



# Brahmayya Bulletin

June 2015

## Editorial

The Industry is optimistic on the formation of the Companies Law Committee. The time span provided is 6 months for the committee to provide recommendations on the implementation issues of the Companies Act, 2013. The presidents of various accounting and secretarial bodies have been made members along with industry nominee's. Certain changes are further anticipated in this regard.

The CBDT has yet again proved to be "assessee friendly" by providing ample time or assessee's to apply

for condonation of delays in filing returns for claiming refunds and returns claiming carry forward of loss and set off. The clarification on Roll Back provisions under the Advance Pricing Agreements would substantially reduce litigations and the assessee's and the relevant authorities can move forward with clear cut guidelines.

In order for facilitate better compliance, the Central Board of Excise and Customs has formulated a procedure for manual scrutiny in respect of certain specified cases.

Though the assessee's envisage that litigations would increase, we are hopeful that it would curb the issues related to effective compliance.

We request the readers to also review the "Our News" section in the website for detailed analysis on specific circulars and notifications for better clarity.

**"Knowledge serves no purpose if it is not put to practice."**



## Ministry of Corporate Affairs (MCA)

### MCA Order – Dated 4th June 2015

The government has constituted a Companies Law Committee with Secretary of MCA as its Chairman and the following members:

- Ms. Reva Khetarpal, Former Judge, Delhi High Court
- Mr. Manoj Fadnis, President, Institute of Chartered Accountants of India
- Mr. Atul H Mehta, President, Institute of Companies Secretaries of India
- Dr. A.S. Durga Prasad, President, Institute of Cost Accountants of India
- Mr. Bharat Vasani, Chief Legal and Group General Counsel, Tata Sons Limited
- Mr. Deosthalee, Chairman, L&T Financial Holdings
- Joint Secretary (Policy), MCA

The Committee may invite or co-opt subject matter experts relating to Corporate Law or any other matter as well as experts from SEBI, RBI, C&AG as required. The committee may also invite any other person or body in the interest of broad – based consultation.

The terms of reference of the Committee are:

- To make recommendations on issues arising on implementation of Companies Act, 2013
- To Examine the recommendations of the Bankruptcy Law Reforms Committee, High Level Committee of CSR, Law Commission and other agencies, while making recommendations on the implementation of Companies Act, 2013.
- The Committee shall submit its recommendation within 6 months of its first meeting.

### Company (Incorporation) Second Amendment Rules, 2015

A proviso is inserted specifying that in case of pursuing any of the objects of the Company requires registration or approval from concerned sectoral regulators shall be obtained before pursuing such objects and a declaration to be submitted at the stage of Incorporation.

### General Circular No. 08/2015 – Dated 12th June 2015

The Ministry has received various representations about non-availability of revised form CRA-2 on MCA-21 required for filing of notice of appointment of the Cost Auditor for the FY 2015-16. As on the date of this circular the time limit for filing such notice in the prescribed form has lapsed. The revised form CRA – 2 has been notified on 12th June 2015 and is available in the MCA-21 system. In view of this delay due to non-availability, the additional fee prescribed is waived for all such filings till 30th June 2015.

Revised form CRA-4 has also been notified and will be available in MCA-21 portal shortly. In view of this delay due to non-availability, the additional fee prescribed is waived for all such filings till 31st August 2015.

### General Circular No. 09/2015 – Dated 18th June 2015

MCA has received various representations seeking clarification regarding processing of deposit related complaints received from investors under section 74 of the Companies Act, 2013 in respect of defaults made by Companies in repayment of deposits accepted prior to 1st April 2014.

MCA has clarified that a depositor is free to file an application under section 73(4) of the Act, with the Company Law Board (CLB), if the Company fails to make repayment of deposits accepted by it. The Company may also file an application under section 74(2) of the Act, with the CLB seeking extension of time in repaying the deposits accepted before 1st April 2014.

## Central Board of Direct Taxes (CBDT)

### Circular No. 09/2015 – Dated 9th June 2015

This circular provides the guidelines to deal with the applications for condonation of delay in filing returns claiming refund and returns claiming carry forward and set-off thereof under section 119(2) (b) of the Income Tax Act, 1961. The following authorities are vested with powers to condone the delay:

Authority	Amount involved
PrCIT/CIT	Upto INR 10 Lakhs
PrcCCIT/CCIT	INR 10 Lakhs – INR 50 Lakhs
CBDT	More than INR 50 Lakhs

Details	Time Limit
Filing Application	Not beyond 6 years from the relevant AY for which application is made.
Disposing Application	6 months from the end of month in which application was received

If the refund claim is made on account of any court order, then the period for which proceedings were pending before any court, should be excluded for determining the period of 6 years, however the assessee has to file the application within a period of 6 months from the end of the month in which the court has passed the order or end of the financial year, whichever is later.

The relevant authorities may redirect the case to the Jurisdictional AO's to make necessary enquiries and scrutinize the case in accordance with the provisions of the Act.

A belated refund claim for of additional claim after completion of assessment can be admitted subject to the following conditions:

- Income of the Assessee is not assessable in the hands of any other person

- No interest will be admissible on belated claim of refunds
- Refund has arisen out of excess TDS/TCS and/or excess advance tax payment and/or excess payment of self-assessment tax.

### Notification No. 49/2015 – Income Tax (8th Amendment) Rules, 2015 – Dated 22nd June 2015

This Rules is effective from 1st April 2015. Under the erstwhile Rule 12.1 of the Income Tax Rules, 1962 an “Individual not having income chargeable to tax, exceeding five thousand rupees” was required to file his return of income in ITR 2. But virtue of this substitution in Clause (c), the phrase “individual not having income chargeable to tax” has been replaced by “individual have agricultural income”. Therefore, and individual having agricultural income, exceeding five thousand rupees shall file his return of income in ITR 2.

By virtue of insertion of Clause (ba) the following category of assesses have to file their return of Income in ITR 2A:

- An Individual whose income is not chargeable under the heads Salaries, Family Pension, House Property, Other sources (except winnings from lottery and horse races), or

- Hindu undivided family where the total income does not include any income chargeable to income-tax under the heads “Profits or gains of business or profession” and “Capital gains”, and
- Resident, and not ordinarily resident, having asset (including financial interest) located outside India, or signing authority in any account located outside India, or has income from source outside India
- Person who has claimed any relief of tax under section 90 or 90A or deduction of tax under section 91.

Third Proviso to Clause (ca) has been amended, thereby, assessee being individual or HUF, having Income chargeable under special provisions of Section 44AD or 44AE and having agricultural income more than rupees five thousand should file return of Income in ITR 4.

#### **Notification No. 50/2015 – Income Tax (9th Amendment) Rules, 2015 – Dated 24th June 2015**

Rule 51A has been inserted in the Income Tax Rules. The term “business relationship” as specified in Section 288(2) shall be construed as any transaction entered into for commercial purpose, other than –

- Professional services rendered

by Auditor and Audit Firm under CA Act, 1949

- commercial transactions which are in the ordinary course of business of the company at arm’s length price – like sale of products or services to the auditor, as customer, in the ordinary course of business, by companies engaged in the business of telecommunications, airlines, hospitals, hotels and such other similar businesses.

#### **Notification No. 51/2015 – Dated 25th June 2015**

No Deduction of Tax shall be made on the payments received by an Investment Fund, which are established or incorporated in India:

- by way of trust, company, LLP or body corporate, which are granted the certificate of registration under category I or
- a Category II Alternative Investment Fund and
- is regulated under Securities and Exchange Board of India (Alternative Investment Fund) Regulations 2012.

#### **Circular No. 10/2015 – Dated 10th June 2015**

Section 92CC relating to Advance Pricing Agreements (APA) was introduced by the Finance Act,

2012 and subsequently notified. Roll Back Provisions relating to APA were introduced by insertion of sub-section (9A) to Section 92CC by the Finance Act, 2014. Subsequent to Notification of the Roll Back Provisions, CBDT has been receiving various requests for clarifications. In order to clarify certain issues, the CBDT has issued this circular.

Detailed note on the clarifications issued have been dealt with as a separate article as part of “Our News” in the website.

### **Central Board of Excise and Customs (CBEC)**

Circular No. 184/3/2015 – ST - Dated 3rd June 2015 The Service Tax rate has been increased to 14% with effect from 1st June 2015. By virtue of this circular, the CBEC has clarified that as provided in Rule 2C of the Service Tax (Determination of Value) Rules, 2006 the service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity, at a restaurant, eating joint or a mess having the facility of air-conditioning or central air-heating in any part of the establishment has been specified as 40 percentage of the total amount charged for such supply. Therefore, effective service tax rate would be 5.6% (14% of 40%) of the total amount charged. It is further clarified that exemption from

service tax still continues to services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, NOT having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year.

### **Circular No. 185/4/2015 – ST - Dated 30th June 2015**

In order to facilitate stronger compliance mechanism, a two part system is envisaged – a preliminary online scrutiny covering all returns and a detailed manual scrutiny for selected cases, identified on certain risk parameters by Division/Range Officers. It has been decided that detailed scrutiny of ST-3 returns, with effect from 1st August 2015 should be carried. Key Highlights of the process are as follows:

#### **Preliminary Online Scrutiny**

- Ensuring completeness of information furnished in the return
- Ensuring arithmetical correctness of tax amount
- Ensuring Timely payment and timely submission of return
- Identification of non-filers and stop-filers.

#### **Detailed Manual Scrutiny**

- Ensuring correctness of self-assessment
- Checking taxability of services and correctness of value of taxable service
- Checking effective rate of tax, after taking into account the exemptions/abatements
- Ensuring correctness availment/ utilization of Cenvat Credit

While performing these procedures, the officer must rely on assessment related documents like, agreements, contracts and invoices and detailed financial record should be called for in a routine manner.

#### **Selection of Returns**

- Assessee selected for audit or have been audited in the past three years should not be taken up for detailed scrutiny.
- To be conducted on assessee whose total tax paid for FY 2014-15 is less than INR 50 Lakhs.
- The Commissionerate has to select the equal number of cases from the following bands:

- INR 0 to INR 10 Lakhs
- INR 10 Lakhs to INR 25 Lakhs
- INR 25 Lakhs to INR 50 Lakhs

- Chief Commissioner may direct manual scrutiny for amounts exceeding INR 50 Lakhs in

**CHENNAI**

48, Masilamani Road,  
Balaji Nagar, Royapettah,  
Chennai - 600014.  
Phone: +91 - 044 - 28131 128/38/48  
Fax: +91 - 28131 158

**BENGALURU**

Khivraj Mansions, 10/2 Kasturba Road,  
Bangalore - 560001.  
Phone: +91 - 080 - 22274 551/52  
Fax: +91 - 22212437

**VISAKHAPATNAM**

1-88-19, Plot No: 135/4,  
Sector 4, MVP Colony,  
Visakhapatnam 530 017  
Phone: (0891) 2755821 & 2755848,  
Fax: (0891) 2755848

**GUNTUR**

10-3-21, 3rd Lane,  
Sambasivapet, Guntur - 522001.  
Phone: +91 - 863 - 2220347/2224924  
Fax: +91 - 2220347

**TANUKU**

22-29/5 Gubbalavari Street,  
Society Road, Tanuku - 534211.  
Phone: +91 - 8819 - 221 234/224 911

**HYDERABAD**

No 403&404, Golden  
Green Apartments,  
Erra Manzil Colony,  
Hyderabad - 500082.  
Phone: +91 - 040 - 23370 002/04  
Fax: 23379 988

**GURGAON (New Delhi)**

404, DLF City Court,  
Sikandarpur, Mehrauli\_Gurgaon Road  
(MG Road), Gurgaon,  
Haryana - 122002  
Phone : +91 - 0124 - 4235 522

**VIJAYAWADA**

No 33-25-33/3, Govinda  
Rajulu Naidu Street,  
Surya Rao Pet,  
Vijayawada - 520010.  
Phone: +91 - 866 - 2444 592/93/94

**KAKINADA**

3-16C-40/1, 8th Road, Santhi Nagar,  
Kakinada - 5330003.  
Phone: +91 - 884 - 2374 402/04  
Fax: +91 - 2374 402, 2363 656

**ADONI**

142/6, Sri Krishnadevaraya Colony,  
Adoni - 518301.  
Phone: +91 - 8512 - 253 447/222 377  
Fax: +91 - 253 447

**Brahmayya&co.**

[www.brahmayya.com](http://www.brahmayya.com)