to interest on non-withholding of tax.

Decision

On appeal, the Tribunal held in assessee's favour follows:

1. Buyback of shares cannot be equated with capital reduction as they are two entirely different concepts. This is a finding on perusal of the provision of the Companies Act, that deals with capital reduction and buyback. This has also been discussed and so held in the Bombay High Court (HC) decision of Capgemini India Pvt. Ltd Company Scheme Petition No. 434 of 2014.

2. On tax treatment of buyback of shares, the Finance Minister's speech in 1999, that led to an amendment of the Income Tax Act and also

the CBDT Circular No. 779 dated 14 September 1999 issued by the Central Board of Direct Taxes (CBDT), specifically states that shareholders would not be subjected to dividend tax but taxed under capital gains provisions.

3. On account of the 2013 amendment, buyback transactions are subjected to DDT. However, as the transaction under consideration pertained to a period prior to this amendment, there is no ambiguity about the provisions that would govern taxability for buyback. Hence, the said transaction could not be regarded as deemed dividend. It should be subjected to tax as capital gains.

4. Since Article 13 of the DTAA specifically exempts such transaction from tax in India, the Taxpayer is not liable to withhold tax under the ITL. Accordingly, the Taxpayer cannot be considered to be a TID. Even if the payment was considered as dividend, the requirement to pay DDT would make the payment exempt in the hands of the shareholder. Accordingly, withholding tax provisions should not apply.

5. By placing reliance on the observations of the Bombay HC ruling of Capgemini (supra), the Tribunal ruled that if the Taxpayer entered into a transaction which did not violate any provision of the Income Tax Act, the transaction cannot be termed as a colorable device just because it results in non-payment or lesser payment of taxes in that particular year. The whole exercise should not lead to tax evasion. This is relevant. Non-payment of taxes by a taxpayer in certain circumstances could be a moral or an ethical issue. However, the taxpayer cannot be penalized for it.

14. Whether the income to the foreign branch from the credit given to its card holders outside India cannot be taxed in the hands of the Indian branch, since it is not arising in India and also it cannot be attributed to the assets and activities of the Indian branch – Held : Yes; Whether the fees in respect of such transaction are not taxable in India – Held : Yes – In favour of the Assessee.

ADIT vs Hong Kong and Shanghai Banking Corporation Ltd. 2016-TII-38-ITAT-MUM-INTL Assessment Year: 2000-2001, 2001-2002, 2003-2004

Facts

The assessee is a non-resident company, engaged in the business of banking. After the assessment order was passed, the assessment was reopened u/s 147. In assessment, the AO observed that the assessee had paid an amount to Visa Card and Master Card and that foreign banks earns substantial amount of discount/commission/ inter change merchant establishment discount (ICMED). The AO held that the assessee had not offered the said discount in the return and that the ICMED towards the use of credit cards had deemed to accrue or arise in India. Therefore, the AO estimated the total inter change fees received by the non India branches/HO of the assessee on account of use of cards in India @1% of the interchange received and made an addition to the total income of the assessee.

Decision

The Tribunal held in favour of the assessee as follows:

We find that in the matter of Standard Chartered Grindlays Bank Ltd., the issue of taxability of commission with regard to Credit Cards was deliberated upon and decided by the Tribunal. As the issue is squarely covered by the decision of the above referred order of the Tribunal, so, we hold that the order of the CIT (Appeals) does not suffer from any legal or factual infirmity as far as issue of taxability of ICMED is considered. Confirming his order, we decide the effective ground of appeal against the AO.

Case followed:

Standard Chartered Grindlays Bank Ltd. – 2008-TII-62-ITAT-DEL-INTL.

CA. Hasmukh Kamdar

INDIRECT TAXES

Central Excise and Customs – Case Law Update

Refund

NSP Electronic Ltd. vs. Commissioner of Central Excise, Bangalore [2016 (331) E.L.T. 451 (Tri-Bang.)]

Facts in this case were as follows

Appellants were engaged in the manufacture of 'Printed Circuit Board' falling under Chapter Heading 8534.00 of the Central Excise Tariff Act, 1985. They availed CENVAT credit of service tax paid on GTA service utilized for outward transportation of excisable goods from the factory. During the course of audit, it was pointed out that appellants were not entitled to the CENVAT of service tax paid on such GTA service. Audit officers raised objection and directed the appellants to reverse the credit of ` 1,94,086/- Accordingly, the appellants debited the same along with interest of ` 26,759/- in their CENVAT Credit account on 27-4-2007.

Subsequent to the said debit so made by the appellants, no proceedings were initiated against them by the Revenue for Adjudication on the said disputed issue and the debit entry was never appropriated towards any payment of duty confirmed against them. The appellants therefore claimed refunds of the said debited amount on 17-6-2008. The refund was rejected by the lower department authorities on the ground of limitation that the refund claim has been made after a period of one year from the date of the debit.

Appellants preferred this appeal before Hon'ble CESTAT.

After hearing both sides, Hon'ble Tribunal observed that the facts are not in disputes. The only issue required to be decided is as to whether the refund claimed by the appellants is barred by limitation or not.

It was further observed that the issue of availment of CENVAT of tax paid on GTA services used for outward transportation of the final products stands decided in favour of the assessee by Larger Bench decision of the Tribunal in the case of *ABB Ltd. [2009 (15) S.T.R. 23 (Tri-LB)],* which stands upheld by the Hon'ble High Court of Karnataka reported in 2011 (23) S.T.R. 97 (Kar.)], laying down that he GTA service utilized for outward transportation of the goods from the factory gate to the Customers' premises are cenvatable. As such, it is to be only seen as to whether the refund would be barred by limitation or not. Further it is well settled law that official working under the Central Excise Act cannot travel beyond the Act and are bound by the provisions of the Central Excise Act. The issue to be considered in the present case is as to whatever the provisions of Section 11B of the Central Excise Act requiring the assessee to file refund claim within the period of one year from

the relevant date, would be applicable to the facts of the present case or not. The appellants have taken a categorical stand that the amount in question cannot be considered to be duty in as much as there is neither any adjudication proceedings nor even any proposal to conform the same. In such a scenario, the said reversal entry has to be treated as 'deposit', in which case the limitation would not apply.

It is undisputed that the appellants debited the CENVAT credit on the instructions of the audit team. The audit team has no jurisdiction to adjudicate the disputed issue. Once the debit is made at the instruction of the audit team, the Revenue is under a legal obligation to initiate proceeding for confirmation of the amount in question, by deciding on the disputed legal issue. No such proceeding, by way of show cause notice stands intimated against the appellant and the deposit so made by them does not stand forfeited or appropriated towards any confirmed demand.

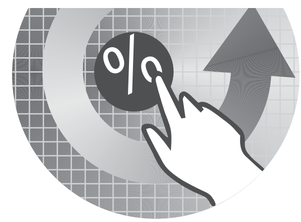
In the circumstances it was held that, the appellants were right in contesting that deposit made during the audit cannot be held to be falling under the umbrella of Section 11B of the Central Excise Act, 1944.

Further reference was made to the Tribunal's decision in the case of *Aptar Beauty & Home India Ltd. vs. C.C.E., Bangalore [2014 (312) E.L.T. 781 (Tri.-LB)]* wherein an identical issue was the subject matter of the decision. By taking note of the Board's Circular No. 290/6/97-CX, dated 20-1-1997, in that case, the Tribunal observed as under:

"I have considered the submissions made by both sides and perused the records. The issue to be decided in this case is whether the amount paid by the appellants on the direction of the audit team is to be considered as an amount of duty payable or an amount paid by them to the Revenue for which they have filed a refund claim. On the factual matrix, I find that there is no dispute regarding the clearance of the goods to the SEZ units. It is also undisputed that the clearances which were made to SEZ units are not liable for duty. The only dispute that has been created by the audit team is that the appellant has cleared the goods under ARE-1 without executing bond and on letter of undertaking before effecting the clearance to the units in SEZ violating provisions of Central Excise Rules, 2002. Even assuming that there was violation of provision of Central Excise Rules, at the most appellant can be penalized for the violation of the said rules, on the face of the facts that there is no dispute regarding the goods cleared from the appellant' units have reached the SEZ units and rewarehousing certificates were submitted to the authorities. It is also not disputed that the said rewarehousing certificates are genuine, in the absence of the contrary finding, in my considered view, the amount reversed by the appellants on 23-11-2007 by debit in CENVAT account cannot be considered as an amount of duty due to the Revenue. If that be so, the refund claim filed by the appellants would squarely fall under the category as enumerated by Board in their circular dated 20-1-1997. In my considered view, if an amount which is not payable by the assessee on the merits of the case, then it is an amount which is retained by the Revenue which is not due to the Government. In view of the foregoing, the impugned order is not correct and liable to be set aside and I do so. The impugned order is set aside the appeal is allowed with consequential relief, if any."

The Hon'ble Gujarat High Court in the case of *Shree ram Food Industries vs. Union of India [2003 [152) E.L.T. 285 (Guj.)]* observed that the deposit made during the investigation would not be subjected to the limitation period.

In view of the above, the impugned order was set aside and the appeal was allowed with consequential relief to the appellants.



CA Janak Vaghani

INDIRECT TAXES
VAT Update

1) Trade Circular

i) Trade Circular No. 4 T of 2016 dated 5-2-2016

Changes in Requirements for VAT Registration

The Commissioner of sales tax by above circular relaxed some of requirements for VAT registrations as under;-

i) If PAN card not available, then details of PAN obtained from the website of Income-tax can be accepted.

ii) Instead of specified pages of Memorandum of Article, copy of Form No. DIR.12 or list of present directors obtained from the website of the Ministry of Corporate Affairs and the copy of the Certificate of Incorporation issued by the Registrar of Companies will be sufficient.

iii) Following additional documents shall be allowed as proof of permanent residence:

  (a) Latest copy of MTNAL/BSNL landline bill.

  (b) First page of Passbook of Saving Bank Account or certificate showing address of the applicant issued by the manager of any Nationalized Bank.

  (c) Last copy of bill of domestic gas connection

iv) In categories of place of business one more category is added i.e. 'online selling portals'. For the proof of the same now applicants are required to submit agreement with main company (online platform) as a proof for place of business.

ii) Trade Circular 5T of 2016, dated 6-2-2016

Grant of Refund

The Commissioner of sales tax has issued above circular to grant refund within 45 days of filing of VAT Audit report and Form 501. Further, the assessment of dealers whose claim of refund in a year is ` 1 crore and below and who have filed application in Form 501 within time shall be completed on or before 31st December of next financial year. It is also stated in the said circular that all other instructions as per Trade Circular 22T of 2010 will remain in force.

iii) Trade Circular No.6T of 2016, dated 23-2-2016

Miscellaneous Refund of Tax Paid Twice
The Commissioner of Sales tax has issued above circular to provide for change in authority to whom application of refund is to be made due to reorganization of department. Accordingly, in cases where dealer inadvertently makes payment twice for a particular return period, he can now make application for refund to the respective nodal Joint Commissioner along with Form No. "Annexure A" which is appended to the said Trade Circular.

iv) Trade Circular No.7 T of 2016, dated 25-2-2016

New Automations in Sales Tax Department
The Commissioner of sales tax has issued above circular to inform trade about proposed various changes in online compliance, mainly online returns, which may be implemented from 1st May, 2016. Some important features are as under: -

(i) Invoice wise sales and purchase annexures should be filed which will auto populate return,

(ii) Each purchase invoice must be identified and categorized to calculate ITC u/r 53 or 54, so that set-off will be auto calculated in the return,

(iii) ITC report will be made available for each return. If vendor does not disclose purchases made from him, auto disallowance of ITC will be made in subsequent return, as excess claim of previous return,

(iv) Claim of Goods Return will be cross verified on the basis of corresponding debt notes of buyer. If the buyer does not confirm through debit note shown in purchase annexure then the tax to the extent of G/R will be added in next return period.

2) Notification

i) Notification No.VAT.1515/CR-102/ Taxation – 1, dated 15-1-2016

Refund to Diplomatic Authorities and International Organizations or Bodies
The Government of Maharashtra had issued Notification No.VAT 1509/CR-89/Taxation-1, dated 5-11-2009 u/s. 41(1) of MVAT Act for grant of refund of amount of taxes paid on purchases by the notified Diplomatic Authorities and International Organizations or Bodies. In the list of those Diplomatic Authorities 'Royal Norwegian Consulate' is added with some more conditions.

ii) Notification No. VAT 1514/CR-22/ Taxation-1, dated 12-2-2016

Private Banks Notified for Bank Guarantee
Rule 61 of MVAT Rules provides that the Bank Guarantee shall be obtained from any branch of bank notified as Government Treasury of any Private Sector Bank or any Foreign Bank notified by State Government. Accordingly, following Private Sector Banks are notified *vide* the above notification for the purpose of Bank Guarantee w.e.f. 12/02/2016:

i. Axis Bank
ii. City Union Bank
iii. Development Credit Bank Ltd.
iv. Federal Bank Ltd.
v. HDFC Bank Ltd.
vi. ICICI Bank Ltd.
vii. IndusInd Bank Ltd.
viii. ING Vyasa Bank Ltd.
ix. Jammu and Kashmir Bank Ltd.
x. Karnataka Bank Ltd.
xi. Karur Vyasay Bank Ltd.
xii. Kotak Mahindra Bank Ltd.
xiii. Lakshmi Vilas Bank Ltd.

xiv. Ratnakar Bank Ltd

xv. South Indian Bank Ltd

xvi. Tamil Nadu Mercantile Bank Ltd.

xvii. Yes Bank Ltd

iii) Notification No. VAT 1516/CR-39(B)/ Taxation -1, dated 29-2-2016

Rate of Tax on Motor Spirit Increased on Sales to Retail Trader in Nagpur

Schedule Entry D-10(a)(i) is amended to include 'Municipal Corporation of Nagpur'. Consequent to the said amendment, any kind of motor spirit when delivered to retail trader for trading from place of business situated within geographical limits of the Municipal Corporations of Nagpur will be taxable at the rate 26% plus ` 3/- per liter w.e.f. 1-3-2016 up to 28-2-2017. Prior to that, the said rate of tax was 25% plus ` 3/- per litre.

iv) Notification No.VAT 1516/CR-39(A)/ Taxation-1, dated 29-2-2016

Rate of Tax on High Speed Diesel Oil Increased on Sales to Retail Trader or Person in Nagpur

Schedule Entry D-10(a)(i) and (ii) is amended to include 'Municipal Corporation of Nagpur'. Consequent to the said amendment, High Speed Diesel Oil when delivered to retail trader for trading from place of business and any person other than retail trader having place of business situated within geographical limits of the Municipal Corporations of Nagpur will be taxable at the rate 26% w.e.f. 1-3-2016 up to 28-2-2017. Prior to that, the said rate of tax was 23% per litre.

3) Website Updates

Templates of Proposed New VAT Returns

Templates of proposed new returns is made available on website of the department under 'What's New', which may be applicable from April, 2016.

4) CST Act

Notification No. CST. 2015/CR 170/ Taxation-1, dated 12/02/2016

Withdrawal of Concessional Rate of Tax on Mobile Phones

The Government of Maharashtra had issued Notification No. VAT2005/CR 71/Taxation-2, dated 17th October, 2005 under Section 8(5) of the CST Act to provide for concessional rate of tax of .5% on inter-State sales of mobile phones effected form the State of Maharashtra. By the new Notification dated 12/02/2016 this Notification is withdrawn from 12/02/2016 accordingly now inter-State sales of Mobile phones effected from the State of Maharashtra will be subject to 2% against form C and without C Form at local rate which is 12.5%.

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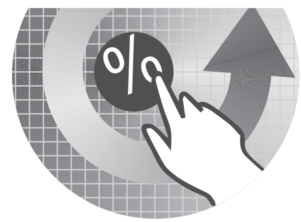

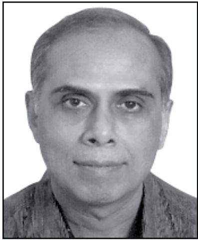

CA Rajkamal Shah & CA Naresh Sheth

INDIRECT TAXES

Service Tax – Statute Update

1. Refund of Service Tax to exporter of goods

- Earlier exporter of excisable goods was entitled to refund of service tax paid on taxable services which are used beyond the place of removal for the export of said goods.

  The condition of usage of service beyond place of removal of excisable goods is removed and the exporter of excisable goods will now be entitled to refund of service tax paid on taxable services which are used beyond factory or any other place or premises of production or manufacture.
- The exporter is entitled to refund of specified rate/percentage of FOB value of goods exported. Specified rates or percentage are enhanced in respect of some goods.

[Notification No. 01/2016- ST dated 3-2-2016]

2. Refund of Swachh Bharat Cess (SBC) to SEZ unit or Developer of the SEZ

- SEZ unit or Developer of SEZ units will be entitled to get the refund of SBC charged by the vendor on specified services on which *ab initio* exemption is admissible on the basis of prescribed formula.
- Relevant amendment is made in original Notification No. 12/2013 – ST dated 01.07.2013.

[Notification No. 02/2016- ST and 03/2016 both dated 3-2-2016]

[Notification No. 04/2016- ST dated 15-2-2016]

3. Services provided by Government or Local Authority on or after 1-4-2016

The Ministry of Finance, Government of India has issued following two notifications widening the scope of taxability of services provided by Government or local authority w.e.f. 1-4-2016. Gist of said notifications and taxability of government and local authority services provided till 31-3-2016 and thereafter is summarized under:

Notification Number	Position upto 31-3-2016	Position on or after 1-4-2016
6/2016-ST dated 18-2-2016	**Taxability of Government/local authority services:** Following services (hereinafter referred to as '**taxable government services**') provided by government or local	**Taxability of Government/local authority services:** Following services (hereinafter referred to as '**taxable government services**') provided by Government or local authorities

	authorities were specifically **excluded from negative list** and hence same were taxable: i) Postal services such as speed post, express parcel post, life insurance and agency services provided to person other than government ii) Services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport iii) Transport of goods or passengers iv) **Support services** provided to business entities All services (other than taxable government services listed above) provided by government or local authorities to **business entities and non-business entities both** were under negative list and not taxable.	were specifically **excluded from negative list** and hence same were taxable: i) Postal services such as speed post, express parcel post, life insurance and agency services provided to person other than government ii) Services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport iii) Transport of goods or passengers iv) **ANY services** provided to business entities All services (other than taxable government services listed above) provided by government or local authorities to **non-business entities** are under negative list and not taxable. **ANY SERVICES** provided by government or local authority to **business entities** are now excluded from negative list and hence all such services become taxable (subject to exemption notification discussed below) w.e.f. 1-4-2016.
7/2016-ST dated 18-2-2016	No exemption in respect of taxable services provided by government or local authorities.	After Entry no. 47 in Mega Exemption Notification a new entry has been inserted granting exemption in respect of services provided by government or local authority to business entity having turnover **up to ` 10 lakh in preceding financial year** (hereinafter referred as "small business entities").

- **ANY SERVICE** received by business entity (except small business entities) from government or local authorities will now be liable to service tax.
- On introduction of Finance Bill, 2016, Govt. has notified 1-4-2016 for following :
  - Deletion of word "Support Service" from Rule 2(1)(d)(E) of Service Tax Rules, 1994.
  - Deletion of word "Support Service" from Notification No. 30/2012 – ST dated 20-6-2012.
  - Deletion of definition of "Support Services" as defined u/s. 65B(49) of the Act.

Combined effect of all above notifications is that the specified taxable government services will be covered under reverse charge mechanism w.e.f. 1-4-2016. Consequently, service recipient will have to discharge service tax liability on any taxable services provided by government to him except for following services :

- Speed post, express parcel post, life insurance and agency services provided by Department of Post.
- Service in relation to an aircraft or a vessel inside or outside the precincts of a port or an airport.
- Transport of goods or passengers.

[Notifications No. 06/2016 – ST dated 18-2-2016, 07/2016 – ST dated 18-2-2016, 15/2016 – ST, 16/2016 – ST and 17/2016 – ST all dated 1-3-2016]

CA Bharat Shemlani

INDIRECT TAXES
Service Tax – Case Law Update

1. Services

Works Contract Service

1.1 CST, Delhi vs. Bagai Construction 2016 (41) STR 433 (Tri.-Del.)

The assessee in this case rendered works contract services prior to 1-3-2008, when lower rate of tax was applicable but payment received after 1-3-2008, when rate of tax increased. The department sought to tax at higher rate. The Tribunal held that, the issue has already been settled by Delhi High Court on similar facts in *Vistar Const. Pvt. Ltd. 2013 (31) STR 129 (Del,)* wherein it was held that, taxable event is rendition of service and therefore lower rate of tax was applicable.

1.2 CCE, Nashik vs. Ashoka Buildcon Ltd. 2016 (41) STR 452 (Tri.-Mumbai)

The appellant in this case cancelled old contract and executed fresh contract and obtained registration under WCS on 29-6-2007 and paid service tax under composition scheme on 5/6th July, 2007. The department contended that new contracts replacing old contracts are merely an eye wash to avail benefit of aforesaid rule. The Tribunal held that, the department has not produced any evidence in this regard and there is no violation of composition scheme. It is further held that, the adjudicating authority confirming demand on completely fresh ground not mentioned in SCN and therefore adjudication order is liable to be set aside.

Business Auxiliary Service

1.3 Maharashtra Chamber of Housing Industry vs. CCEC&ST, Mumbai 2016 (41) STR 441 (Tri.-Mumbai)

The appellant in this case collected fees from members and non-members for organization of exhibition. The department sought to tax such fees received. The Tribunal held that, fees collected from members not is leviable to service tax in terms of decision in 2010 (20) STR 169 (Guj) and 2012 (26) STR 401 (Jhar.), however service tax is leviable under impugned service on fees collected from non-members.

Franchise Service

1.4 CCE, Aurangabad vs. Aurangabad Municipal Corporation 2016 (41) STR 443 (Tri.-Mumbai)

The assessee a municipal corporation allowed use of a logo on buses of private operators on consideration of royalty. The Tribunal observed that, agreement clearly indicated that a joint venture formed to run buses in city and logo decided by both parties. It is held that, no representational right granted to private operator to provide any service identified with assessee and there being no relationship of franchisor and

franchisee between two parties, hence no service tax is payable.

Supply of Tangible Goods Service

1.5 Meru Cab Co. Pvt. Ltd. vs. CCE, Mumbai-II 2016 (41) STR 444 (Tri.-Mumbai)

The appellant in this case a radio taxi scheme operator allowed the use of taxis by driver for plying the passenger. The taxis are booked by a call from customers to appellants call centre and on appellants direction only the driver of taxi in vicinity of passenger ferries him to desired destination. The driver of radio taxi is not a permit holder and he does not have independent authorization for plying vehicles and for any deficiency of service, the appellant is responsible. On the basis of this facts, the Tribunal held that, privity of contract of supply of taxi for undertaking journey is between appellant and the passenger and not the appellant and driver, therefore the agreement between appellant and driver does not indicate that drivers are having possession of vehicles for their use and therefore appellant is not covered under entry supply of tangible goods service.

Management, Maintenance or Repair Service

1.6 CCE, Nashik vs. Sahastronics Controls Pvt. Ltd. 2016 (41) STR 454 (Tri.-Mumbai)

The assessee in this case engaged in activity of designing, manufacturing, installing, commissioning, and maintaining energy saving devices on build, own, operation and transfer (BOOT) basis. The department sought to charge service tax on operating profit. The Tribunal observed that, assessee after undertaking aforesaid activity for municipal corporation, sharing profit in form of energy saved during BOOT period and during the said period ownership of equipment remained with assessee. It is held that, by maintaining its own equipment assessee rendering service to himself only and not to municipal corporation and profit earned over and above cost of equipment cannot be called as charges for rendering service.

Manpower Recruitment & Supply Agency Service

1.7 Neelkant Associates vs. CCE, Jaipur-I 2016 (41) STR 569 (Tri.-Del.)

The appellant in this case paid service tax on 5% commission received and claimed payments to labourers as reimbursement. The Tribunal held that, gross amount charged for service is inclusive of amount of payment made to labourers and therefore service tax is leviable on such gross amount and not merely on amount of commission. It is further held that, since charging of service tax from service recipient only on amount of commission received adds credence to assessee's contention of genuine belief that service tax is chargeable only on amount of commission received and therefore extended period cannot be invoked.

1.8 Shivshakti Enterprises vs. CCE, Pune 2016 (41) STR 648 (Tri.-Mumbai)

The appellant in this case deployed his employees in factory premises of manufacturer for doing specific job as per purchase order and received consideration based on number of pieces manufactured. The department sought to tax under Manpower Recruitment & Supply Agency Service. The Tribunal held that the lump sum work carried out is not liable under the said service and hence not taxable.

Business Support Service

1.9 Capital Transport Convoy Contractor vs. CCE&ST, Indore 2016 (41) STR 651 (Tri.-Del.)

The appellant in this case engaged in managing transportation of vehicles from factory to manufacturers depot and dealers. The department sought to tax them under BAS for the period prior to 1-5-2006 and under BSS thereafter. The appellant contended that the activity is covered either under GTA or Manpower Supply Service as only skilled drivers are provided. The Tribunal held that, apparent from agreement, the appellant was responsible

for proper management, supervision and co-ordination of various aspects and therefore the service rendered clearly falls under scope of managing, distribution and logistics. The service provided by the appellant is therefore liable under BSS w.e.f. 1-5-2006 and not under BAS for the period prior to that.

Banking & Other Financial Service

1.10 Tata Steel Ltd. vs. CST, Mumbai-I 2016 (41) STR 689 (Tri.-Mumbai)

The appellant in this case utilized services of Mandated Lead Agent (MLA) in borrowing money from lending banks both located abroad and paying arrangement fees to MLA for their services. The appellant contended that, services so received pertain to borrowing and not lending and hence not covered under clause (ix) of section 65(12) of FA, 1994. The Tribunal held that, it is common knowledge that borrowing and lending go together and there cannot be lender without borrower. No distinction can be made between borrowing and lending in case of service pertaining to loan and therefore services provided by MLA being in relation to arranging loans, lent to appellant by lending banks covered under BFS and therefore liable to service tax under RCM.

2. Interest/Penalties/Others

2.1 Prashanthi vs. UOI 2016 (41) STR 392 (Kar.)

The High Court in this case held that, until and unless there is no determination and adjudication either under Section 72 or 73 of FA, 1994, the department cannot resort to invoke section 87 for recovery of demand.

2.2 Ashish Kumar Dey vs. Food Corporation of India 2016 (41) STR 403 (Tripura)

The High Court in this case held that, as the rate quoted by service provider/contractor was inclusive of service tax, they could not plead that service did not arise out of contract and they are liable to pay all taxes therein.

2.3 Devang Paper Mills Pvt. Ltd. vs. UOI 2016 (41) STR 418 (Guj.)

The appellant in this case paid duty in wrong accounting code. The department asked to pay the duty in correct code and ask for refund of duty paid under wrong code. The High Court held that, it cannot result into harsh consequences of entire payment not being recognized as valid incurring further liability of repayment of basic duty with interest and penalty. Hence, it cannot be treated as non-payment of duty and department is directed to credit duty paid by assessee by making necessary accounting entries.

2.4 Reliance Industries Ltd. vs. CCE, Mumbai-I 2016 (41) STR 465 (Tri.-Mumbai)

The appellant in this case claimed refund of service tax paid on Banking and other Financial Services for issuing IPO the proceeds of which were utilized for funding of SEZ in May 2007. The department rejected the claim in December, 2008 as the prevailing Notification No. 4/2004-ST did not contain enabling provision for grant of refund. The Tribunal held that, section 26 of SEZ Act, 2005 exempting developer or unit from Service Tax payment on services received for authorized operations having overriding effect in terms of section 51 of SEZ Act, 2005. Notification No. 4/2004-ST is definitely inconsistent with provisions of SEZ Act inasmuch it did not provide for refund mechanism although services were intended for use in SEZ, whereas subsequent notifications provided for refund. Therefore, harmonious construction of Notification No. 4/2004-ST must perforce to be facilitative of refund mechanism for earlier period also.

2.5 GM, Bharat Sanchar Nigam Ltd. vs. CCE, Raipur 2016 (41) STR 475 (Tri.-Del.)

The appellant in this case paid excess service tax due to calculation mistake and adjusting the same from payments of subsequent period. The Tribunal held that, said excess payment is not on account of rendering service and accordingly not

recovered from any person, hence adjustment of such excess payment is admissible.

2.6 CCE, Coimbatore vs. Cbay Systems (India) Pvt. Ltd. 2016 (41) STR 488 (Tri.-Chennai)

In this case, the department denied refund on the ground that though services were rendered at Coimbatore, however the foreign exchange is received in Mumbai office hence refund to be claimed at Mumbai. The Tribunal held that, appellant having provided service tax Coimbatore, the taxable event is occurred thereat and place of realization of foreign exchange is not relevant for refund jurisdiction.

2.7 United Corporation vs. CCE, Chandigarh 2016 (41) STR 494 (Tri.-Del.)

The Tribunal in this case held that, in case where application for rectification of original order is filed, the time for filing appeal to be reckoned from the date of rejection of ROM application.

2.8 Principal Commissioner of ST, Delhi-II vs. Tops Security Ltd. 2016 (41) STR 612 (Del.)

The High Court in this case held that, the statutory provision providing for the benefit of reduced penalty under section 78 if reduced penalty along with due tax and interest is paid within 30 days of date of communication of adjudication order is not available in appeal stage. It is also held that, mere non-mention of option of reduced penalty in adjudication order do not permit appellate authority to grant such option at appeal stage.

2.9 B. R. Ajit (Managing Director) vs. CCCE&ST, Kochi 2016 (41) STR 628 (Tri.-Bang.)

The department in this case denied benefit of STVCES, 2013 to the appellant as SCN demanding tax issued to them before 1-3-2013. The appellant contended that though the SCN was issued before 1-3-2013, the same was not served before 1-3-2013 and therefore the benefit of scheme should be available. The Tribunal held that, any notice, merely issued but not served cannot be said to be within knowledge of person against whom notice is issued and 'Issued to person" used in section 106 to be construed as "Served to person". Therefore the benefit of scheme is available.

2.10 Ugam Solutions SEZ Pvt. Ltd. vs. CCE, Coimbatore 2016 (41) STR 734 (Tri.-Chennai)

The department in this case contended that, refund of service tax paid by SEZ unit on specified services governed by Notification No. 9/2009-ST and such refund could not be claimed under rule 5 of CCR, 2004. The Tribunal held that, said Notification provides regulatory mode to grant benefit to SEZ units or developers thereof but it does not create embargo on such units to claim refund of unutilized CENVAT credit under rule 5. It is further held that, since refund in service tax matters are governed by section 11B of CEA, 1944 r.w.s. 83 of FA, 1994 and rule 5 of CCR, 2004 being integral part of statute, revenue ought not to deny processing of refund under FA, 1994.

3. CENVAT Credit

3.1 Principal Commissioner vs. Essar Oil Ltd. 2016 (41) STR 389 (Guj.)

The High Court in this case observed that in case of availment of credit on Rent-a-Cab Service, Tour Operators Service and Travel Agents Service no dispute has been raised by the department about their consumption at various stages of manufacturing/business activities, hence impugned services are input services and credit thereon is admissible.

3.2 Ambejogai Peoples Co-op. Bank. Ltd. vs. CCE, Aurangabad 2016 (41) STR 450 (Tri.-Mumbai)

The Tribunal in this case held that, since Banking & Other Financial Service is not being fully exempted, the same is not falling under category of exempted service as defined under rule 2(e) of CCR, 2004.

3.3 Micro Inks Private Limited vs. CCEC&ST, Daman 2016 (41) STR 501 (Tri.-Ahmd.)

The Tribunal in this case allowed CENVAT

credit of service tax paid on ECB under RCM for enhancing existing facility and creating new production facility in India and abroad as there is clear nexus with business activities and therefore covered under the definition of Input Service.

3.4 Bajaj Hindustan Ltd. vs. CCE, Allahabad 2016 (41) STR 503 (Tri.-Del.)

The Tribunal in this case allowed CENVAT credit of service tax paid on construction service of dormitory within factory premises for technician/engineers as the permanent stay of technician/engineers within factory required for maintenance of plant & machinery as factory located in remote area and therefore it is integrally connected with manufacturing activity and hence input service.

Also refer to decision in *Bajaj Hindustan Ltd. vs. CCE, Allahabad 2016 (41) STR 521 (Tri.-Del.)*

3.5 CST, Mumbai-I vs. Reliance Capital Asset Management Ltd. 2016 (41) STR 508 (Tri.-Mumbai)

The Tribunal in this case allowed CENVAT credit of service tax paid on outdoor catering services used in canteen though the number of workers were less than 250.

3.6 Hindustan National Glass & Industries Ltd. vs. CCE, Nashik 2016 (41) STR 527 (Tri.-Mumbai)

The Tribunal in this case allowed CENVAT credit of service tax paid on maintenance of vehicles used by staff, group health insurance provided to staff and workers and garden maintained under statutory obligation.

3.7 GMR Industries Ltd. vs. CCEC&ST, Visakhapatnam-I 2016 (41) STR 553 (Tri.-Bang.)

The appellant in this case claimed CENVAT credit of service tax paid on consultancy service obtained from NABARD for preparation of draft project report for maize processing and dairy units, which is denied by the department. The Tribunal held that, preparation of draft project report in connection with extension of ongoing manufacturing operations and business activity and business activity in assessee's factory. The expression "business" is of wide import in fiscal statute and to be interpreted as an integrated continuous activity covering all activities in relation to functioning of a business. It is further held that, longer period of limitation cannot be invoked as no *mala fide* is attributable to assessee as credit availed reflected in statutory records and monthly returns.

3.8 CCEC&ST, LTU, Bangalore vs. Sansera Engineering Pvt. Ltd. 2016 (41) STR 611 (Kar.)

The High Court in this case held that, there is no law provides that credit on outdoor catering service is available only if number of employees in factory exceeds 250.

3.9 Trident Powercrafts Pvt. Ltd. vs. CCE&ST, (LTU) Bangalore 2016 (41) STR 687 (Tri.-Bang.)

The appellant in this case availed CENVAT credit without obtaining ISD registration. The Tribunal held that, obtaining ISD registration is only procedural condition which cannot lead to denial of substantive benefit. Further as per rule 12 of CCR, 2004 appellant can transfer credit lying in one unit to other unit.

3.10 SKF India Ltd. vs. CCE, Pune-I 2016 (41) STR 737 (Tri.-Mumbai)

In this case the appellant objected that SCN is issued to ISD and not to factory and therefore the SCN is without jurisdiction. The Tribunal held that, ISD and factory having two registrations, one for excise and other for ISD will not make any difference as both registrations are for same legal entity. It is further held that, appellant's contention that credit not deniable without setting aside assessment of distribution of credit made at ISD is not sustainable.

Janak C. Pandya, Company Secretary

CORPORATE LAWS
Company Law Update

Case Law No. 1

[2016] 194 Comp Cas 511 (Delhi)

[In the Delhi High Court]

Raj Shekhar Agrawal and Another vs. Union of India and Another

Section 167(3) of the Companies Act, 2013 cannot be interpreted that upon contingency as mentioned in said sub-section, each and every promoter of the Company is entitled for the appointment of a director. The promoter has no special rights under Section 167(3) of the said Act to appoint a director *de hors* the opinion of the other shareholders/promoters.

Brief facts

This petition was filed by two petitioners. The petitioners were seeking a direction of the Registrar of Companies ("RoC") to upload the digital signatures of the petitioners on the RoC website. The petitioners sought this direction to enable them to upload Annual Returns and Financial Statements of one company called Pragati 47 Development Ltd. ("Company"). The petition filed under Sections 397 and 398 of the Companies Act, 1956 for oppression and mis -management of the Company was also pending before the Company Law Board ("CLB"). As per the interim order of the CLB, the petitioners were restrained from writing any letter to third parties which may cause prejudice against the interests of the Company.

The submission made by the petitioners in support of the above is as follows:

a. The Company had not filed its statutory records for last three consecutive years.

b. Due to the aforesaid, the three directors of the Company are ceased to be director as per the provisions of Section 164 of the Companies Act, 2013 ("Act").

c. Petitioners are the promoters of the Company holding 23.1% and had appointed themselves and one another person as a director of the Company.

d. They have applied to the RoC for uploading their digital signature on the RoC website to enable then to file the annual returns for statutory compliances but the RoC had neither permitted nor given any reason or explanation.

e. They have to complete the statutory compliances before October 31, 2015, and if they failed to do so, then they shall also be liable, as directors, under Section 164 of the Act.

From RoC's side, the following arguments were made:

1. The minutes of the board of directors of the Company in which the petitioners claimed to be appointed as directors were

forged as per the letter received from the Jt. Commissioner of Police informing about the FIR for the same.

2. Due to above reason, the RoC being a competent authority, had to decide as to whether to accept the petitioners as directors or not and hence their digital signatures were not uploaded.

The question was raised as to pending the outcome of the petition before the CLB, how the petitioners can be permitted to upload the annual returns and other documents, which constitute a representation to the public, a statement of affairs of the Company.

Judgment

The Court dismissed the petition with the liberty to the petitioners to pursue the rights before the CLB.

The Court observed that Section 167(3) of the Act is not and could not have been intended to provide for a mode of appointment of a director, contrary to the provisions of appointment of directors as provided elsewhere in the Act. A promoter, desirous to appoint a director in the company will have to propose the same either to the board of directors or to the shareholders as permitted.

The Court further analyzed and stated that Section 167(3) cannot be interpreted that upon contingency as mentioned in the said sub-section, each and every promoter of the company is entitled to appoint a director. As per the Court, the promoters had no special rights under Section 167(3) of the Act to appoint a director *de hors* the opinion of the other shareholders / promoters.

Case Law No. 2

[2016] 194 Comp Cas 390 (Bom).

[In the Bombay High Court]

Thomas Cook Insurance Services (India) Ltd., In re

The provisions referred in clauses (i) to (vi) of sub-section (1) of Section 394 are merely enabling provisions and are not in nature of conditions or compulsory in any sense. Thus, a consideration for a scheme may be provided by any other person. Further, the sanction of the scheme, dose not in any way bind the Income Tax department to take any particular view so far as the tax implication is concerned.

Brief facts:

The petition is filed for seeking a sanction of a composite scheme of arrangement and amalgamation ('Scheme"). The Scheme is between Sterling Holiday Resorts (India) Ltd. ("Transferor") and Thomas Cook Insurance Services (India) Ltd. ("Resulting Co. 1") and Thomas Cook (India) Ltd. ("Resulting Co. 2") and their respective shareholders and creditors.

The following were the main contents of the Scheme:

1. Transferor is a listed company but Resulting Co. 1 and Resulting Co. 2 are unlisted public companies.
2. The Scheme has two parts. The first part is to demerge the time share and resort business of the Transferor and to transfer and vest with Resulting Co. 1
3. The remaining business of the Transferor will be amalgamated with Resulting Co. 2
4. After the above demerger and amalgamation, Transferor will stand dissolved.
5. The consideration is issuance of equity shares of Resulting Co. 2 to equity shareholders of the Transferor.
6. Resulting Co. 1 will not issue any shares for demerged business acquired by it; instead it will be paid by its parent company, i.e. Resulting Co. 2

The Regional Director ("RD") had only one objection. As per the RD, under Section 394 of

the Companies Act, 1956, the consideration has to be from the transferee company and that no other person can provide consideration. In the given case, the same was being paid by its parent company, which is Resulting Co. 2. It also submitted that the Scheme is against the provisions of Sections 2(19AA) and 2(41A) read with Section 2(19AA) of the Income-tax Act, 1961 having regard to the definition of "demerger" and "resulting company". The submission by the RD was also supported by the Income Tax department.

Judgment

The Court allowed the petition for the approval of the Scheme.

On objections raised by the RD, the Court observed that provisions referred in clauses (i) to (vi) of sub-section (1) of Section 394 are merely enabling provisions. The company Court while sanctioning the Scheme may or may not make any provisions contained in clauses (i) to (vi) as above. They are not in nature of conditions or compulsory in any sense. As per clause (ii), the Scheme should provide for allotment or appropriation of any shares, debentures or other like interest by a transferee company and the same shall be sufficient. It is not required that consideration must come from the transferee company so long as it is any legitimate consideration. The Court relied on the principle laid down by the Supreme Court in *Miheer H. Mafatlal v. Mafatlal Industries Ltd. [1996] 87 Comp Cas 792 (SC); [1997] 1 SCC 579.*

With regards to the Income Tax department's objection, the Court opined that sanction of the Scheme does not in any way bind the Income Tax department to take any particular view so far as the tax implications are concerned. The Court also observed that the Scheme itself provides that if any terms or provisions of the Scheme are inconsistent with the provisions of Section 2(19AA) of the Income-tax Act, 1961 the provisions of this said Act shall prevail.

STATEMENT AS PER PRESS AND REGISTRATION OF BOOKS ACT
FORM IV *[See Rule 8]*

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CA Mayur Nayak, CA Natwar Thakrar &
CA Pankaj Bhuta

OTHER LAWS
FEMA Update

In this article, we have discussed recent amendments to FEMA through Circulars & Press Releases issued by RBI:-

A. Circulars issued by RBI

1. Settlement of Export/Import transactions in currencies not having direct exchange rates

Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2000 (Notification No. FEMA. 14 /RB -2000, dated 3rd May 2000), as amended from time to time deals with the manner of receipt and payment of export proceeds for exports from India and import payments for imports to India. In order to liberalize the procedure and facilitate settlement of export and import transactions where the invoicing is in a freely convertible currency and the settlement takes place in the currency of the beneficiary, which though convertible, does not have a direct exchange rate, RBI has decided that AD Category-I banks may permit settlement of such export and import transactions (excluding those put through the ACU mechanism), subject to the following conditions:

i. Exporter/Importer shall be a customer of the AD Bank,

ii. Signed contract/invoice is in a freely convertible currency,

iii. The beneficiary is willing to receive the payment in the currency of beneficiary instead of the original (freely convertible) currency of the invoice/contract/Letter of Credit as full and final settlement,

iv. AD bank is satisfied with the *bona fides* of the transactions, and;

v. The counterparty to the exporter / importer of the AD bank is not from a country or jurisdiction in the updated FATF Public Statement on High Risk & Non Co-operative Jurisdictions on which FATF has called for counter measures.

(A.P. (DIR Series) Circular No. 42 dated February 4, 2016)

(Comments: This liberalization will ease the settlement of export import transactions in cases where invoicing is in a freely convertible currency and the settlement takes place in the *currency of the beneficiary, which though convertible, does not have a direct exchange rate.)*

2. Foreign Exchange Management (Acquisition and Transfer of Immovable Property outside India) Regulations, 2015

On a review, RBI felt it necessary to revise the regulations issued under the Foreign Exchange Management (Acquisition and

Transfer of Immovable Property outside India) Regulations, 2000, as amended from time-to-time. Accordingly, in consultation with GOI, the old regulations have been repealed and replaced by the Foreign Exchange Management (Acquisition and Transfer of Immovable Property outside India) Regulations, 2015.

In terms of the 2015 Regulation, acquisition or transfer of any immovable property outside India by a person resident in India would require prior approval of Reserve Bank except in the following cases:

a) Property held outside India by a foreign citizen resident in India;

b) Property acquired by a person on or before 8th July, 1947 and held with the permission of Reserve Bank;

c) Property acquired by way of gift or inheritance from:

 i. persons referred to in (b) above;

 ii. persons referred to in section 6(4) of the Act;

d) Property purchased out of funds held in Resident Foreign Currency (RFC) account held in accordance with the Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2015;

e) Property acquired jointly with a relative who is a person resident outside India provided there is no outflow of funds from India;

f) Property acquired by way of inheritance or gift from a person resident in India who acquired such property in accordance with the foreign exchange provisions in force at the time of such acquisition.

An Indian company having overseas offices may acquire immovable property outside India for its business and residential purposes provided total remittances do not exceed the following limits prescribed for initial and recurring expenses, respectively:

a) 15 per cent of the average annual sales/ income or turnover of the Indian entity during the last two financial years or up to 25 per cent of the net worth, whichever is higher;

b) 10 per cent of the average annual sales/ income or turnover during the last two financial years.

It has also been clarified that for the purpose of these regulations, 'relative' in relation to an individual means husband, wife, brother or sister or any lineal ascendant or descendant of that individual.

(A.P. (DIR Series) Circular No. 43/2015-16 [(1)/7(R)] dated February 4, 2016)

*(Comment: RBI has now permitted property to **be acquired jointly with a relative who is a per**son resident outside India provided there is no outflow of funds from India.)*

3. Foreign Exchange Management (Foreign currency accounts by a person resident in India) Regulations, 2015

On a review, RBI felt it necessary to revise the regulations issued under the Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2000, as amended from time-to-time. Accordingly, in consultation with the GOI, the old regulations have been repealed and replaced by the Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2015.

According to the regulations, a "Foreign Currency Account" means an account held or maintained in currency other than the currency of India or Nepal or Bhutan. These regulations seek to regulate opening and maintenance of foreign currency accounts in and outside India by a person resident in India.

In terms of Regulation No. 4 of Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2015 ('the regulation'), a person resident in India may open, hold and maintain with an authorized dealer in India the following accounts, subject to the conditions specified in the regulations:

a) **Exchange Earner's Foreign Currency (EEFC)** Account subject to the terms and conditions of the Exchange Earner's Foreign Currency Account Scheme (Schedule I to the regulations);

b) **Resident Foreign Currency (RFC)** Account out of sources of receipt of foreign exchange mentioned in sub-regulation (B) of the regulations;

c) **Resident Foreign Currency (Domestic) [RFC(D)]** Account with an authorised dealer in India out of sources of receipt of foreign exchange mentioned in sub-regulation (C) of the regulations;

d) **Diamond Dollar Account (DDA)** - firms and companies who comply with the eligibility criteria stipulated in the Foreign Trade Policy of Government of India, subject to the terms and conditions of the DDA Scheme (Schedule II to the regulations).

In addition, in terms of Regulation No. 4 the following persons resident in India can open foreign currency accounts with an authorized dealer in India, subject to the conditions specified in the regulations:

a) A unit in a Special Economic Zone;

b) An exporter who is exporting services and engineering goods on deferred payment terms or has undertaken a turnkey project or a construction contract abroad;

c) Indian agents of foreign airlines or shipping companies;

d) Ship-manning/crew managing agencies in India;

e) Project offices set up in India in terms of Foreign Exchange Management (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000 dated May 3, 2000, as amended from time-to-time;

f) Indian companies receiving Foreign Direct Investment.

g) Organisers of international seminars, conferences, conventions etc.

In terms of Regulation No. 5 of the Regulation, the following persons resident in India can open foreign currency accounts outside India subject to the conditions specified in the regulations:

a) An authorized dealer in India with its branch/ head office/ correspondent outside India;

b) A branch outside India of a bank incorporated or constituted in India;

c) An India firm/company/body corporate in the name of its foreign office/ branch or its representative posted outside India;

d) An exporter who is exporting services and engineering goods on deferred payment terms or has undertaken a turnkey project or a construction contract abroad;

e) An Indian Party [as defined in Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004, as amended from time-to-time] for making overseas direct investment provided the overseas regulator requires the maintenance of such an account;

f) A person raising ECB or ADR/ GDR;

g) Indian shipping or airline companies;

h) Life Insurance Corporation (LIC) of India or General Insurance Corporation (GIC) of

India and its subsidiaries for the purpose of carrying on life/ general insurance business;

i) A resident individual under the Liberalized Remittance Scheme;

j) A person going abroad to participate in an exhibition/ trade fair;

k) A person going abroad for studies;

l) A person who is on a visit to a foreign country provided the balances are repatriated on return to India;

m) A foreign citizen resident in India, being an employee of a foreign company, or an Indian citizen, being an employee of a foreign company, in either case on deputation to the office/ branch/ subsidiary/ joint venture/ group company in India;

n) A foreign citizen resident in India employed with an Indian company.

In terms of Regulation 6 of the Regulations, unless otherwise specifically stated, a Foreign Currency Account with an authorized dealer in India under these Regulations may be opened, held and maintained in the form of current or savings or term deposit account in cases where the account holder is an individual, and in the form of current account or term deposit account in all other cases. The account can be held singly or jointly in the name of person eligible to open, hold and maintain such account.

The salient features of the foreign currency accounts that can be maintained by certain residents and the credits and debits allowed in such accounts are annexed to the circular and reproduced as below:

I. Exchange Earner's Foreign Currency (EEFC) Account [Regulation 4(A)]

- The terms and conditions under which this account can be opened, held and maintained are laid down in Schedule I to the regulations.
- The account will be in the form of a non-interest bearing current account.
- The claims settled in rupees by ECGC/insurance companies should not be construed as export realisation in foreign exchange and the claim amount will not be an eligible credit to the EEFC account.
- Authorised Dealers can allow SEZ developers to open, hold and maintain EEFC Account and credit their foreign exchange earnings, as specified in the paragraph 1 of Schedule I.
- The sum total of the accruals in the account during a calendar month should be converted into Rupees on or before the last day of the succeeding calendar month after adjusting for utilization of the balances for approved purposes or forward commitments.
- Credit Facilities: Credit facilities, both fund-based and non-fund based should not be granted against the balances held in EEFC Accounts.
- Exporters can repay packing credit advances, whether availed of in Rupee or in foreign currency, from balances in their EEFC account to the extent exports have actually taken place.
- Balances may be credited to NRE/ FCNR(B) accounts, at the option/ request of the account holders consequent upon change of their residential status from resident to non-resident.

II. Resident Foreign Currency (RFC) Account [Regulation 4(B)]

- Resident individuals are allowed to open a Resident Foreign Currency

(RFC) Account with an AD bank in India out of foreign exchange received as pension, superannuation benefits, conversion of assets referred to in section 6(4) of the Act and other cases as laid down in Regulation 4(B). The balances in the Non-Resident External (NRE) Account and Foreign Currency Non-Resident Bank [FCNR (B)] Account can be credited to the RFC account when the residential status of the non-resident Indian (NRI) changes to that of a Resident.

III. Resident Foreign Currency (Domestic) Account (RFC(D)) [Regulation 4(C)]

- To enable resident individuals to keep in a bank account the foreign exchange they could retain from the sources mentioned in terms of Regulation 3(iii) of RBI Notification No.FEMA.11(R)/ 2015-RB dated December 29, 2015, they are allowed to open a Resident Foreign currency (Domestic) Account [RFC(D)] with an AD bank in India. This facility is in addition to that provided under of RBI Notification No.FEMA.11(R)/ 2015-RB dated December 29, 2015.

- The sum total of the accruals in the account during a calendar month should be converted into Rupees on or before the last day of the succeeding calendar month after adjusting for utilization of the balances for approved purposes or forward commitments.

- Balances may be credited to NRE/ FCNR(B) Accounts, at the option/ request of the account holders consequent upon change of their residential status from resident to non-resident.

IV. A unit in a Special economic Zone [Regulation 4(D)]

- A unit located in a Special Economic Zone may open hold and maintain a Foreign Currency Account with an authorized dealer to credit all foreign exchange funds received by the unit.

- The account can be used for *bona fide* trade transactions between the unit and a person resident in/ outside India.

V. Diamond Dollar Accounts (DDA) [Regulation 4(E)]

- The terms and conditions under which this account can be opened, held and maintained are laid down in Schedule II to the regulations.

- The sum total of the accruals in the account during a calendar month should be converted into Rupees on or before the last day of the succeeding calendar month after adjusting for utilization of the balances for approved purposes or forward commitments.

VI. Ship-manning/crew managing agencies in India [Regulation 4(G)(2)]

- AD Category-I banks may allow ship-manning/crew managing agencies in India to open and maintain non-interest bearing foreign currency accounts in India for the purpose of undertaking transactions in the ordinary course of its business, as detailed:

- Credits: Only by way of inward remittances through normal banking channels from the overseas principal.

- Debits: Towards various expenses in connection with the management

of the ships/ crew in the ordinary course of its business.

- No credit facility (fund based or non-fund based) should be granted against security of funds held in the account.
- The bank should meet the prescribed Reserve Requirements in respect of such accounts.
- No EEFC facility should be allowed in respect of the remittances received in the account.
- The account will be maintained only during the validity period of the agreement.

VII. Project Offices — Foreign Currency Accounts in India [Regulation 4(G)(3)]

- An AD may open non-interest bearing foreign currency account for Project Offices in India subject to the following:
- The Project Office has been established in India, with the general/specific permission of Reserve Bank, having the requisite approval from the concerned Project Sanctioning Authority,
- The contract under which the project has been sanctioned, specifically provides for payment in foreign currency,
- Each Project has only one Foreign Currency Account.
- Debits:

  Payment of project related expenditure.
- Credits:

  Foreign currency receipts from the Project Sanctioning Authority, and
- Remittances from parent/ Group Company abroad or bilateral/ multilateral international financing agency.
- The Foreign Currency account may be closed at the completion of the project.
- Inter-project transfer of funds will be permitted with the prior permission of the Regional Office of the Reserve Bank under whose jurisdiction the Project Office is situated.
- In case of disputes between the Project Office and the Project Sanctioning Authority or other Government/Non-Government agencies etc., the balance held in such account shall be converted into INR and credited to a special account which shall be dealt with as per the settlement of the dispute.

VIII. Organisers of international Seminars, Conferences, Conventions etc. [Regulation 4(G)(5)]

- Organisers of international Seminars, Conferences, Conventions etc. may hold temporary foreign currency accounts with an AD in India subject to the following conditions:
- Credits: All inward remittances in foreign currency towards registration fees payable by overseas delegates, grant, sponsorship fees and donations, received from abroad, in connection with the conference, convention, etc.
- Debits: (i) Payment to foreign/ special invitees attending the conference, etc., on the specific invitation of the organisers, towards travel, hotel charges, etc., and honorarium to foreign guest

speakers; (ii) Remittance towards refund of registration fees to foreign delegates and unutilised sponsorship/grant amount, if any; (iii) Bank charges, if any; (iv) Conversion of funds into rupees.

- All other credits/ debits would require the prior approval of the Reserve Bank.

- The account should be closed immediately, after the conference/ event is over.

IX. An Indian Corporate raising ECB [Regulation 5(E)(1)

- ECB proceeds meant only for foreign currency expenditure can be retained abroad pending utilization. Till utilisation, these funds can be invested in the following liquid assets (a) Deposits or Certificate of Deposit or other products offered by banks rated not less than AA (-) by Standard and Poor/ Fitch IBCA or Aa3 by Moody's; (b) Treasury bills and other monetary instruments of one year maturity having minimum rating as indicated above and (c) deposits with overseas branches/ subsidiaries of Indian banks abroad.

(A.P. (DIR Series) Circular No. 44/2015-16 [(1)/10(R)] dated February 4, 2016)

***(Comment: A number of changes have been** brought into the new regulation. The following **persons have now been permitted to open foreign** currency accounts with an AD Bank in India (subject to conditions mentioned above):*

- ***An exporter who is exporting services and engineering goods on deferred payment terms or has undertaken a turnkey project or a construction contract abroad***

- *Indian companies receiving Foreign Direct Investment*

- ***Orga**nizers of international seminars, conferences, conventions etc.*

*Hitherto, a shipping or airline company incorporated outside India and its agents in India were permitted to open, hold and maintain foreign currency account in India. However, **such permission is now only restricted to an** Indian agent of a shipping or airline company incorporated outside India.*

*In the above mentioned circular a number of **conditions have been enumerated for Organizers** of international seminars, conferences, conventions etc. and a Project Office in India to open, hold and maintain a foreign currency account in India. However, these conditions have not been specified in Notification 10(R) dated 21st January, 2016. Such disconnect needs to be addressed by the RBI.*

Also, Notification 10(R) dated 21st January, 2016 allows interest earned on the funds held in the account as a permissible credit in an EEFC A/c. However, A.P. (DIR Series) Circular No. 44 dated February 4, 2016, mentions that an EEFC A/c shall be in the form of a non-interest bearing current account. Such disconnect needs to be addressed by the RBI.

4. Foreign Exchange Management (Export and Import of Currency) Regulations, 2015

In supersession of Foreign Exchange Management (Export and import of currency) Regulations, 2000 (Notification No. FEMA 6/ 2000-RB dated May 3, 2000), RBI has notified Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 dated 29th March, 2016.

Synopsis of the new regulations is given as under:

A. Export and import of Indian currency and currency notes

a) Any person resident in India,

i. may take outside India (other than to Nepal and Bhutan) currency notes

of Government of India and Reserve Bank of India notes up to an amount not exceeding ` 25,000 (Rupees Twenty Five Thousand only) per person.

ii. may take or send outside India (other than to Nepal and Bhutan) commemorative coins not exceeding two coins each. ('Commemorative Coin' includes coin issued by Government of India Mint to commemorate any specific occasion or event and expressed in Indian currency.)

iii. who had gone out of India on a temporary visit, may bring into India at the time of his return from any place outside India (other than from Nepal and Bhutan), currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding ` 25,000 (Rupees Twenty Five Thousand only) per person.

b) Any person resident outside India, not being a citizen of Pakistan or Bangladesh, and visiting India,

i. may take outside India currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding ` 25,000 (Rupees Twenty Five Thousand only) per person

ii. may bring into India currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding ` 25,000 (Rupees Twenty Five Thousand only) per person

B. Import of Foreign Exchange into India

A person:

i. may send into India without limit foreign exchange in any form other than currency notes, bank notes and travellers cheques;

ii. may bring into India from any place outside India without limit foreign exchange (other than unissued notes) subject to the condition that such person makes, on arrival in India, a declaration to the Customs authorities in Currency Declaration Form (CDF). It shall not be necessary to make such declaration where the aggregate value of the foreign exchange in the form of currency notes, bank notes or travellers cheques brought in by such person at any one time does not exceed US$10,000 (US Dollars ten thousand) or its equivalent and/or the aggregate value of foreign currency notes brought in by such person at any one time does not exceed US$ 5,000 (US Dollars five thousand) or its equivalent.

C. Export of Foreign Exchange and Currency Notes

i. An authorised person may send out of India foreign currency acquired in normal course of business,

ii. any person may take or send out of India, -

a) Cheques drawn on foreign currency account maintained in accordance with Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2000;

b) foreign exchange obtained by him by drawal from an authorised person in accordance with the provisions of the Act or the rules or regulations or directions made or issued thereunder;

c) currency in the safes of vessels or aircrafts which has been brought into India or which has been taken

on board a vessel or aircraft with the permission of the Reserve Bank;

iii. any person may take out of India, -

a) foreign exchange possessed by him in accordance with the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2000 ;

b) unspent foreign exchange brought back by him to India while returning from travel abroad and retained in accordance with the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2000.

iv. any person resident outside India may take out of India unspent foreign exchange not exceeding the amount brought in by him and declared in Currency Declaration Form (CDF).

D. Export and Import of currency to or from Nepal and Bhutan

A person may:

i. take or send out of India to Nepal or Bhutan, currency notes of Government of India and Reserve Bank of India notes (other than notes of denominations of above ` 100 in either case) provided that an individual travelling from India to Nepal or Bhutan can carry Reserve Bank of India currency notes of denomination ` 500/- and/or ` 1000/- up to a limit of ` 25,000/-.

ii. bring into India from Nepal or Bhutan, currency notes of Government of India and Reserve Bank of India notes (other than notes of denominations of above ` 100 in either case) ;

iii. take out of India to Nepal or Bhutan, or bring into India from Nepal or Bhutan, currency notes being the currency of Nepal or Bhutan.

E. Prohibition on Export of Indian Coins

No person shall take or send out of India the Indian coins which are covered by the Antique and Art Treasure Act, 1972.

(A.P. (DIR Series) Circular No. 45/2015-16 [(1)/6(R)] dated February 4, 2016)

(Comment: No change was found in the new regulations issued by RBI. It seems that RBI has merely reissued the old regulations.)

5. Foreign Exchange Management (Realisation, repatriation and surrender of foreign exchange) Regulations, 2015

RBI has notified Foreign Exchange Management (Realisation, repatriation and surrender of foreign exchange) Regulations, 2015 (notified vide Notification No. FEMA. 9(R)/2015-RB dated December 29, 2015) which supersedes the Foreign Exchange Management (Realisation, repatriation and surrender of foreign exchange) Regulations, 2000 and all amendments thereto.

Synopsis of the new regulations is given as under:

A. Duty of persons to realise foreign exchange due

A person resident in India to whom any amount of foreign exchange is due or has accrued shall, save as otherwise provided under the provisions of the Act, or the rules and regulations made thereunder, or with the general or special permission of the Reserve Bank, take all reasonable steps to realise and repatriate to India such foreign exchange, and shall in no case do or refrain from doing anything, or take or refrain from taking any action, which has the effect of securing.

a) that the receipt by him of the whole or part of that foreign exchange is delayed; or

b) that the foreign exchange ceases in whole or in part to be receivable by him.

B. Manner of Repatriation

(1) On realisation of foreign exchange due, a person shall repatriate the same to India, namely bring into, or receive in, India and -

i. sell it to an authorised person in India in exchange for rupees; or

ii. retain or hold it in account with an authorised dealer in India to the extent specified by the Reserve Bank; or

iii. use it for discharge of a debt or liability denominated in foreign exchange to the extent and in the manner specified by the Reserve Bank.

(2) A person shall be deemed to have repatriated the realised foreign exchange to India when he receives in India payment in rupees from the account of a bank or an exchange house situated in any country outside India, maintained with an authorised dealer.

C. Period for surrender of realised foreign exchange

A person not being an individual resident in India shall sell the realised foreign exchange to an authorised person, within the period specified below :-

i. foreign exchange due or accrued as remuneration for services rendered, whether in or outside India, or in settlement of any lawful obligation, or an income on assets held outside India, or as inheritance, settlement or gift, within seven days from the date of its receipt;

ii. in all other cases within a period of ninety days from the date of its receipt.

D. Period for surrender in certain cases

(1) Any person not being an individual resident in India who has acquired or purchased foreign exchange for any purpose mentioned in the declaration made by him to an authorised person under sub-section (5) of Section 10 of the Act does not use it for such purpose or for any other purpose for which purchase or acquisition of foreign exchange is permissible under the provisions of the Act or the rules or regulations or direction or order made thereunder, shall surrender such foreign exchange or the unused portion thereof to an authorised person within a period of sixty days from the date of its acquisition or purchase by him.

(2) Notwithstanding anything contained in sub-regulation (1), where the foreign exchange acquired or purchased by any person not being an individual resident in India from an authorised person is for the purpose of foreign travel, then, the unspent balance of such foreign exchange shall, save as otherwise provided in the regulations made under the Act, be surrendered to an authorised person:

i. within ninety days from the date of return of the traveller to India, when the unspent foreign exchange is in the form of currency notes and coins; and

ii. within one hundred eighty days from the date of return of the traveller to India, when the unspent foreign exchange is in the form of travellers cheques.

E. Period for surrender of received/realised/unspent/unused foreign exchange by Resident individuals :-

A person being an individual resident in India shall surrender the received/realised/unspent/unused foreign exchange whether in the form of currency notes, coins and travellers cheques, etc. to an authorised person within a period of 180 days from the date of such receipt/realisation/purchase/acquisition or date of his return to India, as the case may be.

F. Exemption

Nothing in these regulations shall apply to foreign exchange in the form of currency of Nepal or Bhutan.

(A.P. (DIR Series) Circular No. 46/2015-16 [(1)/9(R)] dated February 4, 2016)

(Comment: No change was found in the new regulations issued by RBI. It seems that RBI has merely reissued the old regulations.)

6. Foreign Exchange Management (Export and Import of Currency) Regulations, 2015

RBI has notified Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 (notified *vide* Notification No. FEMA. 11(R)/2015-RB dated December 29, 2015) which supersedes the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 and all amendments thereto.

Synopsis of the new regulations is given as under:

A. Following are the limits for possession or retention of foreign currency or foreign coins, namely

i. possession without limit of foreign currency and coins by an authorised person within the scope of his authority;

ii. possession without limit of foreign coins by any person;

iii. retention by a person resident in India of foreign currency notes, bank notes and foreign currency travellers' cheques not exceeding US$ 2000 or its equivalent in aggregate, provided that such foreign exchange in the form of currency notes, bank notes and travellers cheques;

a) was acquired by him while on a visit to any place outside India by way of payment for services not arising from any business in or anything done in India; or

b) was acquired by him, from any person not resident in India and who is on a visit to India, as honorarium or gift or for services rendered or in settlement of any lawful obligation; or

c) was acquired by him by way of honorarium or gift while on a visit to any place outside India; or

d) represents unspent amount of foreign exchange acquired by him from an authorised person for travel abroad.

B. A person resident in India but not permanently resident therein may possess without limit foreign currency in the form of currency notes, bank notes and travellers cheques, if such foreign currency was acquired, held or owned by him when he was resident outside India and, has been brought into India in accordance with the regulations made under the Act.

Explanation: for the purpose of this clause, 'not permanently resident' means a person resident in India for employment of a specified duration (irrespective of length thereof) or for a specific job or assignment, the duration of which does not exceed three years.

(A.P. (DIR Series) Circular No. 47/2015-16 [(1)/11(R)] dated February 4, 2016)

(Comment: No change was found in the new regulations issued by RBI. It seems that RBI has merely reissued the old regulations.)

7. Definition of "Currency", 2015

RBI has notified Notification No. FEMA. 15(R)/2015-RB in pursuance of clause (h) of Section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999) dated December 29, 2015, which supersedes Notification No. FEMA 15/2000-RB dated May 3, 2000 and all amendments thereto.

By way of this notification, RBI has included debit cards, ATM cards or any other instrument by whatever name called that can be used to create a financial liability, in the definition of 'currency'.

(A.P. (DIR Series) Circular No. 48/2015-16 [(1)/15(R)] dated February 4, 2016)

(Comment: No change was found in the new regulations issued by RBI. It seems that RBI has merely reissued the old regulations.)

8. Post Office (Postal Orders/Money Orders), 2015

RBI has notified Post Office (Postal Orders/ Money Orders), 2015 (Notification No. FEMA. 18(R)/2015-RB dated 29th December, 2015) which supersedes Notification No. FEMA 18/2000-RB dated May 3, 2000 and all amendments thereto.

By way of this notification, general permission has been given to any person to buy foreign exchange from any post office in India in the form of postal order or money order.

(A.P. (DIR Series) Circular No. 49/2015-16 [(1)/18(R)] dated February 4, 2016)

(Comment: No change was found in the new regulations issued by RBI. It seems that RBI has merely reissued the old regulations.)

9. Compilation of R-Returns: Reporting under FETERS

In order to enhance the security-level in data submission and further improve data quality guidelines for submission of data under the FETERS are made applicable for AD banks from 1st fortnight of April 2016 (i.e., reporting of those transactions which take place from April 1, 2016).

In-order to streamline the reporting of the transactions relating to the Liberalised Remittance Scheme (LRS) in FETERS and On-line Return Filing System (ORFS), it has been decided that transactions relating to LRS may be reported under respective FETERS purpose codes instead of reporting collectively under the purpose code S0023.

For facilitating the existing monthly reporting of LRS transactions under ORFS, AD banks may use the following purpose codes only.

Sr. No	Items under LRS	Corresponding FETERS purpose codes, if transaction is identified under LRS
1	Opening of foreign currency account abroad with a bank under LRS	S0023
2	Purchase of immovable property	S0005
3	Investment in equity, debt, JV, WoS, ESOPs, IDRs	S0001, S0002, S0003, S0004, S0021, S0022
4	Gift	S1302
5	Donations	S1303
6	Travel (business, pilgrimage, medical treatment, education, employment, personal)	S0301, S0303, S0304, S0305 & S0306

Sr. No	Items under LRS	Corresponding FETERS purpose codes, if transaction is identified under LRS
7	Maintenance of close relatives	S1301
8	Medical Treatment	S1108
9	Studies abroad	S1107
10	Emigration	S1307
11	'Others' such as loan to NRI close relatives and health insurance	S0011, S0603

AD banks should also ensure that the data pertaining to LRS transactions reported by them in FETERS tallies with that reported by them in ORFS.

The Form A2 is also being revised by introducing a check-box for LRS transactions in the relevant block as follows:

Sr. No	Whether under LRS (Yes/No)	Purpose Code	Description

Further, the 'Application cum Declaration for purchase of foreign exchange under the Liberalised Remittance Scheme of USD 250,000' has been clubbed with Form A2 in order to reduce multiplicity of forms to be filled in by the customers.

Online submission of Form A2 by the remitter

With a view to facilitating miscellaneous remittances and reducing paperwork associated with payment transactions, it has been decided that Authorised Dealer banks, offering internet banking facilities to their customers may allow online submission of Form A2. Besides, they may also enable uploading/submission of documents, to establish the permissibility of the remittances under the extant rules or regulations framed under the Foreign Exchange Management Act, 1999 (FEMA). Remittances that do not require any documentation (e.g. certain transactions under the LRS) may be put through on the basis of the Form A2 alone. To start with, remittances on the basis of online submission alone will be available for transactions with an upper limit of USD 25,000 (or its equivalent) for individuals and USD 100,000 (or its equivalent) for corporates. It may be noted that the remittance will be subject to satisfaction of the Authorised Dealer banks as laid down in Section 10 (5) of FEMA.

(A.P. (DIR Series) Circular No. 50 dated February 11, 2016)

(Comment: This move is to enable online sub*mission of A2 forms for outward remittances on the basis of the form alone or with upload/submission of document(s), depending on the* ***nature of remittance is intended to provide ease*** *in doing business involving foreign parties.)*

10. Compilation of R-Returns: Reporting under FETERS.

In the circular clarifications relating to the start-ups accepting payments on behalf of overseas subsidiaries are made as follows:

1. A start-up in India with an overseas subsidiary is permitted to open foreign currency account abroad to pool the foreign exchange earnings out of the exports/sales made by the concerned start-up.

2. The overseas subsidiary of the start-up is also permitted to pool its receivables arising from the transactions with the residents in India as well as the transactions with the non-residents abroad into the said foreign currency account opened abroad in the name of the start-up.

3. The balances in the said foreign currency account as due to the Indian start-up should be repatriated to India within a period as applicable to realisation of export proceeds (currently nine months).

4. A start-up is also permitted to avail of the facility for realising the receivables of its overseas subsidiary or making the above repatriation through Online Payment Gateway Service Providers (OPGSPs) for value not exceeding USD 10,000 (US Dollar ten thousand) or up to such limit as may be permitted by the Reserve Bank of India from time to time under this facility.

5. To facilitate the above arrangement, an appropriate contractual arrangement between the start-up, its overseas subsidiary and the customers concerned should be in place.

(A.P. (DIR Series) Circular No. 51 dated February 11, 2016)

(Comment: The regulations will allow Indian ***start-ups to directly pool the receivables of the*** *overseas subsidiary and the startup entity)*

11. Regulatory Relaxations for Startups – Clarifications relating to Issue of Shares

Vide A.P. (DIR Series) Circular No. 52 dated February 11, 2016, clarifications were made in case of start-ups on issue of shares without cash payment by the investor through sweat equity or against any legitimate payment owed by the company remittance of which does not require any permission under FEMA, 1999.

1. Issue of shares without cash payment through sweat equity

RBI has permitted Indian companies to issue sweat equity shares if the scheme has been drawn either in terms of regulations issued under the Securities Exchange Board of India Act, 1992 in respect of listed companies or the Companies (Share Capital and Debentures) Rules, 2014 notified by the Central Government under the Companies Act, 2013 in respect of other companies.

2. Issue of shares against legitimate payments owed

Reserve Bank of India vide Notification No. FEMA.315/2014-RB dated July 10, 2014, has permitted Indian companies to issue equity shares against any other funds payable by the investee company, remittance of which does not require prior permission of the Government of India or Reserve Bank of India under FEMA, 1999 subject to conditions relating to adherence to FDI policy including sectoral caps, pricing guidelines, etc. and applicable tax laws (cf. paragraph 3 of Schedule 1 to Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2015).

(A.P. (DIR Series) Circular No. 52 dated February 11, 2016)

(Comment: Under existing FEMA/ FDI guidelines, an Indian Company can issue shares ***against any legitimate payments owed by the Company for which no prior permission is*** *required from RBI/ Government for making payments.*

This benefit has also been extended to Indian Starts-up and they can issue shares against such legitimate payments which do not require prior approval of Government of India or RBI. The Indian startup may make payment for acquisition of intellectual property rights, consultancy fees etc by issuing shares.)

B. Notification issued by DIPP

1. Startup India Initiative – Start-up Definition by DIPP

The Government of India has announced 'Start-up India' initiative for creating a conducive environment for start-ups in India. The various Ministries of the Government of India have initiated a number of activities for the purpose. To bring uniformity in the identified enterprises, an entity shall be considered as a 'start-up'-

a. Up to five years from the date of its incorporation/registration,

b. If its turnover for any of the financial years has not exceeded Rupees 25 crore, and

c. It is working towards innovation, development, deployment or commercializalion of new products, processes or services driven by technology or intellectual property;

Provided that any such entity formed by splitting up or reconstruction of a business already in existence shall not be considered a 'start-up';

Provided further that in order to obtain tax benefits a startup so identified under the above definition shall be required to obtain a certificate of an eligible business from the lnter-Ministerial Board of Certification consisting of:

a. Joint Secretary, Department of Industrial Policy and Promotion,

b. Representative of Department of Science and Technology, and

c. Representative of Department of Biotechnology.

Further, DIPP in an Explanation to the definition clarified that

1. An entity shall cease to be a start-up on completion of five years from the date of its incorporation/registration or if its turnover for any previous year exceeds Rupees 25 crore.

2. Entity means a private limited company (as defined in the Companies Act, 2013), or a registered partnership firm (registered under section 59 of the Partnership Act, 1932) or a limited liability partnership (under the Limited Liability Partnership Act, 2002).

3. Turnover is as defined under the Companies Act, 2013.

4. An entity is considered to be working towards innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property if it aims to develop and commercialize:

   a. A new product or service or process, or

   b. A significantly improved existing product or service or process, that will create or add value for customers or workflow.

Provided that the mere act of developing:

a. products or services or processes which do not have potential for commercialization, or

b. undifferentiated products or services or processes, or

c. products or services or processes with no or limited incremental value for customers or workflow

would not be covered under this definition.

DIPP, through the circular notified the process of Recognition as a 'star-tup' and clarified that it shall be through a mobile app/ portal of the Department of Industrial Policy and Promotion.

The Start-ups are required to submit a simple application with any of following documents:

1. A recommendation (with regard to innovative nature of business), in a format specified by DIPP, from any Incubator established in a postgraduate college in India; or
2. A letter of support by any incubator which is funded (in relation to the project) from Government as part of any specified scheme to promote innovation; or
3. A recommendation (with regard to innovative nature of business), in a format specified by DIPP, from any Incubator recognized by Government of India; or
4. A letter of funding of not less than 20 per cent in equity by any Incubation Fund/ Angel Fund/ Private Equity Fund/ Accelerator/ Angel Network duly registered with SEBI that endorses innovative nature of the business; (DIPP may include any such fund in a negative list for such reasons as it may deem fit) or
5. A letter of funding by Government of India or any State Government as part of any specified scheme to promote innovation; or
6. A patent filed and published in the Journal by the Indian Patent Office in areas affiliated with the nature of business being promoted.

Until such app or portal is launched, DIPP will make alternative arrangements to recognise a startup. Once the application is uploaded, a recognition number will be issued to the startup in real time. If the number is found to be obtained without uploading the documents, or uploading the forged documents, a fine on the applicant will be levied, which shall be 50 per cent of the paid-up capital of the startup and not less than ` 25,000.

(DIPP Notification dated 17th February, 2016)

(The government has set out the definition of a 'startup' to ensure that only deserving companies draw the benefits of its 'Startup India Action Plan' and to "create a conducive environment for startups in India".

It is not clear whether this definition would apply only to entities that have been incorporated after these changes have been notified, or would even extend to existing entities).

C. Notifications issued by RBI.

1. Amendments made in Regulations of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000, (Notification No. FEMA 20/2000-RB dated 3rd May 2000).

A. In Regulation 2, clause (viia), definition of ‘Non-resident Indian (NRI)’ was borrowed from the definition provided under the Foreign Exchange Management (Deposit) Regulations, 2000. (Notification No. FEMA 5/2000-RB dated 3rd May, 2000). The same shall be now be substituted as follows-

“(viia) Non-Resident Indian (NRI) means an individual resident outside India who is citizen of India or is an ‘Overseas Citizen of India’ cardholder within the meaning of section 7 (A) of the Citizenship Act, 1955.”

B. In Regulation 2, after clause (viiA) and before the existing clause (viia), the following clause shall be inserted, namely:

“(vii AA) “Manufacture”, with its grammatical variations, means a change in a non-living physical object or article or thing – (a) resulting in transformation of the

object or article or thing into a new and distinct object or article or thing having a different name, character and use; or (b) bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure."

C. Regulation 5(3) is substituted also substituting existing Schedules 3 & 4 to make following changes:

— A Non-Resident Indian can now acquire securities or units under Portfolio Investment Scheme (PIS) on a Stock Exchange in India on repatriation basis. The NRI investor should take delivery of the shares/convertible preference shares/ convertible debentures /warrants and units purchased and give delivery of the same when sold.

— A Non-resident Indian (NRI), including a company, a trust and a partnership firm incorporated outside India and owned and controlled by non-resident Indians, can acquire and hold, on non-repatriation basis, equity shares, convertible preference shares, convertible debenture, warrants or units under Schedule 4. These investments will be deemed to be domestic investment at par with the investment made by residents.

— NRI investment on repatriable basis will be subject to compliance with FDI policy.

— An NRI can contribute, on non-repatriation basis, to the capital of a partnership firm, a proprietary firm or a Limited Liability Partnership without any limit.

— Prohibition of investment in Nidhi Company or a company engaged in agricultural/ plantation activities or real estate business or construction of farm houses or dealing in Transfer of Development Rights continues. Revised definition of "real estate business" to be used. Investments in units of SEBI-registered REITs are excluded from the definition.

— The amount invested under Schedule 4 together with the capital appreciation thereon shall not be allowed to be repatriated abroad.

D. Schedule 1, paragraph 2 amended to allow issue of shares to a person resident outside India against shares swap under automatic route subject to valuation by merchant banker registered with SEBI in sectors where investment is allowed under automatic route.

E. Amendment in Schedule 1 'Annex B'.

In order to attract investments and for ease of doing business in India, many policy changes have been made through various Press Notes in the recent past. Press Note No. 12 of 24th November, 2015 made far reaching changes in the Annex B which was last notified vide Notification No. FEMA.354/2015-RB October 30, 2015. In order to make these provisions effective, RBI has notified new Annex B vide

Notification No.363 dated 15th February, 2016. The salient features of the changes are discussed in the following paragraphs.

Foreign Investments caps and entry route in various sectors

Sr. No.	Sector/Activity	Foreign Investment Cap (%)	Entry Route	Major Change
Agriculture				
1.	**Agriculture & Animal Husbandry**			
	a) Floriculture, horticulture, Apiculture and Cultivation of vegetables & mushrooms under controlled conditions b) Development and production of seeds and planting material; c) Animal Husbandry (including breeding of dogs), Pisiculture, Aquaculture, under controlled conditions; and d) Services related to agro and allied sectors.	100%	Automatic	Other Conditions dealing with development of transgenic seeds/ vegetables is deleted
	Note: Besides the above, FDI is not allowed in any other agricultural sector/ activity			
2.	**Plantation**			
2.1	i. Tea sector including tea plantations ii. Coffee plantations iii. Rubber Plantations iv. Cardamom plantations v. Palm oil tree plantations vi. Olive oil tree plantations	100%	Automatic route	Earlier, 100% FDI was allowed in Tea Plantation only under government approval route.
	Note: FDI is not allowed in any plantation sector/activity except those mentioned above.			
3.	**Mining**			
3.1	Mining and Exploration of metal and non-metal ores including diamond, gold, silver and precious ores but excluding titanium bearing minerals and its ores; subject to the Mines and Minerals (Development & Regulation) Act, 1957.	100%	Automatic	Consolidated FDI Policy Para 3.3.2- Other Conditions – Preamble consisting of three paragraphs dropped.

Sr. No.	Sector/Activity	Foreign Investment Cap (%)	Entry Route	Major Change
4.	**Petroleum & Natural Gas**			**No Change**
5	**Manufacturing**			
	Subject to the provisions of the FDI policy, foreign investment in 'manufacturing' sector is under automatic route. Further, a manufacturer is permitted to sell its products manufactured in India through wholesale and/or retail, including through e-commerce without Government approval.	100%	Automatic	New Entry.
6.	**Defence**			
6.1	Defence Industry subject to Industrial license under the Industries (Development & Regulation) Act, 1951	49%	Automatic route up to 49% Above 49% under Government route on case to case basis, wherever it is likely to result in access to modern and 'state- of-art' technology in the country.	Earlier, 49 % FDI was allowed under Government route & above 49% was allowed subject to approval by to Cabinet Committee on Security (CCS) on case to case basis, wherever it is likely to result in access to modern and 'state-of-art' technology in the country. Old 20 conditions replaced with 4 modified conditions.
Services Sector				
Information Services				
7.	**Broadcasting**			
7.1	**Broadcasting Carriage Services**			
7.1.1	(1) Teleports (setting up of uplinking HUBs/Teleports) (2) Direct to Home (DTH)	100%	Automatic up to 49% Government route beyond 49%	Earlier automatic up to 49% & Government route beyond 49% and up to 74%

Sr. No.	Sector/Activity	Foreign Investment Cap (%)	Entry Route	Major Change
	(3) Cable Networks [Multi System Operators (MSOs) operating at National or State or District level and undertaking up gradation of networks towards digitalization and addressability] (4) Mobile TV (5) Headend-in-the Sky Broadcasting Service (HITS)			
7.1.2	**Cable Networks** (Other MSOs not undertaking upgradation of networks towards digitalization and addressability and Local Cable Operators (LCOs)).	100%	Automatic up to 49% Govern-ment route beyond 49%	Earlier investment up to only 49% was allowed under automatic route.
7.2	**Broadcasting Content Services**			
7.2.1	**Terrestrial Broadcasting FM (FM Radio)**, subject to such terms and conditions, as specified from time to time, by Ministry of Information & Broadcasting, for grant of permission for setting up of FM Radio stations.	49%	Govern-ment	Earlier investment up to only 26% was allowed under automatic route.
7.2.2	**Up-Linking of 'News & Current Affairs' TV Channels**	49%	Govern-ment	Earlier investment up to only 26% was allowed under automatic route.
7.2.3	**Up-linking a Non-'News & Current Affairs' TV Channels/Down-linking of TV Channels**	100%	Automatic	Earlier 100% investment was allowed under government approval route.
8.	**Print Media**			
8.1	Publishing of newspaper and periodicals dealing with news and current affairs	26%	Govern-ment	No change
8.2	Publication of Indian editions of foreign magazines dealing with news and current affairs	26%	Govern-ment	No change

Sr. No.	Sector/Activity	Foreign Investment Cap (%)	Entry Route	Major Change
8.3	Publishing/printing of Scientific and Technical Magazines/ specialty journals/ periodicals, subject to compliance with the legal framework as applicable and guidelines issued in this regard from time to time by Ministry of Information and Broadcasting.	100%	Govern-ment	No change
8.4	Publication of facsimile edition of foreign newspapers	100%	Govern-ment	No change
9.2	**Airports**			
	(a) Greenfield projects	100%	Automatic	No Change
	(b) Existing projects	100%	Automatic upto 74%; Govern-ment Route beyond 74%	No Change
9.3	**Air Transport Services**			
	(a) Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline	49% (100% for NRIs)	Automatic	No Change
	(b) Regional Air Transport Service	—	Automatic up to 49% 100% for NRIs	New Entry
	(2) Non-Scheduled Air Transport Service	100%	Automatic	Earlier 74% (100% for NRIs) Automatic upto 49%; Government Route beyond 49% and up to 74%
	(3) Helicopter services/ seaplane services requiring DGCA approval	100%	Automatic	No change
9.3.2	Foreign Airlines in the capital of the Indian companies, operating schedule and non-scheduled air transport services	49% (100% for NRIs)	Govern-ment	No Change

Sr. No.	Sector/Activity	Foreign Investment Cap (%)	Entry Route	Major Change
9.4	**Other Services under Civil Aviation sector**			
	(1) Ground Handling Services subject to sectoral regulations and security clearance	100%	Automatic	Earlier 74% (100% for NRIs) Automatic upto 49%; Government Route beyond 49% and up to 74%
	(2) Maintenance and Repair organizations; flying training institutes and technical training institutions	100%	Automatic	No change
10.	**Courier services** for carrying packages, parcels and other items which do not come within the ambit of the Indian Post Office Act, 1898 and excluding the activity relating to the distribution of letters	100%	Automatic	No Change
11.	**Construction Development: Townships, Housing, Built-up infrastructure**			
11.1	Construction development projects (which would include development of townships, construction of residential/ commercial premises, roads or bridges, hotels, resorts, hospitals, educational institutions	100%	Automatic	- Conditions prescribing minimum area to be developed and minimum capitalization dropped. - Each phase of the construction development project would be considered as a separate project for the purposes of FDI policy. - Investor may exit on completion of project or after development of trunk infrastructure.

Sr. No.	Sector/Activity	Foreign Investment Cap (%)	Entry Route	Major Change
				- Investor may also exit and repatriate foreign investment before completion of project subject to minimum lock-in period of three years for each tranche. - NR to NR transfer without repatriation of investment will not be subject to lock-in-period & GOI approval. - The definition of Real Estate Business has been amended to specifically state that Earning of rent/income on lease of property, not amounting to transfer, will not amount to real estate business. -In respect of completed projects, transfer of ownership and/ or control of the investee company from residents to non-residents is also permitted.

Sr. No.	Sector/Activity	Foreign Investment Cap (%)	Entry Route	Major Change
				However, there would be lock-in-period of three years, calculated with reference to each tranche of FDI, and transfer of immovable property or part thereof is not permitted during the period - A new Clause (v) has been inserted to include the definition of Transfer.
12.	**Industrial Parks – New and existing**	100%	Automatic	No Change
13.	**Satellites – Establishment and operation**			
13.1	Satellites Establishment and operation, subject to the sectoral guidelines of Department of Space/ISRO	100%	Government	Earlier 74 % under Government Route was allowed
14.	**Private Security Agencies**	49%	Government	No Change
15.	**Telecom services (including Telecom Infrastructure Providers Category-I)**	100%	Automatic upto 49% Government route beyond 49%	No Change
16.	**Trading**			
16.1	**(i) Cash & Carry Wholesale Trading/ Wholesale Trading (including sourcing from MSEs)**	100%	Automatic	- A wholesale /cash & carry trader can undertake single brand retail trading, subject to certain conditions.

Sr. No.	Sector/Activity	Foreign Investment Cap (%)	Entry Route	Major Change
				- An entity undertaking wholesale/cash and carry as well as retail businesses will be mandated to maintain separate books of accounts for these two arms of the business and duly audited by the statutory auditors. - Conditions of FDI policy for wholesale/ cash and carry business and for retail business have to be separately complied with by the respective business arms.
16.2	**B2B E-commerce activities**	100%	Automatic	No Change
16.3	**Single Brand product retail trading**	100%	Automatic up to 49%. Govern-ment route beyond 49%	- Procurement requirements relaxed - Single brand retail trading entity operating through brick and mortar stores is permitted to undertake retail trading through e-commerce.
16.4	**Multi Brand Retail Trading**	51%	Govern-ment	No Change
16.5	**Duty Free Shops**	100%	Automatic	New Entry
F.1	**Financial Services** (Other financial services, other than those indicated separately)		Approval Route	No Change

Sr. No.	Sector/Activity	Foreign Investment Cap (%)	Entry Route	Major Change
F.1	**Asset Reconstruction Companies**	100%	Automatic up to 49% Government route beyond 49%	No Change
F.2	**Banking - Private sector**			
F.2.1	**Banking - Private sector**	74%	Automatic upto 49% Government route beyond 49% and upto 74%	No Change
F.3	**Banking - Public Sector**	20%	Government	No Change
F.4	**Commodity Exchanges**	49%	Automatic	No Change
F.5	**Credit Information Companies (CIC)**	100%	Automatic	No Change
F.6	**Infrastructure Company in the Securities Market**	49%	Automatic	No Change
F.7.	**Insurance**	49%	Automatic upto 26%,; Government route beyond 26% and upto 49%	No Change
F.8.	**Non-Banking Finance Companies (NBFCs)**	100%	Automatic	No Change
F.8.3	White Label ATM Operations	100%	Automatic	No Change
F.9	**Power Exchanges**	49%	Automatic	No Change
F.10	**Pension Sector**	49%	Automatic up to 26%; Government route beyond 26% and up to 49 %	No Change
17.	**Pharmaceuticals**			
17.1	Greenfield	100%	Automatic	No Change
17.2	Brown Field	100%	Government	No Change
18	Railway Infrastructure	100%	Automatic	No Change

Ajay Singh, *Advocate* & CA Namrata Bhandarkar

BEST OF THE REST

1. Complaint on Builder – Non grant of Parking Space as per Memorandum of Agreement – Compensation granted for breach of promise – builder was held guilty for unfair trade practice : Consumer Protection Act

The Complainants, Guptas, purchased a flat from Royal Palms Limited at a price agreed with the terms and conditions stated in the Memorandum in writing as to the allotment of life memberships of the Club as well as one covered parking space in the compound of the Building. M/s Royal Palms Private Limited breached the promise/undertaking to provide covered parking space in the compound of the building, in respect of the flat purchased by the complainants from the opposite party.

A complaint was filed on the ground that the Builder was bound to hand over the covered parking space as agreed in the Memorandum of the terms and conditions and as required under the Building Development Regulations, 1991. The argument of the builder was that since Co-operative Housing Society is already formed however the same were not impleaded in the complaint proceedings therefore the complainant Guptas cannot insist upon the Builder to allot the covered parking space as the builder was bound by the Maharashtra Ownership of Flats Act. It was pleaded by the builder that after handing over possession of the Building to the Co-operative Housing Society of the Flat Purchasers, now it cannot have any right to allot the car parking space to Guptas in the compound of the building in which Guptas are residing. Guptas can now approach the Housing Society and request for the covered parking space as requested by them before this Commission.

The District Court awarded the Complainants, compensation of ` 5,00,000/- on account of unfair trade practice committed by M/s Royal Palms Private Limited breaching the promise/ undertaking to provide covered parking space in the compound of the building, in respect of the flat purchased by the complainants from the opposite party. Costs in the sum of ` 15,000/- was also awarded towards expenses for prosecuting the Complaint Case. Amounts awarded were payable within eight weeks, failing which the interest was payable at the rate of ` 9% per annum on outstanding dues.

Against this order, Royal Palms Ltd. filed an appeal before the State Consumer Disputes Redressal Commission. The Hon'ble Commission was of the opinion that the findings recorded by the District Forum are just, proper and reasonable and were based on the evidence led before it so as to award the just compensation of ` five lakhs for non-allotment of a car parking space on the premise that despite the written

memorandum/undertaking by the Builder Royal Palms, no covered parking space was allotted to the complainant Guptas in the compound of the Building constructed by the builder, though promised in writing on behalf of the Builder Royal Palms. The evasion of the Builder was on the pretext that the Building is later handed over to the Co-operative Housing Society of the Flat Purchasers which alone can now as per it's policy decision in the General Body Meeting allot the parking spaces to the Flat Purchasers/occupants in the Building, which was not accepted. The Forum upheld the Judgment and award.

M/s Royal Palms India Pvt. Ltd. vs. Mrs. Anita A. Gupta & Anita J. Gupta FA No.13/103 and FA No.13/247 dated :18-1-2016 (State Consumer Disputes Redressal Commission, Maharashtra)

2. Builder did not grant occupation certificate and non-transfer of title of property to society – The complainant society is compelled to pay additional charges and taxes for availing various facility from the municipal authorities – Society filed consumer complaint alleging deficiency – Held there was deficiency in service – Granted compensation and occupation Certificate

The complainant society has been registered on 24-8-1992. Since then, the complainant has been making all endeavours with the opponents for compliance on their part of the statutory obligations under the provisions of – The Maharashtra Ownership Flats (Regulation of the Promotion, Construction, Sale, Management and Transfer) Act, 1963 ("the MOFA for brevity) which include obtaining of NOC from the competent authorities, execution of deed of conveyance, handing over duly audited statement of accounts, to obtain certificate from Fire Fighting Authorities. For want of occupation certificate and non-transfer of title of property, the complainant society is compelled to pay additional charges for availing drinking water facility from the municipal authorities and paid property taxes at higher rate to avoid attachment of the property by the municipal authorities. Since all the efforts put in from time-to-time by the complainant society for redressal of the dispute went futile and opponents did not pay any heed, dispute arose between the parties. Therefore complainant Co-operative Housing Society filed this consumer complaint through Authorized office bearer alleging deficiency in service against the opponent builder/developer for their failure to discharge the statutory obligations. Complainant has prayed for directions to the opponents for issuance of occupation certificate, execution of conveyance, supply of audited accounts, fire fighting certificate and in all claim of ` 74,18,181/- under various heads and ` 1 lac towards compensation.

The Hon'ble State Consumer Disputes Redressal Commission observed that there was no reason to disbelieve the contention and claim raised by the complainant which are supported by the documents and affidavit of evidence as there is no written version opposing the consumer complaint, even no participation by the opponents in the proceedings of the consumer complaint. As provided under Sec.11 of the MOFA, opponents are under obligation to execute the conveyance deed to transfer title, right and interest of the building of upper tenant land of society within four months from the date of formation of the society. The deficiency is writ large as opponents failed to take steps to discharge their statutory obligations. Secondly, Occupation Certificate has not been obtained as yet, though flat buyers/members of the complainant society were put into possession of the flats somewhere in the year 1992-93. Opponents also failed to obtain the Occupation Certificate which is a deficiency in service on their part. Property

taxes on yearly as and when basis, the bills received by the complainant have been paid which is supported by the payment receipts. Further, sufferings of the society for redressal of genuine grievances deserve to be considered as deficiency in service against the opponents is well-established.

In view of observations, the State Consumers Disputes Redressal Commission held that the opponents have failed to discharge their statutory obligations incurring deficiency in service. Therefore, the consumer complaint was to be partly allowed with costs, re-imbursement of the expenses borne in relation to property taxes and water charges and the opponents were directed to obtain occupation certificate from the competent authorities and to execute conveyance deed in favour of the complainant society in respect of the transfer of rights, title and interest in the property.

Amit Estate Co-op. Housing Society Ltd. vs. M/s. Urban Developers and Ashok BabulaVardhan (Complaint Case No.CC/12/20 dated 19-1-2016 State Consumers Dispute Redressal Commission).

3. Rights of Nominee-Insurance Amount received by nominee/ wife – Such amounts constitute the entitlement of all legal heirs of deceased – Insurance Act 1938, S.39

Existence of Joint family - common residence for almost 7 years There was no discord between parties and there was peace in whole family – Can be taken as evidence of existence of Joint Family – Hindu Law

Hindu widow is not coparcener in HUF of her husband. Therefore, cannot act as karta of HUF-Hindu Law. Hindu Succession Act, S.6.

In the year 1937, Hari Shankar married Savitru Vidyarthi, the mother of the respondent plaintiff i.e. Ashok Vidyathi. In the year 1942 Hari Shankar married for the second time to Rama Vidyarthi and had two daughters namely Srilekha Vidyarthi and Madhulekha Vidyarthi. Shreya Vidyarthi is the adopted daughter of Srilekha Vidyarthi (since deceased) and the beneficiary of a will left by Madhulekha Vidyarthi. The dispute in present case revolves around the question whether the suit property purchased by Rama Vidyarthi from the joint family funds or out of her personal funds.

The Trial Court dismissed the suit stating that the suit property was purchased in the name of Rama Vidyarthi; there was no mention in the sale deed that Rama Vidyarthi was representing the joint family and that she purchased the suit property on behalf of any other person. The learned Tribunal court further held that in the year 1955 when Hari Shankar Vidyarthi had died there was no joint family in existence and in fact no claim of any joint family property was raised until the suit property was purchased in the year 1960-61. The Trial Court was also of the view that if the other members of the family had any right to the insurance money such a claim should have been lodged by the way of separate suit. Aggrieved by the dismissal of the suit, the respondent-plaintiff filed an appeal before the High Court.

The High Court made the following observation that there was a joint family in existence in which the second wife Rama Vidyarthi had played a predominant role and that the suit property was purchased out of the joint family funds namely the insurance money and the advance received from Pratap Press Trust, Kanpur. In so far as the devolution of shares is concerned, the High Court took the view that following the death of Hari Shankar Vidyarthi, as the sole surviving male heir, the respondent - plaintiff became entitled to 50% of the suit property and the remaining 50% was to be divided between two wives of Hari Shankar Vidyarthi in equal proportion. This order was further appealed before the Supreme Court.

The Hon'ble Apex Court observed that the sole question involved is whether the suit property was purchased by Rama Vidyarthi out of the joint family funds or from her own income. The affidavit of Rama Vidyathi filed by Savitri Vidyarthi disclosed that she was looking after family as the manager taking care of the respondent No.1, her step-son i.e. son the first wife of Hari Shankar Vidyarthi. In the said affidavit, it is also admitted that she has received the insurance money following the death of Hari Shankar Vidyarthi and the same was used for the purchase of the suit property along with other funds which she had generated on her own. The virtual admission by the predecessor-in-interest of the appellant of the use of the insurance money is significant. Though the claim of absolute ownership of the suit property had been made by Rama Vidyarthi in the aforesaid affidavit, the said claim is belied by the true legal position with regard to the claims/ entitlement of the other legal heirs to the insurance amount. Such amounts constitute the entitlement of all the legal heirs of the deceased though the same may have been received by Rama Vidyarthi as the nominee of her husband.

Another fact that Hon'ble Apex Court observed was that the family was peacefully living together at the time of the demise of Hari Shankar Vidhyarthi, the continuance of such common residence for almost 7 years after purchase of the suit property in the year 1961, that there was no discord between the parties and there was peace and tranquillity in the whole family. The execution of sale deed dated 27-9-1961 in the name of Rama Vidyarthi in the absence of any member thereof that she was acting on behalf of the joint family has also been rightly construed with reference to the young age of the plaintiff-respondent which may have inhibited any objection to the dominant position of Rama Vidyarthi in the joint family, a fact also evident from the other materials on record, No interference was required to the conclusion of the High Court on the issue of existence of a joint family.

While there can be no doubt that a Hindu widow is not a coparcener in the HUF of her husband and therefore, cannot act as karta of the HUF after the death of her husband the two expressions i.e. karta and manager, may be understood to be not synonymous and the expression "manager" may be understood as denoting a role distinct from that of the karta. Hypothetically, in case of HUF where the male adult coparcener has died and there is no male coparcener surviving or as in the facts of the present case where the sole male heir is a Minor. In such a situation obviously the HUF does not come to an end, The mother of the male coparcener can act as the legal guardian of the minor and also look after his role as the Karta in her capacity as minor's legal guardian. Such a view has been affirmed by the Calcutta High Court in the case of *Sushila Devi Rampuria v. ITO.* The materials on record indicate that the natural mother of Ashok Vidyarthi, had played a submissive role in the affairs of the joint family and the step mother had played an active and dominant role in managing the said affairs. Therefore the same can be very well understood to be in her capacity as the guardian of the sole surviving minor male co-parcener. Such a role has to be

In light of the above the Apex Court has observed that the High Court has rightly held that suit property was joint family property and the appeal was accordingly dismissed.

Shreya Vidyarthi vs. Ashok Vidyarthi & Others AIR 2016 Supreme Court 139

4. Sale of Secured assets – Auction notice – Requirement of giving details of borrower – Details of guarantor alone given in auction notice – Auction notice not rendered invalid – Especially when liability of

guarantor is co-extensive with that of principal debtor – Security Interest (Enforcement) Rules 2002, Rules 6(2) (a), 8(6)

Sunbio Technology Limited, third respondent is a debtor of the State Bank of India, first respondent, committed default in repayment of dues in excess of ` 26 crore. The due repayment and discharge of the balance due under the credit facilities was secured by the personal guarantee of the petitioner who executed a Deed of Guarantee in his personal capacity on being approached by the third respondent for working capital limit to be accorded by the first respondent to the third respondent. It was claimed that no security interest was created by him in favour of the first respondent. The third respondent defaulted in making payment resulting loan account becoming irregular, whereafter the first respondent invoked the provisions of section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The controversy is an e-auction notice issued by the second respondent (authorised officer of the first respondent), published in the Time of India The impugned notice purportedly issued in exercise of power conferred by the Rules 6(2) abd 8(6) if the Security Interest (Enforcement) Rules 2002, mentions the name of the petitioner as one of the several guarantors. The notice also gives details of properties (movable and immovable) sought to be sold on auction.

The basic grievance of the petitioner is that the second respondent has acted in excess of jurisdiction by disclosing the name of the petitioner in the impugned notice as a guarantor and by wrongly treating plant and machinery as movable assets which are not required to be disclosed in terms of Rule 8(6) (f) of the Rules.

The Hon'ble High Court observed that there is no question of the context requiring the word 'borrower' in clause (a) of Rule 6(2) being read in a constricted manner so as to exclude a guarantor and therefore the Authorised Officer seems to be right in disclosing, *inter alia* the name of the petitioner as one of the several guarantors in the impugned notice. The contention of that word 'borrower' in Rule 6(2) (a) must mean borrower in the plain sense and not a 'guarantor' is misconceived.

Further, careful reading of clause (f) in Rules 6(2) and 8(6) of the Rules would leave none in doubt that the authorized officer has been conferred a wide discretion by the statute to make it known to an intending bidder whatever such authorized officer in his perception considers material so as to fetch the highest price for the property put up for sale.. The respondent no.3 has disclosed the name of the petitioner as guarantor without any oblique motive. Thus disclosure of the name of the petitioner as guarantor in the impugned e-auction notice does not appear to offend any statutory provision.

It was further observed by the High Court, that plant and machinery is available on the factory premises of the third respondent need not necessarily mean equipment embedded to the earth but may also include equipment that are movable and therefore by issuing a combined notice under Rules 6(2) and 8(6) of the Rules, the authorised officer did not act in excess of jurisdiction as claimed by the petitioner. The appeal was accordingly dismissed.

Jagdish Sarda vs. State Bank of India AIR 2016 Calcutta 2

5. Embezzlement of taxpayers funds by Bureaucrats of ` 385 crores – Requests the DG of Police to verify and take action against claims of misappropriation reported

in newspapers – taxpayers' may resort to refuse to pay taxes by Non-cooperation movement'

The State Government established 'Lokshahir Annabhau Sathe Vikas Mahamandal' for upliftment of "Matang" community, which falls in Scheduled Caste in the State of Maharashtra. One of the members of the Legislative Assembly, Ramesh Kadam, a political appointee was made Chairman of the Corporation in connivance with the Managing Director of Mahamandal, Shravan Bawane in cahoot with Bank officers of bank of Maharashtra withdrew crores of Rupees by showing fake expenditure, disbursement of loan of subsidy, grant, etc. and misappropriated the same unto themselves. Shravab Bawane one of the main accused is still absconding. In one of the instances, the Chairman asked one of the accused party, Prahlad Pratap, to withdraw all the amount which was deposited in the said two accounts and accordingly he withdrew the amount of ` 24,69,48,000/-. The Chairman on his personal level had also telephonically called Branch Manager of Bank of Maharashtra and informed him that, he should not object or interfere in the withdrawing of the cash amount by Prahlad Pratap.The matter of anticipatory bail came up before the Bombay High Court in case of Prahlad Pratap.

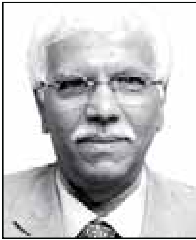
The Hon'ble Bombay High Court observed that misappropriation and embezzlement of amount to the tune of approximately ` 385 crores, which is stymieing. It shocks one and all as to the manner in which the taxpayers' money is being swindled, misappropriated and robbed by such unscrupulous holders of posts. The money was meant for upliftment of the 'Matang' community and instead of that, the political appointee, the Chairman Ramesh Kadam, in league with the Managing Director and the Bank Officers of the Bank of Maharashtra, looted the taxpayers' money. How this huge amount of ` 385 crore will come back is a 'million dollar question' . For the last over two decades, this has become the order of the day and sordid state of affairs; whereas the taxpayers' are merely looking at this grim situation.

Ethics and morals have taken a back seat in modern India's scheme of things. In my considered opinion, corruption can be beaten if all work together. To eradicate the cancer of corruption the "hydraheaded monster", it is now a high time for the citizens to come together to tell their Governments that they have had enough. That is this miasma of corruption. If the same continues, taxpayers' may resort to refuse to pay taxes by 'non-co-operation movement'. It is surprising that the Unions of Central or State Government employees, whether politically affiliated or otherwise, make demonstrations for demanding the application of VII Pay Commission, but they do not condemn, outcast or demonstrate against their counterpart bureaucracy indulging in corruption. On the contrary, they provide support.

There has been a report in the recent point of time that there are some more Corporations of State of Maharashtra who have indulged into huge misappropriation of taxpayers money in the alike fashion. Therefore, the Bombay High Court in its order expects the Director General of Police, MS, Mumbai and rather requests him to take up such cases and find out the veracity of such a claim made in newspapers, and if there is substance, to immediately proceed to take action in all such cases as the taxpayers are in deep anguish

In that view of the above, the Court held that would be wholly improper to grant anticipatory bail to the applicant.

Pralhad Pratap s/o Tanbaji Pawar vs. State of Maharashtra CA(ABA) No. 642/2015 dt 27-1-2016 (Bom. HC)



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Articles published in Taxmann, Current Tax Report (CTR), The Tax Referencer (TTR), Income Tax Report (ITR), ITR's Tribunal Tax Reports (ITR Tribunal), Sales Tax Review (S. T. Review), The Bombay Chartered Accountant Journal (BCAJ), The Chamber's Journal (CJ), The Chartered Accountant (CAJ), All India Federation of Tax Practitioners Journal (AIFTPJ), Company Case, Times of India and Economic Times for the period December 2015 To January, 2016 has been arranged and indexed topic-wise.

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Japan Airlines vs. CIT (2015) 377 ITR 372 (SC); Oil & Natural Gas Corporation Ltd. vs. CIT(2015) 377 ITR 117 (SC) ; Shamsher Singh Verma vs. State of Haryana(Criminal Appeal No. 1525 of 2015) (SC) Asst. Commissioner of Agricultural it vs. Netley 'B' Estate & Ors.(2015) 372 ITR 590 (SC)	Paras S. Savla & Viraj Mehta	CJ	IV/No.4	63
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CA Rajaram Ajgaonkar

ECONOMY AND FINANCE

BUDGET BLESSINGS

If the month of January was considered as volatile, February was no less for the global economy. The concerns of China continued to weigh on the minds of global investors, though there was a silver lining from the US. Improvement in the crude oil prices also helped to support the sentiment towards the end of the month. However, volatility was quite high during the month. In current times, uncertainty has become a norm rather than an exception and there does not seem to be any escape from the same. The effect of uncertainty and volatility is hampering not only global trade but is also affecting the currencies, stock prices and even commodity prices. The daily fluctuations in prices of currencies, stocks and commodities are so high that it is creating a risk for businesses across the world, except for those who are purely in the business of speculation. As things stand, on a near term basis, the volatility is not likely to ebb and the world will have to learn to live with these uncertainties and seek growth. Unfortunately, growth is not coming easily and it is not likely to come easily at least for some more time.

The Chinese economy and its stock markets continue to cause concerns to global investors. The Chinese stock markets have tanked substantially and in the month of January they have touched 12 month's low level, which was about 50% of the peak achieved in June 2015. The Chinese economy is visibly slowing down though China is showing a brave face to the world. The economy is estimated to grow between 6% to 7% during 2016 but many people are not sure about this number. The published data on the economy is not considered as fully authentic by many global investors. This means the cause of concern exists and the world is worried about China slowing down further like many other matured economies. In the recent past, substantial foreign capital has exited the country and the exit may continue unabated. China poses biggest risk for the world in the near future and slowing China can slowdown not only the nearby region but even the whole world. It can change the costing of numerous products as China is a cheap source of supply. Efforts are being made by the Government to cool down the situation by encouraging domestic consumption but time will only tell how successful it can be in this endeavour.

Europe has been struggling and suddenly the talk of 'Brexit' has taken momentum, which is causing further heat and uncertainty to the economy of the region. 'Brexit' stands for exit of Britain from European Union. There is a referendum planned by United Kingdom regarding the 'Brexit' and if Britain exits from the European Union, it will weaken the Union as well as the economies in it. As the verdict may come in the month of June, the next few months will remain uncertain for Europe as well as Britain. This uncertainty will hold back the possibility of revival of the Euro zone for the near future and that is not good news for Europe, which is struggling even after the 'Quantitative Easing' undertaken by European Central Bank.

The bright spot in the world economy continues to be the US. The economy continues to be on the right path, inspire of the global turmoil. The data suggests positive developments. It is likely that the global headwinds may affect the economy but still it is likely to keep on growing at a healthy rate. That is a great solace for the world, which is struggling for growth. However, how the slowing world can affect the US remains an important issue. If the US gets adversely affected, which is a possibility, concerns of growth can become serious for the world. It can also generate recession in some economies. Today's world is very integrated and decoupling with the world is not easy for any economy of developed or even developing countries.

The key issue, which is concerning the world economy, is the price movement of crude oil. Many countries are very much dependent on oil for their economic welbeing. The drastic movement in the oil prices over the last couple of years has made a lot of impact on the economic balance of many countries. Many of them, who are excessively dependent on oil, are likely to be in trouble. If oil stabilizes at around 50 to 60 USD a barrel, the world economy will stabilize. If it tanks from the current levels, there can be casualties in some economies. It may create risk of recession in some countries and even sovereign defaults may occur. Fortunately, over the last few weeks, the oil prices are showing some strength on the back on control of production by many oil producing countries. If this trend continues, the oil prices may harden further. Such a situation will support the health of the world economy and avoid problems to many countries including the possibilities of recession therein.

As compared to many other economies and especially the developing countries, India seems to be in a better position. Being a major oil importer, the country has benefitted substantially from the falling crude oil prices. This has taken care of its trade deficit to an extent. It has allowed the Rupee to remain comparatively stable. As the price reduction is not passed on to the consumer to a greater extent and mopped up as excise duty, it has helped to control the budgetary deficit of the country. The strategy has also helped the finance minister to stick to the fiscal deficit plan and keep the long term promise to strengthen the credibility of the country. The movement in oil prices will surely play a major role in the fiscal planning and growth of India for the years to come.

The budget of the fiscal year 2016-17 was received well by the businesses and the industry. Many found it to be in the right direction and a good effort in challenging times. The Finance Minister has tried to be investor friendly. He has not tinkered with the tax provisions in respect of capital gains and dividend tax, which directly affects the investors except for the tax on dividend for investors earning high dividend. He has made some efforts to reduce the sting of the over enthusiasm of Income Tax Department hurting businesses and investors. There is extra allocation for the rural and farm sector, which can help the farmers of India and spur consumption. The Finance Minster has also tried to support the banking sector considering their current problem of Non-Performing Assets. In his efforts, he is well supported by the Reserve Bank of India (RBI), which has allowed the revaluation of certain assets to be considered for capital adequacy. The budget appears to be well-meaning though it may not make everybody happy. However, as of now, it has given a boost to the sagging sentiment in India. The plan to stick to the fiscal deficit of 3.50% has instigated the foreign investors to increase their exposure on India. Now we should hope that the sentiment continues to remain strong and the targets are met with sincere efforts. The picture will be clearer over the next few months.

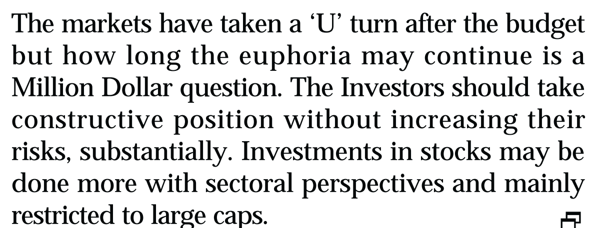
Indian stock markets tanked about 7.50% in the month of February. They were moving continuously in the negative territory due to external as well as internal influences. The Foreign Institutional Investors (FIIs) were continuously net sellers and they sold stocks worth more than 3 billion USD during the last couple of months. The quarterly results of PSU banks published in the month of February displayed large provisions for Non Performing Assets (NPA) and the issue of NPAs again came to the forefront. The banking sector tanked substantially in the month eroding about 9% value and there was gloom in the minds of the

investors. The global as well as local cues were not looking positive. Fortunately, the budget presented on the last day of February has suddenly become the game changer. Indian stock markets have rallied more than six per cent in the first three days of March and the sentiment has suddenly become positive. Though the possibilities of improvement in the economic environment have enhanced, the gains of the first three days will need efforts to sustain and add on to. The ground realities are still not changing and they may take some time to improve. Though change looks certainly coming in, the speed of change remains a critical issue and that can be a dampener over the next twelve months, unless the Finance Minister matches his maths properly, while implementation. Though the markets have reacted well to the budget, the initial euphoria may be over and there may be a consolidation with a positive bias in the month of March. Investors need not get aggressive in equity investments but can start gradually investing. Most of the seasoned players in the market do not believe that the market will appreciate more than 15% in the next year from the current levels and sustainability of the rate of growth over the next couple of years also looks uncertain. The ground realities will hopefully change gradually and therefore the investment in equity may be ramped up gradually. A lot depends upon forthcoming monsoon and investors should take their positions looking at the clearer predictions, which will start coming in as we near the month of June.

There are great expectations of reduction in interest rates in the near future as the Finance Minister has promised to stick to the budgeted deficit and the overall inflation is reducing, inspite of the fact that last couple of years the monsoon was not good in the continent. It is expected that if the rate reduction does not materialize in the month of March itself, it is very likely to happen at the time of the RBI policy in the month of April. This means there can be a further reduction in lending rates by the banks which can help the businesses and industry to reduce their cost of finance. However, it also means that the interest rates available to small investors on their deposits with banks and companies are likely to reduce. The bond prices may harden. This may affect the small investors as well as retired people. One cut in fixed deposit rates seems to be around the corner and the investors should take their positions as early as possible not to miss the bus.

Gold has suddenly appreciated more than 10% even in USD terms on the back of global uncertainties over the last couple of months. The appreciation is partly because of strengthening of Gold prices in the world markets and partly due to the weakness of the Indian currency against the US Dollar. Though the phenomenon appears to be temporary, if the Indian currency continues to depreciate against US Dollars for various reasons, gold prices may get stronger, even if globally Gold continues to lose its sheen in USD terms. This time Gold has proven even the seasoned investors wrong by sudden appreciation and its demand remains unabated in India mainly due to social reasons, which reduces its downside risks.

Indian currency was depreciating over the last couple of months, mainly due to sentiment and FIIs being net sellers in stocks, which resulted in outflow of foreign exchange of over 4 billion US Dollars in the last couple of months. However, after the budget, the Rupee has suddenly gained strength as FIIs have returned to India with a bang. The Rupee has gained about 1.70% over the first four days of March. It may strengthen for a while by a percentage or two but if crude oil prices continue to perk up and if Indian exports continue to remain sluggish as they are now, the Rupee may restart its gradual depreciation. Investors, who invest in Liberalised Remittance Scheme (LRS) may complete their current year's quota in the month of March and may also take further position as allowed by law and permitted by their finances as the Rupee may gradually weaken especially against the US Dollar, over the next year.



The markets have taken a 'U' turn after the budget but how long the euphoria may continue is a Million Dollar question. The Investors should take constructive position without increasing their risks, substantially. Investments in stocks may be done more with sectoral perspectives and mainly restricted to large caps.

Ajay Singh, *Advocate*, CA. Ashok M. Manghnani
Hon. Jt. Secretaries

The Chamber News

Important events and happenings that took place between 8th February, 2016 to 8th March, 2016 are being reported as under.

I. ADMISSION OF NEW MEMBERS

1) The following new members were admitted in the Managing Council Meeting held on 26th February, 2016.

Life Membership

1.	Mrs. Shah Rupal Dharmen	Ca	Mumbai
2.	Mr. Panchal Paresh Maneklal	CA	Mumbai
3.	Mr. Chitale Sushrut Mukund	CA	Mumbai
4.	Mr. Dani Devang Deepak	ITP	Mumbai
5.	Mr. Agrawal Natwar Hari Prasad	CA	Mumbai
6.	Ms. Dholakia Niyati Mahendra	CA	Mumbai
7.	Mr. Gandhi Premal Hemant	CA	Mumbai
8.	Mr. Vaitheeswaran K. Krishnamurthi	Advocate	Chennai
9.	Mr. Jain Pramod Rajendra Prasad	Advocate	Pune
10.	Mr. Shah Rajendra Bhogilal	CA	Gandhidham
11.	Mr. Mehta Sanjay Rasiklal	CA	Gandhidham

Ordinary Membership

1.	Mr. Sultania Sajjan Kumar Lt. Motilal	CA	Kolkata
2.	Mr. Salvi Sanjeev Vishwanath	ITP	Mumbai
3.	Mr. Agarwal Amit Sham	CA	Pune
4.	Mr. Menezes Jayant Wilfred	CA	Mumbai
5.	Mr. Tibrewal Anand Kumar Shree Kishan	CA	Kolkata
6.	Mr. Thakkar Viren Ravilal	CA	Mumbai

7.	Mrs. Agrawal Anjali Ankit	CA	New Delhi
8.	Mr. Shah Nilesh Dhirajlal	CA	Mumbai
9.	Mrs. Singh Shikha Siddharth	CA	Mumbai
10.	Mr. Agrawal Ankit Balkishan	CA	New Delhi
11.	Mr. Bagai Sukhinder Surinder	Advocate	Mumbai
12.	Mr. Purohit Manish Purnashankar	CA	Mumbai
13.	Mr. Laddha Giriraj Baluram	CA	Silvassa
14.	Mr. Khakhkhar Chetan Dilip	CA	Vapi

Student Membership

1	Mr. Nanda Jagannath A. T. V. Rabindra Prasad	BA LLB	Odisha
2	Mr. Lapsiya Hiren Dhanpati	3rd Year LLB	Mumbai
3	Ms. Sanabegum H. Saiyed	CA Appear	Vapi
4	Ms. Urvashi Mistry	CA Appear	Vapi

Associate Membership

1	Sandeep R. Maheshwari & Co.		Mumbai
2	Voxco Pigment & Chemicals Pvt. Ltd.		Mumbai

II. PAST PROGRAMMES

1. RESIDENTIAL REFRESHER COURSE AND SKILL DEVELOPMENT COMMITTEE:

39TH RESIDENTIAL REFRESHER COURSE:

39th Residential Refresher Course was held from 18th to 21st February, 2016 Lavasa. The RRC was inaugurated by Padma Bhushan Dr. S. B. Mujumdar, Founder and President, Symbiosis and Chancellor, Symbiosis International University. The Course was addressed by Mr. Hiro Rai, Advocate, CA. Jagdish Punjabi, CA Anup Shah and CA. Yogesh Thar. The Brains' Trust Session was held where trustees CA. Rajan Vora and Mr. Vipul Joshi, Advocate - replied to the queries raised by the delegates.

The RRC was well-attended and received very good response and was attended by 209 delegates including 86 outstation delegates and surpassing the previous highest record of 202 delegates.

The unique and interesting feature of the RRC which was being introduced first time during this RRC was **"Go Live with Luminaries"** where Mr. Arvind Sonde, Advocate had a live talk with Mr. Y. P. Trivedi, Sr. Advocate and Past President and Mr. S. E. Dastur, Sr. Advocate and Past President. This session was anchored talk show where both the Luminaries share their experience in person with the Anchor and delegates.

The other unique feature introduced in the RRC first time was live Moot Court session. The delegates also attended and enjoyed the team building exercise which was carried out by X-Thrill. The RRC turned out to be very successful and will be fondly remembered in time to come.

2. RESEARCH & PUBLICATION COMMITTEE

The first e-Book on Budget 2016 was published and mailed to the members. The e-book covered all the Amendments in detail and also in-depth analysis by tax professionals.

III. FUTURE PROGRAMMES

(For details of the future programmes, kindly visit www.ctconline.org or refer The CTC News of March, 2016)

1. ALLIED LAWS COMMITTEE

A) The **Half Day Seminar on Labour Laws** jointly with Bombay Chartered Accountant's Society will be held on 2nd April, 2016 at BCAS, 7, Jolly Bhavan, New Marine Lines.

B) Two Days **Education Course on "Capital Market"** will be held on 29th April, 2016 at West End Hotel and on 30th April, 2016 at Conference Room, Consultair Investment Ltd, Churchgate.

2. CORPORATE MEMBERS COMMITTEE

A Panel discussion on **"Impact of Budget Proposals on Indian Economy and Capital Markets in Current Global Scenario"** will be held on 9th March, 2016 at Walchand Hirachand Hall, IMC.

3. DIRECT TAXES COMMITTEE

A) Half Day Workshop on **Direct Tax Provisions of Finance Bill 2016** jointly with WIRC of ICAI will be held on 12th March, 2016 at M. C. Ghia Hall, Kala Ghoda, Fort.

B) Full Day Seminar on **"Appellate Proceedings, DRP and AAR"** will be held on 16th April, 2016 at West End Hotel, New Marine Lines, Mumbai-400 020.

4. INDIRECT TAXES COMMITTEE

A) The remaining session of **Workshop on MVAT Act, Service Tax & Allied Laws** jointly with AIFTP (WZ), BCAS, MCTC, STPAM and WIRC of ICAI will be held from 9th March, 2016 at STPAM Library Hill, Mazgaon.

B) The **Workshop on Finance Bill, 2016 (Indirect Taxes Provisions)** Jointly with WIRC of ICAI will be held on 12th March, 2016 at M. C. Ghia Hall, Fort.

5. INTERNATIONAL TAXATION COMMITTEE

A) The **Advanced FEMA Conference** jointly with Bombay Chartered Accountant's Society will be held on 18th March, 2016 at 4th Floor, Walchand Hirachand Hall, IMC.

B) The **Advanced Workshop on Principles of Transfer Pricing (4 Days)** will be held on 22nd, 23rd, 29th & 30th April, 2016 at West End Hotel, New Marine Lines, Mumbai.

C) **10th Residential Refresher Conference on International Taxation, 2016** will be held from 23rd to 26th June, 2016 at Rhythm Resorts, Lonavala.

6. MEMBERSHIP & PUBLIC RELATIONS COMMITTEE

The Lecture Meeting (In Hindi) on "The Challenge of Change" by Pujya Adarshjeevan Swami – BAPS Swaminarayan Mandir, Dadar will be held on 18th March, 2016 at A. V. Centre Hall, 4th Floor, Jai Hind College, Mumbai – 400 020.

7. STUDENT & IT CONNECT COMMITTEE

A) LECTURE MEETINGS

a) On **"Protect Yourself from Cyber Frauds** will be held on 17th March, 2016 at 4th Floor, Walchand Hirachand Hall, IMC, Churchgate, Mumbai- 400 020.

b) On **"Statutory Audit of Bank Branches and Practical Issues"** will be held on 21st March, 2016 at Maheshwari Bhavan, Chira Bazar, Mumbai-400 002.

c) On **"Procedural Aspects of TDS/TCS"** will be held on 21st April, 2016 at Maheshwari Bhavan, Chira Bazar, Mumbai-400 002.

B) Practical Workshop on **"Effective e-Mail Management"** will be held on 9th April, 2016 at CTC Conference Room, New Marine Lines, Mumbai- 400 020

C) **The Dastur Essay Competition - 2016** for Student of Law & Accountancy:

Topics : (1) Reshaping India through Priceless Heritage, (2) Religion & Terrorism, (3) My favourite Sports Person

Registration Deadline – 24th February, 2016 & Submission Deadline – 15th March, 2016

For Rules & Regulations of the Essay Competition kindly visit Chamber's website www.ctconline.org.

D) The **Youth Residential Refresher Course** jointly with Bombay Chartered Accountant's Society **(for CA and Tax professionals under 40 years age)"** will be held from 17th to 19th April 2016 at Dew Drops Retreat, Igatpuri, Nashik.

8. RENEWAL OF MEMBERSHIP FEES 2016-2017:

The Renewal fees for Annual Membership, Study Group, Study Circle and other Subscription for the financial year 2016-2017 falls due for payment on 1st April, 2016. The Renewal notices have been sent separately which contains entire information of members as per CTC data base. In case any change of information of members shown in form, kindly provide updated information along with the form.

Members are requested to visit www.ctconline.org for online payment of the Renewal fees.

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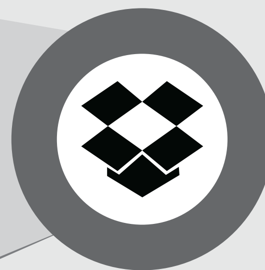

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INTERNATIONAL TAXATION COMMITTEE

FEMA Study Circle jointly with Study Circle (Direct Tax), Study Circle on International Taxation and Intensive Study Group on International Taxation held on 22nd February, 2016 at West End Hotel

Mr. A. O. Basheer, General Manager, Foreign Exchange Department, RBI addressing the members. Seen from L to R: S/Shri CA Naresh Ajwani, Chairman, International Taxation Committee, CA Avinash Lalwani, President, Mr. Adarsh Kumar, Manager, Foreign Exchange Department, RBI, Faculty, CA Ashok Sharma, Chairman, Study Circle & Study Group Committee and CA Kartik Badiani, Convenor

Mr. Adarsh Kumar, Manager, Foreign Exchange Department, RBI addressing the members. Seen from L to R : S/Shri CA Naresh Ajwani, Chairman, International Taxation Committee, CA Avinash Lalwani, President, Mr. A. O. Basheer, General Manager, Foreign Exchange Department, RBI, Faculty, CA Ashok Sharma, Chairman, Study Circle & Study Group Committee and CA Kartik Badiani, Convenor

Transfer Pricing Study Circle Meeting on the subject "Location Savings" held on 24th February, 2016 at Kilachand Hall, IMC

CA Arun Saripalli

CA Gaurav Haldia

DIRECT TAXES COMMITTEE & INDIRECT TAXES COMMITTEE

The Live screening of the Finance Minister's speech & Presentation of Budget 2016 held on 29th February, 2016 at CTC Conference Room

Section of Members

ALLIED LAWS COMMITTEE

Study Circle Meeting on the subject "Micro, Small and Medium Enterprises Development Act, 2016 (MSMED Act, 2006)" held on 25th February, 2016 at CTC Conference Room

CA Abhay Arolkar

STUDY CIRCLE & STUDY GROUP COMMITTEE

Study Group Meeting on "Recent Judgments under Direct Taxes" held on 23rd February, 2016 at Conference Room, Eros Theatre Building

CA Pradip Kapasi addressing the members

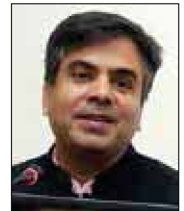
MEMBERSHIP & PUBLIC RELATIONS COMMITTEE

Health Check-Up Camp for Members, Staff & Family held on 24th February, 2016 at CTC Conference Room

DELHI CHAPTER

Seminar on e-Commerce Business Models, Regulatory aspects, Direct & Indirect Taxes held on 13th February, 2016 at New Delhi

CA Suhit Aggarwal, Vice Chairman, Delhi Chapter welcoming the faculties and delegates. Seen from L to R: S/Shri Amithraj A.N., Director with Big 4, Bengaluru, Faculty, R. P. Garg, Chairman, Delhi Chapter, Ashish Chandra, Faculty and V. P. Verma, Advisor, Delhi Chapter



Mr. Ashish Chandra

Mr. Amithraj A. N., Director with Big 4, Bengaluru

Mr. Satyajit Gupta, Principal, Advaita Legal

Mr. Sudipta Bhattacharjee, Principal, Advaita Legal

Mr. Arijit Chakravarty, Senior Principal, Advaita Legal

MEMBERSHIP & PUBLIC RELATIONS COMMITTEE

Full Day Seminar on Various Laws Assessment & Appeal under Sales Tax & Income Tax jointly with The Income Tax Bar Association & Tax Practitioners Association, Kolhapur held on 13th February, 2016 at Kolhapur.

CA Avinash Lalwani, President, CTC inaugurating the seminar by lighting the lamp. Seen from L to R : S/Shri Dhiraj Shah, Advocate, Member of Membership & PR Committee, CTC, S. D. Herlekar, President of Tax Consultants Association, CA Abhay Arolkar, Faculty, R. R. Doshi, Advocate, President of Income Tax Association, CA Hemant Parab, Chairman, Membership & PR Committee, CTC, CA Deepak K. Bapat, Faculty, K. Gopal, Advocate, Faculty and Ravindra Kulkarni

CA Avinash Lalwani, President, CTC delivering the opening speech. Seen from L to R : S/Shri Dhiraj Shah, Advocate, Member of Membership & PR Committee, CTC, R. R. Doshi, Advocate, President of Income Tax Association, Kholapur, S. D. Herlekar, President of Tax Consultants Association, Kholapur and CA Hemant Parab, Chairman, Membership & PR Committee, CTC

Dignitaries on the dais. 1st Row : Seen from L to R : S/Shri K. Gopal, Advocate, Faculty, CA Avinash Lalwani, President, CTC, R. R. Doshi, Advocate, President of Income Tax Association, S. D. Herlekar, President of Tax Consultants Association, Deepak Bapat, Advocate, Faculty and CA Abhay Arolkar, Faculty
2nd Row Standing L to R : S/Shri Dhiraj Shah, Advocate, Member of Membership & PR Committee, CTC, CA Hemant Parab, Chairman of Membership & PR Committee, CTC

FACULTIES

Mr. K. Gopal, Advocate

Mr. Deepak K. Bapat Advocate

CA Abhay Arolkar

CA Hemant Parab, Chairman, Membership & PR Committee, CTC addressing the delegates

Section of delegates.

ALLIED LAWS COMMITTEE

Study Series on International Audit held on 4th, 5th, 11th & 12th February, 2016 at IMC

Dignitaries at the Inaugural Session. Seen from L to R : S/Shri CA Avinash Lalwani, President, CA Jugal Aswani, Faculty, CA Kamal Dhanuka, Chairman, CA Natwarlal Trivedi, Member and CA Anil Sharma, Convenor

CA Avinash Lalwani, President delivering opening speech. Seen from L to R : S/Shri CA Kamal Dhanuka, Chairman, CA Jugal Aswani, Faculty, CA Avinash Lalwani and CA Anil Sharma, Convenor

CA Kamal Dhanuka, Chairman welcoming the faculties and delegates. Seen from L to R : S/Shri CA Jugal Aswani, Faculty, CA Avinash Lalwani, President, and CA Anil Sharma, Convenor

FACULTIES

CA Jugal Aswani

CA Nirav Pujara

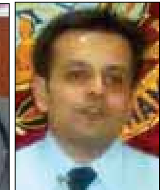
CA Chiranjavi Soni

Section of delegates

CA Divyang Desai

CA Parag Mehta

CA Rajiv Iyer



Mr. Suketu Shah

DIRECT TAXES COMMITTEE

Intensive Study Group (Direct Taxes) Meeting on the subject "Recent Judgment under Direct Taxes" held on 8th February, 2016 at CTC Conference Room.

CA Sanjay Chokshi addressing the members

Intensive Study Group (Direct Taxes) Meeting on the subject "Recent Judgment under Direct Taxes" held on 8th March, 2016 at CTC Conference Room.

Mr. Mandar Vaidya, Advocate addressing the members

STUDENT & IT CONNECT COMMITTEE

Workshop on Office Productivity: Technology Tools and Tips held on 10th February, 2016 at Conference Room, Eros Theatre Building, Churchgate

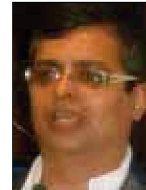
Dignitaries at the Session. Seen from L to R : S/Shri CA Mitesh Katira, Faculty, CA Aalok K. Mehta, Vice Chairman, Student & IT Connect Committee, CA Dinesh Tejwani, Faculty, CA Avinash Lalwnai, President, CA Adarsh Madrecha, Faculty and Mrs. Priya Madrecha

CA Dinesh Tejwani, Vice Chairman & Faculty addressing the delegates. Seen from L to R: S/Shri CA Maitri Chheda, CA Mitesh Katira and CA Adarsh Madrecha, Faculties & CA Avinash Lalwani, President

FACULTIES

CA Adarsh Madrecha addressing the delegates on the subject "Calendar | Backup"

CA Maitri Chheda addressing the delegates on the subject "Content Management | Password Management"



CA Mitesh Katira addressing the delegates on the subject "E-Mail Management | Collaborative Working"

CORPORATE COMMITTEE & DIRECT TAXES COMMITTEE

Full Day Seminar on Limited Liability Partnership held on 27th February, 2016 at West End Hotel.

CA Avinash Lalwani, President delivering Opening Speech. Seen from L to R : S/Shri CA Ketan Vajani, Chairman, Direct Taxes Committee, CS Makrand Joshi, Faculty and CA Neha Gada, Convenor, Corporate Members Committee

CA Ketan Vajani, Chairman, Direct Taxes Committee welcoming the faculties and delegates. Seen from L to R : S/Shri CA Avinash Lalwani, President, CS Makrand Joshi, Faculty and CA Neha Gada, Convenor, Corporate Members Committee

CA Paras Savla, Chairman, Corporate Members Committee welcoming the faculty. Seen from L to R : S/Shri Mandar Vaidya, Vice Chairman, Direct Taxes Committee, CA Umesh Gala, Faculty and CA Vitang Shah, Convenor, Corporate Members Committee

FACULTIES

CS Makrand Joshi

CA Amrish Shah

CA Umesh Gala

CA Jayesh Karia

Section of Delegates

AMITA MEMORIAL LECTURE MEETING

Amita Memorial Lecture Meeting jointly with BCAS on the subject "My Experiments in Universal Love" held on 11th February, 2016 at IMC

CA Rashmin Sanghvi addressing the members.

Section of Members.

DELHI CHAPTER

Seminar on "Finance Bill 2016" jointly organised by the Delhi Chapter of Chamber of Tax Consultants and the Northern Region Chapter of International Fiscal Association - India Branch on 3rd March 2016 at India International Centre, New Delhi

CA Avinash Lalwani, President, CTC delivering the opening speech.

Dignitaries at the session. Seen from L to R : S/Shri Anurag Jain, Faculty, V. P. Verma, Advisor, S. R. Wadhwa, Advocate & Former Chairman Settlement Commission, Faculty, R. P. Garg, Chairman and V. P. Gupta.

FACULTIES

Ms. Rani Singh Nair, Member (L&C), CBDT

Mr. V. Anandarajan, Joint Secretary (TPL)-II, CBDT

Mr. S. R. Wadhwa, Advocate & Former Chairman Settlement Commission

Mr. G. C. Srivastava, Advocate & Former DGIT (International Taxation)

Mr. Kamlesh Chandra Varshney, CIT (APA), Delhi-1

Mr. Vijay Iyer, Transfer Pricing Leader, EY

Mr. Ajay Vohra, Senior Advocate

Dr. Ravi Gupta, Advocate, Member, Justice Easwar Committee on Income Tax Simplification

Mr. Sujit Ghosh, Partner & National Head, Tax Litigation & Controversies (IDT) Advaita Legal

Mr. Anurag Jain

Mr. Arun Giri, Tax Journalist, Tax Sutra

Section of Delegates

RESIDENTIAL REFRESHER COURSE & SKILL DEVELOPMENT COMMITTEE

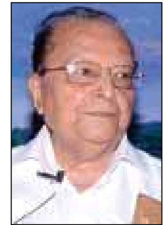
39th Residential Refresher Course held between 18th and 21st February, 2016 at Mercure

GO LIVE WITH LUMINARIES

Mr. Arvind Sonde, Anchor having talk with luminaries Mr. Y. P. Trivedi, Senior Advocate & Past President and Mr. S. E. Dastur, Senior Advocate and Past President

Mr. Arvind Sonde, Advocate

Mr. S. E. Dastur, Senior Advocate



Mr. Y. P. Trivedi, Senior Advocate

MOOT COURT SESSION

Mr. Ajay R. Singh, Hon. Jt. Secretary explaining the method of Moot Court Session

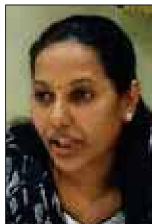
CA Shailesh Bandi as assessee representative

Mr. K. Gopal, Advocate & CA Sanjay Parikh Department Representatives

INDIRECT TAXES COMMITTEE

Study Circle Meeting on the subject "Recent Decisions Under Service Tax" held on 10th February, 2016 at IMC

Mr. R. Nambirajan, Advocate chairing the session



Ms. Aparna Hirandangi, Advocate addressing the delegates

RESIDENTIAL REFRESHER COURSE & SKILL DEVELOPMENT COMMITTEE

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BRAINS' TRUST SESSION

Dignitaries at the Brains' Trust Session. Seen from L to R : S/Shri CA Mahendra Sanghvi, Past President, Vipul Joshi & CA Rajan Vora, Brains' Trustees and CA Hinesh Doshi, Hon. Treasurer

39th RRC Team Building Exercise

Standing from (L to R): CTC - Past Presidents S/Shri K. Gopal, Advocate, CA Parimal Parikh, CA A. S. Merchant, CA Ajit Rohira, Kishor Vanjara, CA Mahendra Sanghvi, Y. P. Trivedi, Senor Advocate, S. E. Dastur, Senior Advocate, CA Avinash Lalwani, President, CA Paras K. Savla, IMM. Past President, CA Manoj C. Shah, Vipul B. Joshi, Advocate, CA Yatin Desai and CA Vipin Batavia

Seated from (L to R) : S/Shri CA Shailesh Bandi, Chairman, CA Ashok Manghnani, Hon. Jt. Secretary, CA Hinesh Doshi, Hon. Treasurer, CA Hitesh R. Shah, Vice President and Ajay Singh, Hon. Jt. Secretary

39th RRC Group Photo

RESIDENTIAL REFRESHER COURSE & SKILL DEVELOPMENT COMMITTEE

39th Residential Refresher Course held between 18th and 21st February, 2016 at Mercure

Padmabhushan Dr. S. B. Mujumdar delivering Keynote address to the delegates. Seen from L to R: S/Shri CA Avinash Lalwani, President, Kishor Vanjara, Advisor & Past President and CA Pranav Jhaveri, Convenor.

CA Jagdish Punjabi addressing the delegates. Seen from L to R: S/Shri CA Charu Ved, Vice Chairperson, CA Hitesh R. Shah, Vice President and CA Ashok Manghnani, Hon. Jt. Secretary

CA Yogesh Thar addressing the delegates. Seen from L to R : CA Bhavesh Joshi, Member CA Parimal Parikh, Past President and CA Dilip Sanghvi, Member

CA Anup Shah addressing the delegates. Seen from L to R: S/Shri CA Vijay Bhatt, Member, CA Paras K. Savla, Past President and CA Kishor Rajshikre, Member

Mr. Hiro Rai, Advocate addressing the delegates. Seen from L to R : S/Shri CA Shailesh Bandi, Chairman, CA Bhavesh Vora, Past President and CA Chetan Shah, Member

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