



# **Brahmayya Bulletin**

January 2017

## Editorial

Wishing our readers a very happy and prosperous new year! As the New Year starts with great expectations, the Governments focus continues on digitization and forming a cashless economy. All the departments continue to work in unison to achieve this objective. In order to reap the benefits of demonetisation and the steps taken, amendments have been made by CBDT to provide suitable information regarding cash deposits to the Income Tax Departments. A very important amendment to the definition of term "company resident in India" would further enhance monitoring of taxation in respect of "Place of Effective Management" which decides the accrual of income taxes to India. Details of which have been elaborately dealt with in the "Our News" Section of the website also.

SEBI has provided Guidance on Board Evaluation under the Companies Act, 2013 and SEBI's LODR. This enhances Corporate Governance.

The Impact of demonitisation has indeed stabilized, with RBI providing relaxation on the withdrawal limits. This is a big relief to the common man, and those who are not technologically advanced. This also signals the ease of the demonitisation proceedings and no further pressure is expected from RBI or the Government.

February would indeed be a crucial month as the citizens would expect certain relief due to the hardships faced during the course of demonitisation.

We request the readers to continue to watch the "Newsroom" section of the website more closely for updates on the Budget, 2017 as well.

Thank You!

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  
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Update

## Ministry of Corporate Affairs (MCA)

### Notification No. G.S.R 08 & 9(E) – Dated 4th January, 2017

MCA allows certain modifications or exemptions for private firms licensed to set up businesses in International Financial Services Centres (IFSCs) from clauses in Companies Act, 2013. An IFSC caters to customers outside the jurisdiction of the domestic economy and are set up in special economic zones, and deal with flows of finance, financial products and services across borders. IFSC companies can make private placement offers and will not be restricted by earlier offers which haven't been completed or withdrawn. An extract of the annual return of the company will not have to be included in the board's report. IFSC companies will not have to comply with the Secretarial Standards prescribed by the Institute of Company Secretaries of India. IFSC companies only need an internal audit if their articles of association provide for the same. IFSC firms can make investments through more than two investment companies. Apart from the exemptions that have been granted in the Companies Act, 2013 the government had earlier announced various tax concessions. Transaction taxes and stamp duty won't be levied in IFSCs and firms operating in them will enjoy a tax holiday.

### Notification No G.S.R.(E) - Dated 25th January, 2017

MCA vide this notification has amended the Companies (Incorporation) Rules, 2014 and shall come into force on the 30th day of January, 2017.

Amended Rule 18 specifies, that in addition to issue of Certificate of Incorporation by the Registrar in Form No.INC-11, the Certificate of Incorporation shall also mention permanent account number of the company where it is issued by the Income Tax Department. Revised version of Form No. INC-11 and Form No. INC-32 have been introduced through notification.

## Central Board of Direct Taxes (CBDT)

### Press Information Bureau – Dated 16th December, 2016

The Income Tax Rule 114B provides the list of the transactions which requires quoting of Permanent Account Number (PAN). Accordingly, CBDT has now provided timeline, upto February 2017 for the persons who have account with any banking company or a co-operative bank which are registered under Banking Regulation Act, 1949, to provide the PAN or Form 60, to the manager or officer of a banking company or co-operative bank. The aforesaid time line for shall not be applicable if the person has basic saving bank deposit account or the time deposit below the limits of Rs. 50,000 or Rs. 5,00,000 in aggregate.

The Central Board of Direct Taxes, has made it mandatory to link all the transactions to the PAN or Form 60 by the concerned authorities and person as specified under Rule 114C (1) and 114C(2) for the transactions as covered under Rule 114B of the Income Tax Rules and also to mention the same while providing any information to the income-tax authority or any other authority or agency under the provision of the Income Tax Act or any rules.

Section 285BA requires certain assesseees to furnish a statement of financial transaction, electronically in Form No. 61A as prescribed in Rule 114E. The Income Tax Department by way of an insertion to sub-rule(2) of 114E now requires banks to report on Cash Deposits to specified accounts made during the period 1st April, 2016 to 9th November, 2016, and amended Form No. 61A requiring to report the aggregate amount deposited to specified accounts from 9th November, 2016 to 30th December, 2016.

### Notification No. 01/2017 – Dated 17th January, 2017

In order to facilitate the assesses to furnish the statement of financial transaction under Section 285BA, electronically in Form No. 61A, CBDT has provided suitable guidelines along with Schema and Validation for preparation of the said form electronically. The statement of financial transactions shall be furnished on or before the 31st May, immediately following the financial year in which the transaction is registered or recorded. The statement of financial transaction in respect of Cash deposits during the period 1st April, 2016 to 8th November, 2016 and 9th November, 2016 to 30th December, 2016 shall be furnished on or before the 31st of January, 2017.

### Notification No. 03/2017 - Dated 10th January, 2017

The Government of India has entered into the agreement and protocol for avoidance of Double Taxation and prevention of fiscal evasion of taxes with the Government of Republic of Cyprus on 18th November 2016. The said agreement will come in force from the 1st April 2017.

### **Circular No. 1 - Dated 2nd January, 2017**

This circular contains the rates of deduction of income-tax from the payment of income chargeable under the head "Salaries" during the financial year 2016-17 and explains certain related provisions of the Act and Income-tax Rules, 1962. CBDT has provided detailed guidelines of all related provisions along with necessary illustrations. CBDT had also issued a Corrigendum on 24th January 2017 correcting certain aspects issued in the Circular No.1/2017.

### **Circular No. 2 - Dated 18th January, 2017**

Pradhan Mantri Garib Kalyan Yojana, 2016 provides an opportunity to persons having undisclosed income in the form of cash or deposit in an account maintained with a specified entity to declare such income and pay tax, surcharge and penalty totaling to 49.9 % of such declared income and make a mandatory deposit of not less than 25% of such income in the Pradhan Mantri Garib Kalyan Deposit Scheme, 2016. The Scheme had commenced on 17th December, 2016 and shall remain open for declarations/deposit upto 31st March 2017. Through this circular, CBDT has clarified through FAQ's to queries raised by stakeholders.

### **Circular No. 6 - Dated 24th January, 2017**

As per the Section 6 (3) of the Income Tax Act, any company is resident in India, if the following conditions are satisfied:

- a. It is Indian Company, or
- b. During the year, the control management of Company's affair is situated wholly in India.

The Section has been seen as the opportunities for Tax Evasion by many companies, by shifting the management and controls outside India. To avoid the loop-holes of the Act, the Finance Act, 2015 has amended the Section 6 (3) specifying that a Company would be resident in India if:

- a. It is an Indian Company, or
- b. Its "place of effective management" in that year is in India.

The Finance Act 2016, through this amendment has made the provision effective from 1st April 2017 and it will be applicable from Assessment Year 2017-18. The Central Board of Direct Taxes has provided the Guiding Principles for Determination of "Place of Effective Management" (POEM), which has been dealt with as a separate article as part of "Our New" section in our website.

### **CENTRAL EXCISE**

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

### **Circular No. 1/2017- Dated 4th January, 2017**

Reference is invited to Board's Circulars No. 03/2016 dated 03.02.2016 and No. 09/2015 dated 31.03.2015 regarding the Indian Customs Single Window Interface for Facilitation of Trade (SWIFT). The project envisages that the importers and exporters can electronically lodge their Customs clearance documents at a single point only with the Customs. The required permission can be obtained online from other regulatory agencies without the importer/exporter having to separately approach these agencies.

The Single Window provides the importers/exporters a single point interface for Customs clearance of import and export goods thereby reducing interface with Governmental agencies, dwell time and cost of doing business.

With the successful implementation of SWIFT for import, it is proposed to implement online-release from Partner Government Agencies (PGAs) for exports from 5th January, 2017 onwards as a pilot at Chennai, Delhi and Mumbai Air cargo complexes for CITES/wildlife items. Under the pilot, Shipping Bills filed online on ICEGATE or through the Service Centre will be referred to the concerned agency, namely WCCB, online for a "No Objection Certificate" (NOC), if any required. The selection of items to be referred to any agency will be based on criteria specified by the agencies. As in the case of imports, the list of Customs Tariff Heads (CTHs) for which goods require NOC from the Wildlife Crime Control Bureau, shall be published on ICEGATE.

For granting NoC for goods entered for export, the offices of the Wildlife Crime Control Bureau are connected to the ICES. Once a Shipping Bill is filed, the system will determine whether the consignment contains items requiring NOC from the agency. Based on the list of Shipping Bills marked to the WCCB, the Agency's officer will retrieve the Shipping Bill online, and record the decision online on ICES.

Once NOC (Release/Out of Scope/ or Provisional NOC) is obtained from the concerned agency and assessment by Customs, if any, is completed, the exporter may register goods or present them for stuffing into containers.

In cases where a sample needs to be drawn, the concerned agency will arrange with the exporter to collect them prior to the issuance of NOC. The rest of the procedure for registration of goods, examination and 'Let Export Order' will remain as at present. Since, the agency's officer records the NOC online, Customs shall not insist on the physical copy of the NOC.

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

#### **Notification No. 1/2017 – Dated 12th January, 2017**

Earlier Notification No.25/2012, dated the 20th June, 2012 had exempted certain taxable service (Mega Exemption Notification) in the public interest, under which, Insurance Company in a Rural Area was exempted. This notification has removed the exemption for Insurance Company in a Rural Area, thereby rendering it a taxable service.

#### **Notification No. 2/2017 – Dated 12th January, 2017**

A new proviso is inserted in Rule 2(1)(aa) of Service Tax Rules, 1994 stating that aggregator shall not include such person who enables a potential customer to connect with persons providing services by way of renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes subject to following conditions, namely

- the person providing services by way of renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes has a service tax registration under provision of these rules; and

- whole of the consideration for services provided by such service provider is received directly by such service provider and no amount, which forms part of the consideration of services of such service provider, is received by the aggregator directly from either recipient of the service or his representative

Another new item is inserted in clause (d), of sub-clause (i) that, when reverse charge mechanism is applicable, the person liable to pay service tax means in relation to services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India, the person in India who complies with sections 29, 30 or 38 read with section 148 of the Customs Act, 1962 with respect to such goods.

#### **Notification No. 3/2017 – Dated 12th January, 2017**

Earlier notification No. 30/2012, dated 20th June, 2012 notified certain taxable services and the extent of service tax payable thereon by the person liable to pay service tax. In the said notification, a new taxable service has been inserted in regard to Transportation of goods by vessel i.e., service provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India. The extent of service tax payable thereon by the person who provides the service is "NIL" and the person who receives the service specified above is 100%.

#### **Notification No. 4/2017 – Dated 12th January, 2017**

The Abatement Notification No.26/2012, dated the 20th June, 2012, with abatement under 3 categories of 25%, 10% and 40% to tour operators based on certain conditions. Through this notification, clarity is brought about by providing 60% abatement to all tour operators satisfying the following conditions:

- i. 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.
- ii. The bill issued for this purpose indicates that it is inclusive of charges of accommodation and transportation required for such a tour and the amount charged in the bill is the gross amount charged for such a tour including the charges of accommodation and transportation required for such a tour.

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

#### **IMD/HO/FPIC/CIR/P/2017/003 – Dated 4th January, 2017**

SEBI has issued Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2016, which provides that no employee including key managerial personnel or director or promoter of a listed entity shall enter into any agreement himself or on behalf of any other person, with any shareholder or any other third party with regard to compensation or profit sharing in connection with dealings in the securities of such listed entity,



unless prior approval has been obtained from the Board of Directors as well as public shareholders by way of an ordinary resolution. In case any such agreement, whether subsisting or expired, entered during the preceding three years from the date of this notification, it shall be disclosed to the stock exchanges for public dissemination. Further in case of any such subsisting agreement as on the date of this notification, it shall be placed for approval before the Board of Directors in the forthcoming Board meeting and before the public shareholders in the forthcoming general meeting.

**SEBI/HO/CFD/CMD/CIR/P/2017/04 – 5th January, 2017**

The Companies Act, 2013 and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“SEBI LODR”) contain broad provisions on Board Evaluation i.e. evaluation of the performance of:

- the Board as a whole,
- individual directors (including independent directors and Chairperson) and
- various Committees of the Board.

Through this circular SEBI has issued Guidance Note on Board Evaluation. Covering all major aspects including the following:

- Subject of Evaluation i.e. who is to be evaluated;
- Process of Evaluation including laying down of objectives and criteria to be adopted for evaluation of different persons;
- Feedback to the persons being evaluated;

- Disclosure to stakeholders on various aspects;
- Frequency of Board Evaluation;
- Responsibility of Board Evaluation and
- Review of the entire evaluation process periodically.

**Foreign Exchange Management Act (FEMA)**

**FEMA.382/2016RB - Dated 2nd January, 2017**

Foreign Exchange Management Regulations, 2004 dealing with Transfer or Issue of any Foreign Security (Notification No. FEMA.120/RB 2004 dated July 7, 2004) has been amended to specify that an Indian Party shall make no direct investment in an overseas entity [set up or acquired abroad directly as JV/WOS or indirectly as Step Down Subsidiary] located in the countries identified by the Financial Action Task Force (FATF) as “non-cooperate countries and territories” as per list available on FATF website ([www.fatfgafi.org](http://www.fatfgafi.org)) or as notified by the Reserve Bank of India from time to time.

**FEMA.377/2016RB - Dated 10th January, 2017**

Foreign Exchange Management Regulations, 2000 dealing with Transfer or Issue of Security by a Person Resident outside India (Notification No. FEMA. 20/2000RB dated 3rd May 2000) has been amended to include the definition of ‘convertible note’ which means an instrument issued by a startup company evidencing receipt of money initially as debt, which is repayable at the option of the holder, or which is convertible into such number of equity shares of such startup company,

within a period not exceeding five years from the date of issue of the convertible note, upon occurrence of specified events as per the other terms and conditions agreed to and indicated in the instrument.

New Regulation 6D has also been inserted to facilitate issue of convertible notes by startup companies. Accordingly,

a. A person resident outside India (other than an individual who is citizen of Pakistan or Bangladesh or an entity which is registered / incorporated in Pakistan or Bangladesh), may purchase convertible notes issued by an Indian startup company for an amount of Rs.25 Lakhs or more in a single tranche.

b. A startup Company engaged in a sector where foreign investment requires Government approval may issue convertible notes to a non resident only with approval of the Government in accordance with the Schedule 1 of the Principal Regulations.

c. A startup Company issuing convertible notes to a person resident outside India shall receive the amount of consideration by inward remittance through banking channels or by debit to the NRE / FCNR (B) / Escrow account maintained by the person concerned in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016, as amended from time to time. It is further provided that an escrow account for the above purpose shall be closed immediately after the requirements are completed or within a period of six months, whichever is earlier. However, in no case continuance of such escrow account shall be permitted beyond a period of six months.

d. NRIs may acquire convertible notes on non-repatriation basis in accordance with Schedule 4 of the Principal Regulations.

e. A person resident outside India may acquire or transfer, by way of sale, convertible notes, from or to, a person resident in or outside India, provided the transfer takes place in accordance with the pricing guidelines as prescribed by RBI. Prior approval from the Government shall be obtained for such transfers in case the startup company is engaged in a sector which requires Government approval.

f. The startup company issuing convertible notes shall be required to furnish reports as prescribed by Reserve Bank.

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

#### **RBI/2016-17/213 – Dated 16th January, 2017**

On a review of limits placed on withdrawals from ATMs and current accounts, it has been decided by RBI to enhance the same, with immediate effect. The limit on withdrawals from ATMs has been enhanced from the current limit of Rs.4,500 to Rs.10,000 per day per card but will be operative within the existing overall weekly limit of Rs.24,000.

The limit on withdrawal from current accounts has been enhanced from the current limit of Rs.50,000 per week to Rs.1,00,000 per week and it extends to overdraft and cash credit accounts also.

### **Employees Provident Fund Organisation (EPFO)**

‘Employees’ Enrolment Campaign, 2017’ has been launched on 4th January 2017 which provides an opportunity to the employers to voluntarily come forward and declare details of all such employees who were entitled for PF membership between 1st April 2009 and 31st December 2016 but could not be enrolled for any reason. The Campaign aims to extend PF benefits to employees hitherto deprived of PF benefits. The EPFO has issued an FAQ in this regard which has been elaborated in the “Our News” Section of our website.

**CHENNAI**

48, Masilamani Road,  
Balaji Nagar, Royapettah,  
Chennai - 600014.  
Phone: +91- 044 - 28131128/38/48  
Fax: +91 - 28131158

**BENGALURU**

Khivraj Mansions, 10/2 Kasturba Road,  
Bangalore - 560001.  
Phone: +91 - 080 - 22274551/52  
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 - 221234/224 911

**HYDERABAD**

No 403&404, Golden  
Green Apartments,  
Erra Manzil Colony,  
Hyderabad - 500082.  
Phone: +91 - 040 - 23370002/04  
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 - 2444592/93/94

**KAKINADA**

3-16C-40/1, 8th Road, Santhi Nagar,  
Kakinada - 5330003.  
Phone: +91 - 884 - 2374402/04  
Fax: +91 - 2374402, 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)