



Brahmayya Bulletin

October 2016

Editorial

October begins with celebrations of the birthday of the Father of the Nation. Long before the smart CRM tools found their way into our daily lives, Mahatma Gandhi had emphasized on Customer Satisfaction. He said "A customer is the most important visitor on our premises. He is not dependent on us. We are dependent on him. He is not an interruption of our work. He is the purpose of it. He is not an outsider of our business. He is part of it. We are not doing him a favour by serving him. He is doing us a favour by giving us the opportunity to do so.

The most significant professional developments that has taken place over the last month is the Implementation of the GST regime,

the biggest tax reform since Independence. We welcome this development and hope that the GST is rolled out from April 1 next year, as decided. It is a pleasure to note that as required, the Government has already constituted the GST Council immediately after the Presidential assent, which will be a key body to decide on the functional modalities of GST, including tax rates, cess and surcharges, and the first meeting of this Council took place in New Delhi on 22nd -23rd September 2016, with the Government running ahead of the schedule in the matter regarding GST implementation. The states and the Centre are working overtime and talking to stakeholders to draft the central GST,

state GST and integrated GST laws, which are likely to be passed in the winter session of parliament.

Our readers are requested to refer the "Our News" section of the website for further details on regulatory updates

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 Order
Update Circular

Ministry of Corporate Affairs (MCA)

Circular No. 12/2016 - Dated 27th October 2016

MCA has extended the due date of filing of E-forms AOC-4, AOC-4 (XBRL), AOC-4 (CFS) and MGT-7 till 29th November 2016. No additional fees would be payable for such extended filing.

S.O. 3118(E) – Dated 3rd October 2016

Central Government hereby constitutes an Advisory Committee to be called the National Advisory Committee on Accounting Standards, to advise the Central Government on the formulation and laying down of accounting policies and accounting standards for adoption by companies or class of companies.

Central Board of Direct Taxes (CBDT)

Notification No. 89/2016 - Dated 4th October 2016

Section 35ABA is inserted in the Income-tax Act, 1961 vide the Finance Act, 2016 to provide for tax treatment of spectrum fee. Section 35ABA provides that any capital expenditure incurred and actually paid by an assessee on the acquisition of any right to use spectrum for telecommunication services by paying spectrum fee will be allowed as a deduction in equal instalments over the period for which the right to use spectrum remains in force. Section 35ABA provides for the meaning of the term "payment has actually been made" as the actual payment of expenditure irrespective of the previous year in which the liability for the expenditure was incurred according to the method of accounting regularly employed by the assessee or payable in such manner as may be prescribed.

Accordingly, the CBDT through this Notification has inserted a new Rule 6A in the Income-tax Rules, 1962 which provides for the meaning of the term 'payment has actually been made'.

Notification No 90/2016 - Dated 5th October 2016

Section 270AA(1) of the Income-tax Act, 1961 provides that an assessee may make an application to the Assessing Officer to grant immunity from imposition of penalty under section 270A and from initiation of proceedings under section 276C or section 276CC, subject to fulfilment of certain conditions. Further Section 270AA(2) provides that an application shall be made within one month from the end of the month in which the order has been received and shall be made in such form and verified in such manner as may be prescribed. Accordingly, the CBDT vide the said notification inserted a new Rule 129 in the Income-tax Rules, 1962 which shall come into force on 1.04.2017. The new Rule 129 prescribes that an application to the Assessing Officer to grant immunity from imposition of penalty under section 270A and from initiation of proceedings under section 276C or section 276CC shall be made in Form No. 68.

Notification No. 94/2016 – Dated 17th October 2016

Chapter XII-DA was inserted by the Finance Act, 2013 containing Section 115QA to 115QC. Section 115QA provides for the levy of additional income tax @20% of the distributed income on account of buy back of unlisted shares by a company. Distributed income means the consideration paid by the company on buy-back of shares as reduced by the amount which was received by the company for issue of such shares, determined in the manner as may be prescribed.

Thus, for the purpose of computing distributed income, the amount received by the company for issue of shares being bought back shall be determined in the prescribed manner. The Rules to be framed would provide for manner of determination of the amount in various circumstances including shares being issued under tax neutral re-organizations and in different tranches. The income arising to the shareholders in respect of such buy back by the company would be exempt where the company is liable to pay additional income-tax on the buy-back of shares.

Accordingly, vide this Notification, new Rule 40BB has been inserted which deals with the manner of determination of the amount received by the company in respect of issue of shares.

For further details, refer "Our News" Section of the website

Circular No.35/2016 - Dated 13th October 2016

Section 194-I of the Income-tax Act, 1961 requires that TDS be deducted at the prescribed rates from payment of any income by way of rent. For the purposes of this section, "rent" has been defined as any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any land or building or machinery or plant or equipment or furniture or fittings. The issue of whether or not TDS under section 194-I of the Act is applicable on 'lump sum lease premium' or 'one-time upfront lease charges' paid by an assessee for acquiring long-term leasehold rights for land or any other property has been examined by CBDT in view of representations received in this regard.

CBDT noted that in various favorable judicial precedents, like Foxconn India Developer Limited (Tax Case Appeal No. 801/2013) it has been held that such payments which are not adjustable against periodic rent payable are not in the nature of rent for the use of land or any property and are not subject to withholding. Accordingly, CBDT has issued the Circular clarifying non-applicability of withholding on lump sum premium or one-time lease charges paid for acquisition of long-term leasehold rights. Therefore, such payments are not liable for TDS under section 194-I of the Act.

Circular No. 36/2016 - Dated 25th October 2016

CBDT has clarified that compensation received in respect of award or agreement which has been exempted from levy of income-tax vide Section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 shall also not be taxable under the provisions of Income-tax Act, 1961 even if there is no specific provision of exemption for such compensation in the Income-tax Act, 1961.

Order under section 119 - Dated 25th October 2016

It has come to the notice of the CBDT that some returns of income having 'claim of refund' pertaining to AY 2014-2015, 2013-2014 and 2012-2013 were not processed within the time frame prescribed under Section 143(1). Consequently, intimation of 'amount of refund due' which is issued to the taxpayer after processing the income tax return could not be sent. This has led to a situation where the concerned taxpayer is unable to get his legitimate refund in accordance with provisions of the Act, although the delay is not attributable to him.

him. On consideration of the matter by the CBDT, in instances where a valid ROI having 'claim of refund' for AY 2014-2015, 2013-2014 and 2012-2013 was filed either under Section 139 or 142(1) of the Act and in which the time for sending intimation under Section 143(1) has lapsed, the CBDT has relaxed the time-frame prescribed in second proviso to Section 143(1) and directed that such ROI shall now be processed by 31st March 2017. Further, intimation of processing and consequential refund, if any, shall be issued expeditiously as per the prevailing norms and existing provisions of the Act. However, the above relaxation shall not be applicable to those cases where the said ROI was not processed in view of provisions of Section 143(1D) of the Act. Further, this relaxation shall not be applicable to those cases where either demand is shown as payable in the ROI or is likely to so arise after processing the return-of income.

Press Release - Dated 1st October 2016

Under the Income Declaration Scheme, 2016 64,275 declarations were filed up to the midnight of 30th September, 2016 with an aggregate of Rs 65,250 crore worth of undeclared incomes in the form of cash and other assets being declared. With the final stock taking of declarations being filed in physical printed forms all over the country till late night on the last day, this number is likely to be further revised upwards

Press Release - Dated 24th October 2016

The CBDT constantly endeavors to provide better taxpayer services and reduce taxpayer grievances. New schemes and e-initiatives to redress and reduce complaints of mismatches in tax deducted at source are key to this effort.

In this direction, the Hon'ble Finance Minister, Shri Arun Jaitley, launched a new step as an effort by the Income Tax Department to directly communicate deposit of tax deducted, through SMS alerts to salaried taxpayers, at the end of every quarter. In case of a mismatch, they can contact their deductor for necessary correction. Simultaneously, SMS alerts will also be sent to deductors who have either failed to deposit taxes deducted or to e-file their TDS returns by the due date. This initiative will initially benefit approximately 2.5 crore salary cases. The CBDT will soon extend this facility to another 4.4 crore non-salaried taxpayers. The frequency of SMS alerts will be increased, once the process for filing TDS returns is streamlined to receive such information on a real-time basis. All taxpayers who wish to receive such SMS alerts are advised to update their mobile numbers in their e-filing account.

Central Board of Excise and Custom (CBEC) – Customs

Notification No. 131/2016-CUSTOMS (N.T.), & Circular No. 50/2016-Customs – Dated 31st October, 2016

Central Government has revised the All Industry Rates (AIRs) of Drawback with effect from 15th November 2016. These AIRs consider relevant broad average parameters like:

- prevailing prices of inputs,
- input output norms,
- share of imports in input consumption,
- the rates of central excise and customs duties,
- incidence of service tax paid on taxable services which are used as input services in the manufacturing or processing of export goods,
- incidence of duty on HSD/furnace oil,

- Value of export goods, etc. Further major changes have been made including reduction in residuary rate (customs) provided to items across various chapters from 1.9% to 1.5% and from 1.4% to 1.1% while certain products such as rubber parts (for automobile or other machinery) and children's picture / drawing books, that earlier had customs AIRs have been provided composite rates.

With trade facilitation in view, tenure of the Drawback Committee constituted by the Central Government has been extended to expeditiously consider issues arising from the changes made. Accordingly, exporters of products at revised residuary rates of 1.1% and 1.5% have been requested to immediately come forward with data, if any, for higher than residuary rates

Notification No. 132/2016 - Customs (N.T), Dated: 31st October, 2016

Central Government has amended Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 w.e.f. 15th November 2016 by deleting sub-rule (1) of Rule 8 which did not allow AIR or Brand Rate drawback to exports (other than postal exports or exports under advance authorisation) if the amount of drawback is less than 1% of F.O.B. value of export, except where the amount of drawback per shipment exceeded Rs. 500.

Foreign Exchange Management Act (FEMA)

A.P. (DIR Series) Circular No. 05 - Dated 6th October, 2016

In order to enhance ease of doing business and facilitate efficient data processing for payment of import transactions and effective monitoring thereof,

Import Data Processing and Monitoring System (IDPMS) has been developed in consultation with the Customs authorities and other stakeholders. The details of IDPMS were advised to the AD Category-I banks vide above mentioned A.P.(DIR Series) Circular No.65 dated April 28, 2016 and banks were requested to be ready with the required IT changes in their system to generate/submit the data under IDPMS as per specified message format and technical specification. Banks are advised that IDPMS will go live with effect from 10th October, 2016 and are directed to use IDPMS for reporting and monitoring of the import transactions.

A.P. (DIR Series) Circular No. 7 - Dated 20th October, 2016

Any Foreign Venture Capital Investor (FVCI) which has obtained registration under the Securities and Exchange Board of India (FVCI) Regulations, 2000, will not require any approval from Reserve Bank of India and can invest in:

- Equity or equity linked instrument or debt instrument issued by an Indian company whose shares are not listed on a recognized stock exchange at the time of issue of the said securities/instruments and engaged in any of the eligible sectors (Biotechnology, IT related hardware and software development, nanotechnology, etc.
- Equity or equity linked instrument of debt instrument issued by an Indian 'startup' irrespective of the sector in which the startup is engaged.
- Units of VCF or of Cat I AIF or units of scheme or of a fund set up by a VCF or by Cat I AIF.

A.P. (DIR Series) Circular No. 9 - Dated 20th October, 2016

It has been decided that permitted trade transaction under Rupee Drawing Arrangement shall not exceed Rs. 15 Lakhs per transaction.

A.P. (DIR Series) Circular No. 10 - Dated 20th October, 2016

To simplify procedure relating to External Commercial Borrowings (ECB), further powers have been delegated to AD Banks to approve requests of borrowers for extension of matured but unpaid ECB subject to following conditions -

- No additional cost is incurred.
- Lenders consent is available.
- Reporting requirements are fulfilled.

Further powers have also been delegated to AD for approving cases of mature but unpaid ECB into equity subject to same conditions as set out above. In case ECB borrower has availed credit facility from Indian Banking System including overseas branches/subsidiaries, any extension of tenure/ conversion into equity shall be subject to applicable prudential guidelines of Department of Banking Regulation of RBI.

Reserve Bank of India (RBI)

FIDD. CO. Plan CO. BC. No.17/04.09.001/2016-17 - Dated 6th October 2016

RBI has notified the said circular dealing with reporting system for priority sector advances. Revised formats for quarterly and annual reporting by Banks have been prescribed.

DBR.BP.BC.No.20/21.06.001/2016-17 - Dated 20th October 2016

RBI had observed that there was a lack of uniformity among banks in the application of risk weights on their exposures to Housing Finance Companies (HFCs). In this regard RBI has advised that exposures to all HFCs would be risk weighted as per the ratings assigned by the rating agencies registered with the SEBI and accredited by the Reserve Bank of India, in a manner similar to that of corporates, AFCs, NBFC-IFCs and NBFC-IDFs as per extant Basel norms.

Securities Exchange Board of India (SEBI)

CIR/CFD/DIL/115/2016 - Dated 24th October 2016

In view of listing of insurance companies, SEBI has prescribed that insurance companies (life and non-life) shall submit the disclosures of quarterly financial results and Reporting of Segment wise Revenue, Results and Capital Employed along with the quarterly results for quarters ending 30th September, 2016 and 31st December, 2016 in the format as specified by IRDAI.

SEBI/HO/CFD/CMD/CIR/P/2016/16 - Dated 26th October 2016

SEBI, vide Circular No. CIR/CFD/CMD/12/2015 dated November 30, 2015, had prescribed the uniform fine structure for non-compliance with certain provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("Listing Regulations") and Standard Operating Procedure for suspension and revocation of trading of specified securities. It has been observed that some of the non-compliant listed entities have not paid the fines levied by the recognized stock exchange

In order to ensure effective enforcement, it has been decided in consultation with recognized stock exchanges to freeze the holdings of their promoters and promoter group entities in a specified manner.

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