



# **Brahmayya Bulletin**

February 2016

## Editorial

The Government intends to put the GDP back on track, through appropriate financial budgetary mechanism and efficient growth. India needs higher investment to unlock its potential. Banking system has been facing non-performing asset issues and thereby increasing stress to the economy. While the cyclical impact continues, tax rationalisation is also continuing. GST implementation having faced many hurdles is getting into reasonable shape. It would indeed, be a game changer to the economy.

CBDT has provided various clarifications relying on Court judgements,

urging the Department and Assesses not to initiate further proceedings based on settled issues. The CBEC has clarified on the Swacch Bharath Cess related issues.

The RBI to facilitate ease of doing business, in view of the Government's startup India initiative, has clarified certain issues that would eventually make it easier for the companies and its investors. Certain FEMA regulations have also been amended, details of which have also been provided in "Our News" Section of our website.

We thank the readers for the continued support and as we strive

to enhance readers understanding of each regulatory amendment. We urge our readers to send in your comments to [contact@brahmaya.com](mailto:contact@brahmaya.com) for clarification on circulars/notifications mentioned in the Brahmaya Bulletin.

Policy Directive order Instruction Update Clarification  
**Ministry of Corporate Affairs** Circular  
Rule Enactment Notification Guideline  
Framework Update Policy Instruction  
**Central Board of Direct Taxes**  
Order Notification Regulation Instruction  
Notice Circular Update Notification  
**Central Board of Excise and Customs**  
Directive Order Notification Enactment  
Pronouncement Announcement Framework Rule  
**Foreign Exchange Management Act**  
Instruction order Clarification Directive Interpretation  
**Institute of Chartered Accountants of India**  
Circular Order Clarification Directive Framework  
**Reserve Bank of India** Notification  
Announcement Framework Clarification  
Notification Order Rule  
Instruction Order  
Framework Circular  
Update

## Central Board of Direct Taxes (CBDT)

### **Circular No. 1/2016 - Dated 15th February 2016**

Section 80IA(2) provides for deduction of an amount equal to 100% of the profits and gains derived by an undertaking or enterprise from an eligible business, at his option, for any ten consecutive assessment years out of fifteen years (twenty years in some cases) beginning from the year in which the undertaking commences operations, begins development or starts providing services.

Section 80IA(5) prescribes the manner of determining the quantum of deduction and a reference has been made to the term "initial assessment year". It has been presented that Assessing officer are interpreting the term "initial assessment year" as the year in which business activity had commenced as the first year of granting the exemption ignoring clear mandate provided in subsection (2) which states at the option of assessee. The matter has been examined by Board and by virtue of sub section (2) clarified that the initial assessment year would mean the first year opted for by the assessee for claiming deduction. The Assessing Offices are, therefore, directed to allow deduction in accordance with this Clarification.

### **Circular No. 2/2016 - Dated 25th February 2016**

In exercise of the power conferred under section 119 of Income Tax Act, 1962 the board clarifies that the provision of Indian-UK DTAA would be applicable to a partnership that is a resident of either India or UK to the extent that the income derived by such partnership,

estate or trust is subject to tax in that state as the income of the resident, either in its own hand or in hands of its partner or beneficiaries.

### **Circular No. 3/2016 - Dated 26th February 2016**

CBDT has clarified that consideration received on buyback of shares between 1st April 2000 till 31st May 2013 would be taxed as Capital Gain in the hands of 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). Amendment in Finance Act, 2013 introduced Section 115AQ to provide that any amount of distributed income on Buyback of unlisted shares shall be charged to tax and the company so distributing the income shall be liable to pay additional tax at the rate of 20% of the distributed income.

### **Circular No.4/2016 - Dated 29th February 2016**

CBDT has clarified the issue of applicability of TDS u/s 194C "works contract" or 194J "a contract for professional and technical services" on payment made by Broadcasters/ telecaster to production houses towards content or programme for broadcasting/telecasting. It has been clarified that where the content is produced as per the specification of broadcaster / telecaster and copyright of the content/programme also get transferred to telecaster / Broadcaster then such contract is covered under the definition of "work" in Section 194C of the Act and therefore subject to TDS under that section. However where telecaster / broadcaster acquire only telecasting/broadcasting rights of content/ programme then there is no contract for carrying out work.

Such payment is not liable to TDS under section 194C but may be liable to TDS under other sections under Chapter XVII-C of the Act

### **Circular No. 5/2016 - Dated 29th February 2016**

CBDT has clarified, based on Judgements in the Allahabad and Delhi High Court, that no TDS is attracted on payment made by television channels, media houses, newspaper and magazine publishing companies to the advertising agencies for booking or procuring of or canvassing for advertisements since the relationship between media companies and advertising agencies is that of "principal to principal" basis.

### **Circular No. 6/2016 - Dated 29th February 2016**

The definition of "Capital Asset" under Section 2(14) of the Act, excludes assets held as Stock in Trade. Determining whether investments are treated as "Capital Assets" or held as "Stock in Trade" is subject to continuous litigations. This circular instructs AO's to consider the following factors in the determination process:

- Where assessee, irrespective of the period of holding of the listed shares and securities, opts to treat them as Stock in Trade, then income arising out of transfer would be business income
- In case of Listed Securities, if held for more than 12 months, if the assessee intends to treat the transfer as Capital gain, the AO shall not dispute the claim. However, stand once taken by the assessee should continue for subsequent assessment years
- In all other cases, nature of transaction shall continue to be decided keeping in view the circular issued.

**Instruction No.01/2016 - Dated 15th February 2016**

Section 154(8) of the Income-tax Act, 1961 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.

The CBDT has noticed 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, application of the taxpayer is deemed to have lapsed, thereby not requiring any action.

On examining the matter, the CBDT has directed that the aforesaid time-limit of six months is to be strictly followed by Assessing Officer. 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.

**Notification No. 7/2016 - Dated 19th February 2016**

Central Government hereby notifies the 'Atal Pension Yojana (APY)' as a pension scheme for the purposes of the section 80CCD.

**Central Board of Excise and Custom (CBEC) - Excise**

**Notification No.2/2016 - Dated 3rd February 2016**

This notification amends the CENVAT Credit Rules, 2004 by adding an Explanation in rule 2, in clause (l), after sub-clause (C), (C), defining the term sales promotion as "sales promotion includes services by way of sale of dutiable goods on commission basis".

This notification also amends the said Rules by adding a proviso to sub-rule(4) of Rule 3, namely - "Provided also that the CENVAT credit of any duty specified in sub-rule (1) shall not be utilised for payment of the Swachh Bharat Cess leviable under sub-section (2) of section 119 of the Finance Act, 2015 (20 of 2015)".

**Circular No.1019/7/2016 - Dated 29th February 2016**

Goods warehoused for export when cleared for home consumption are liable to interest at the prescribed rate on the amount of duty payable on such goods from the date of clearance from the factory of production or any other premises approved, till the date of payment of duty and clearance. Through this circular CBECE has provided that, w.e.f. 1st April 2016, the rate of interest for export goods cleared for home consumption would be 15% as against earlier rate of 24%.

**Central Board of Excise and Custom (CBEC) - Service Tax**

**Notification No.2/2016 - Dated 3rd February 2016**

Originally, SEZ unit or Developer was entitled to refund of the service tax paid on (i) the specified services on which ab-initio exemption is admissible but not claimed, and

(ii) the amount distributed to it in terms of clause (a). Further Central Government being satisfied that it is in the public interest make further amendment which provide that the SEZ Unit or the Developer shall be entitled to

- refund of the Swachh Bharat Cess paid on the specified services on which ab-initio exemption is admissible but not claimed; and
- the refund of amount as determined by multiplying total service tax distributed to it in terms of clause (a) by effective rate of Swachh Bharat Cess and dividing the product by rate of service tax specified in section 66B of the Finance Act, 1994.

**Notification No.3/2016 - Dated 3rd February 2016**

Originally, rebate of the whole of the duty paid on excisable inputs or the whole of the service tax and cess paid on all input services, used in providing service exported in terms of rule 6A of the said rules, to any country other than Nepal and Bhutan, was not allowed subject to the conditions, limitations and procedures specified. Through this notification CBECE amends earlier notification to allow Swachh Bharat Cess also as part of input services eligible for rebate.

**Central Board of Excise and Custom (CBEC) - Customs**

**Notification No.8/2016 - Dated 5th February 2016**

CBECE through this notification grants exemption of Customs duty to goods temporarily imported into India for display or use at specified events.

**Circular No 3/2016 - Dated 3rd February 2016**

CBECE has taken-up the task of implementing 'Indian Customs Single Window Project' to facilitate trade.

CBEC has extended the Indian Customs Single Window to other locations and other Participating Government Agencies. Further the Board has decided to implement a system of online granting of "No Objection Certificate" (NoC) under ICES for the imported goods coming under the purview of the following Agencies namely (i) Drug Controller (ii) Animal Quarantine (iii) Wild Life Crime Control Bureau. Under the Single Window project, the Lab Module will be used when a reference has to be made by a Customs Officer online to another Government Agency for NOC/ Clearance at the stage of examination, then he may make a reference using the lab module.

### **Securities and Exchange Board of India (SEBI)**

#### **SEBI/HO/IMD/DF2/CIR/P/2016/35 - Dated 15th February 2016**

SEBI (Mutual Funds) Regulations, 1996 has been amended with respect to the investments permissible to mutual funds. It has specified that a mutual fund scheme shall not invest more than 10% of its NAV in debt instruments comprising money market instruments and non-money market instruments issued by a single issuer which are rated not below investment grade by a credit rating agency. Such limit may be extended to 12% of the NAV of the Scheme with prior approval of Board of Trustees and Board of Directors of AMC subject to certain provisions.

#### **Circular CIR/MRD/DP/ 36 /2016 - Dated 15th February 2015**

SEBI has issued to streamline the process of Offer for Sale with an objective to encourage greater participation of all investors including retail investors.

### **Reserve Bank of India (RBI)**

#### **DNBR (PD)**

#### **CC.No.075/03.10.001/2015-16 - Dated 18th February, 2016**

It has been decided to revise the threshold for reporting of frauds and submission of quarterly progress reports on frauds to Central Fraud Monitoring Cell, Reserve Bank of India, Department of Banking Supervision, from ₹ 25 lakh as on date to ₹ 1 crore with immediate effect.

#### **DBR.BP.BC.No.76/21.07.001/2015-16 - Dated 11th February, 2016**

Scheduled commercial banks (excluding RRBs) shall follow the Indian Accounting Standards subject to RBI direction in the following manner:

- Banks to comply with IND AS from April 1, 2018 with comparatives for the periods ending March 31, 2018.
- Banks shall not be permitted to adopt IND AS earlier.

#### **A.P. (DIR Series) Circular No. 51 - Dated 11th February, 2016**

The RBI to facilitate ease of doing business, in view of the Government's startup India initiative, has clarified the following relating to acceptance of payment on behalf of overseas subsidiaries:

- a) 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
- b) The overseas subsidiary also can pool its receivables in the above account

c) The balance in the said account should be repatriated to India within a period as applicable to realization of export proceeds

d) To facilitate the above arrangement, an appropriate contractual arrangement between the start-up, its overseas subsidiary and the customers concerned should be in place.

e) The Start-up is also permitted to realise such receivables from overseas subsidiaries through Online Payment Gateway service provider for value not exceeding USD 10,000 of upto such limit as may be permitted by RBI.

### **Foreign Exchange Management Act (FEMA)**

#### **A.P. (DIR Series) Circular No. 43/2015-16 [(1)/7(R)] - Dated 4<sup>th</sup> February 2016**

RBI has made amendments to the existing regulations relating the Acquisition and Transfer of Immovable Property outside India and notified the Foreign Exchange Management (Acquisition and Transfer of Immovable Property outside India) Regulations, 2015. The old regulations have been repealed and replaced by the new Regulations.

#### **A.P. (DIR Series) Circular No.44/2015-16 [(1)/10(R)] - Dated 4<sup>th</sup> February 2016**

RBI had notified the Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2015 and old regulations have been repealed and replaced by the new regulations.

Insights on amendments in FEMA has been dealt with as a separate article as part of "Our News" section in our Website.

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