



Brahmayya Bulletin

October 2015

Editorial

October a month where authorities around the world are debating the issue of climate change and gearing up for the 2015 united nations climate change conference, India has set its target to reduce emissions by 35% by 2030.

On the other hand our national capital is fighting with the issue of high pollution level. The court declared collection of green tax from vehicles entering Delhi as a compensation for the pollution generated by them. How soon will this become an alternate income source for officials? We don't know yet.

In the corporates sectors professionals have been busy filing returns of income and audit report as CBDT has extended

the due dates for filing of returns and audit reports under section 44AB to the end of this month.

In order to simplify the data disclosure in an abridged prospectus SEBI has rationalized the requirements. Also to unify the form of listing agreement for all securities listed /to be listed (fresh issue), SEBI has issued a simplified listing agreement.

A committee headed by Justice R.V. Easwar was constituted by the Government of India to simplify the provisions of the Income Tax Act 1961 to enable ease of doing business and reduce litigations.

The collection of indirect tax for the month of October 2015 increased by 36.8% from October 2014

and the half yearly collection of April- October 2015 saw an increase of 35.9% from the corresponding period in 2014. This comes as a response to initiatives of the Government of India to increase excise on petrol and diesel, and withdrawal of exemptions for motor vehicles, capital goods and consumer durables

“Inaction breeds doubt and fear. Action breeds confidence and courage. If you want to conquer fear, don't sit at home and think about it. Go out and get busy” - Dale Carnegie

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

Ministry of Corporate Affairs (MCA)

Circular No. 14/2015 - Dated 28th October 2015

Through an earlier Circular No. 10/2015 dated 13th July 2015, MCA had announced relaxation of additional fees payable on Forms AOC-4, AOC-4 XBRL and Form MGT-7 up to October 31, 2015 (Refer Brahmayya Newsletter for the month of July). MCA has currently extended the date to November 30th 2015 for additional fee required for Forms AOC-4 and AOC-4 XBRL in view of the request received from various shareholders.

Central Board of Direct Taxes (CBDT)

Circular No. 16/2015 - Dated 6th October 2015

Rule 9A of Income Tax Rules, 1962 specifies that in computing the profits and gains of the business of production of feature films carried on by a film producer, the deduction in respect of the cost of production of a feature film certified for release by the Board of Film Censors in a previous year shall be allowed subject to certain conditions as prescribed in Sub-Rule (2) and (4). Consequent to Order of Honourable Bombay High Court dated 28th January 2015 in ITA 310 of 2013, in the case of Venus Records and Tapes Private Limited, it is hereby clarified that Rule 9A does not apply to abandoned feature films and that the expenditure on such abandoned feature films is not to be treated as capital expenditure and therefore to be allowed as revenue expenditure as per Section 37 of Income Tax Act, 1961.

Circular No. 17/2015 - Dated 6th October 2015

Section 2(14)(iii) excludes agricultural land from the definition of capital asset. The litigious area concerning the definition of agricultural land was the proximity of the said land to municipality or cantonment board and the method in arriving the distance. By virtue of amendment by the Finance Act, 2013, the distance was to be measured aerially, however ambiguity persisted in respect of earlier periods prior to the amendment. Consequent to the Order of Honourable Bombay High Court dated 30th March 2015 in ITA 151 of 2013, in case of Smt. Maltibai R Kadu, it is hereby clarified that amendment prescribing distance to be measured aerially applies prospectively in relation to assessment year 2014-15 and subsequent assessment years. For prior periods distance to be measured having regard to shortest road distance.

Notification No. 83/2015 - Dated 19th October 2015

By virtue of this notifications CBDT amends the Income Tax Rules, called the Income Tax (16th Amendment) Rules, 2015. This notifications seeks to amend rules pertaining to Section 92C of the Income Tax Act. Details of this Notification has been dealt with as a separate article as part of "Our News" section in our Website.

Notification No. 86/2015 - Dated 29th October 2015

This notification clarifies the allowed variation between arm's length price determined under section 92C and the actual transaction price. Details of this Notification has been dealt with as a separate article as part of "Our News" section in our Website.

Central Board of Excise and Customs (CBEC) – Customs

Circular No.24/2015 - Dated 14th October 2015

As part of Government's initiatives for improving "Ease of Doing Business", CBEC, has introduced the electronic messaging for issuing of Delivery Orders. This facilitates elimination of Hard Copy Delivery Orders and implementation of the proposed online system of Delivery Order would enable Shipping Lines, Airlines and Consol Agents to issue Delivery Order at the earliest possible time in the process of unloading of cargo. Circular No.25/2015 - Dated 15th October 2015

CBEC having received representations from Ministries and Trade Bodies regarding methodology and issues arising out of valuation of imported second hand machinery, has issued this circular which shall be the guidelines for the said valuation:

- All imports of second hand machinery / used capital goods shall be accompanied by inspection / appraisal report issued by an overseas chartered engineer or equivalent, prepared upon examination of goods at the place of sale.
- The report of chartered engineer or equivalent should be in a specified format - Form A to this circular.
- If importer fails to procure Form A, importers may get the goods inspected by one of the agencies notified by the DGFT and at customs stations where the notified DGFT agencies are not present, importers may continue to avail services of locally empaneled chartered engineers.

- In cases where report is to be prepared in India by agencies notified by DGFT or locally empaneled chartered engineers, the report shall be in Form B annexed to the circular
- Value declared by the importer shall be examined with respect to report of the Chartered Engineers. Declared value shall be compared with the depreciated value of goods determined in terms of Circular No. 493/124/86-Cus VI dated 19/11/1987 and 4/1/1988. In case of significant differences, importer shall provide justification. The officer shall evaluate the evidences with due consideration to depreciation, refurbishment and re-conditioning.

Circular No.26/2015 - Dated 23rd October 2015

Circular No. 10/2015 dated 31st March 2015 mandated Importers registered under the Accredited Client Programme (ACP) to file Bills of Entry with digital signature with effect from 1st May 2015. In order to increase coverage of digitally signed documents and subsequent phasing out of physical /manual submission of documents, Board has decided that all importers, exporters using services of Customs Brokers for formalities under Customs Act, 1962, shipping lines and air lines shall file customs documents under digital signature certificates mandatorily with effect from 1st January 2016. The importers/ exporters desirous of filing Bill of Entry or Shipping Bill individually may however have the option of filing declarations/ documents without using digital signature.

Central Board of Excise and Customs (CBEC) – Service Tax

Circular No. 186/5/2015 – Dated 5th October 2015

Goods Transport Agencies (GTA's) represented by the All India Transport Welfare Association (AITWA), has sought clarification on treatment given to various ancillary services such as loading/unloading, packing/unpacking, transshipment, temporary storage rendered by GTA's in the course of transportation of goods by road.

These ancillary services may be provided by GTA or may be sub-contracted by the GTA. In either case, for the service provided, GTA issues a consignment note and the invoice issued by the GTA for providing the said service includes the value of ancillary services provided in the course of transportation of goods by road. These services are not provided as independent activities but are the means for successful provision of the principal service, namely, the transportation of goods by road.

A single composite service need not be broken into its components and considered as constituting separate services, if it is provided as such in the ordinary course of business. Thus, a composite service, even if it consists of more than one service, should be treated as a single service based on the main or principal service. Thus, if ancillary services are provided in the course of transportation of goods by road and the charges for such services are included in the invoice issued by the GTA, and not by any other person, such services would form part of GTA service and, therefore, the abatement of 70%, presently applicable to GTA service, would be available on it.

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

Notification No.22/2015 - Dated 29th October 2015

CBEC has amended Rule 3, Sub-Rule 7 of Cenvat Rules dealing with CENVAT credit in respect of inputs or capital goods produced or manufactured, by a 100% export-oriented undertaking or by a unit in an Electronic Hardware Technology Park or in a Software Technology Park, to allow utilization of credit of Education Cess (EC) and Secondary and Higher Cess (SHEC):

- Paid on inputs or capital goods received in the premises of the providers of output service on or after the 1st day of June, 2015;
- Paid on capital goods received in the premises of the provider or output services in the FY 14-15 (50% balance of EC & SHEC paid);
- Paid on input services in respect of which the invoice, bill, challan, etc, as referred to in rule 9, is received by the provider of output service on or after the 1st day of June, 2015;
- for payment of service tax on any output service.

Foreign Exchange Management Act (FEMA)

A.P. (DIR Series) Circular No. 22 – Dated 21st October 2015

Notification No. FEMA. 351/2015-RB - Dated 30th September, 2015

In order to track statistics relating to FDI, both inward and outward, by LLP's in India, it has been decided henceforth, all LLP's that have received FDI and / or made FDI abroad in the previous years and in current year, shall submit FLA return to RBI by June 15th of every year.

**A.P. (DIR Series) Circular No. 24 –
Dated 29th October 2015**

**Notification No. FEMA. 353/2015-
RB - Dated 6th October, 2015**

NRI's may subscribe to the National Pension Scheme (NPS) administered by the Pension Fund Regulatory and Development Authority (PFRDA) as an eligible investment option under FEMA, 1999, provided such subscriptions are made through normal banking channels and persons are eligible to invest as per the provisions of the PFRDA Act.

The subscriptions shall be paid by NRI's either by inward remittance through normal banking channels or out of the funds held in their NRE/FCNR/NRO Account. There shall be no restriction on repatriation of the annuity / accumulated savings.

**A.P. (DIR Series) Circular No. 6 –
Dated 20th October 2015**

**Notification No. FEMA. 354/2015-
RB - Dated 30th October, 2015**

The Central Government had reviewed the extant FDI Policy on various sectors and has made amendments in the Consolidated FDI Policy Circular. Key features are as follows:

- In all sectors where there is a limit/cap on foreign investment, such limit/cap shall be reckoned in a composite manner. In other words, "sectoral cap", i.e., the maximum amount which can be invested by foreign investors in an entity will include all types of foreign investments, direct and indirect. Foreign Currency Convertible Bonds (FCCBs) and Depository Receipts (DRs) having underlying instruments

which can be issued under Schedule 5, being in the nature of debt, shall not be treated as foreign investment under such composite limit/cap. However, any equity holding by a person resident outside India resulting from conversion of any debt instrument under any arrangement shall be reckoned as foreign investment under the composite limit/cap.

- "Total foreign investment" in an Indian Company will be the sum total of direct and indirect foreign investments.
- Portfolio investment up to aggregate foreign investment level of 49% or sectoral/statutory cap, whichever is lower, will not be subject to either Government approval or compliance with the sectoral conditions, as the case may be, provided such investment does not result in change in ownership leading to control of Indian entities.

Reserve Bank of India (RBI)

**RBI/2015-16/214DNBR.CC.PD.No.
070/03.10.01/2015-16 – Dated
29th October 2015**

Through an earlier Notification dated 24th September 2015, a framework to revitalize distressed assets through Corrective Action Plan (CAP) by Joint Lenders Forum (JLF) was reviewed and suitable modifications were made applicable only to Banks. RBI has now decided to make the Notification applicable to NBFC's also.

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