



Brahmayya Bulletin

June 2016

Editorial

June, a month of implementation of various initiatives by the Government of India. Our country's farmer shall benefit with the applicability of Krishi Kalyan Cess, which will contribute positively to the agriculture sector. Consequently, KKC's introduction will affect the rate of Service tax.

The rate of Goods and Service Tax (GST) is expected to be in the range of 17% to 18% and it seems that the Service tax is moderately being increased to bring closer to the rate of GST.

National Mineral Exploration Policy (NMEP) has also been approved, which primarily aims at accelerating the exploration activity in the country through enhanced participation of the private sector.

This Month also witnessed appointment of N.S. Vishwanathan as deputy governor of the Reserve Bank of India (RBI). Month also leads to consideration of Model Shops and Establishments (Regulation of Employment and Conditions of Service) Bill, 2016

Evasion of taxes deprives the nation of critical resources and the Income Declaration Scheme, 2016 is one such law which aims at bringing back the cash into the tax chests and suitably apportioning it to development initiatives. By paying tax at the rate of 45%, the declarant can avail permanent immunity against various laws and regulations. The Government anticipates substantial tax collections through this amnesty scheme.

Start-up India initiative of the Government continues to get continuous boost from various regulators. RBI has eased norms for start ups and CBDT has also clarified aspects that may impact huge tax burden to Start-ups.

Never stop fighting until you arrive at your destined place – that is, the unique you. Have an aim in life, continuously acquire Knowledge, work hard, and have perseverance to realize the great life - APJ Abdul Kalam

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Ministry of Corporate Affairs (MCA)

S.O. 1932(E) and 1933(E) - Dated 1st June 2016

Central Government hereby constitutes the National Company Law Tribunal to exercise and discharge the powers and functions as are, or may be, conferred on it by or under the said Act with effect from the 1st day of June, 2016. The Central Government also constitutes the National Company Law Appellate Tribunal for hearing appeals against the orders of the National Company Law Tribunal with effect from the 1st day of June, 2016.

All matters or proceedings or cases pending before the Company Law Board are to be transferred to the National Company Law Tribunal.

G.S.R. 646(E) - Dated 30th June 2016

Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, has been amended:

- Filing of Form No. MR.1 along with such fee for appointment of CEO, CFO & CS has been done away with
- Board Report earlier required a statement showing name of every employee who has drawn remuneration of Rs. 60 Lakhs, if employed throughout the year and Rs. 5 Lakhs if employed partly in the year. This notification requires only top 10 employee names and remuneration drawn to be disclosed and the quantum or Rs.60 Lakhs has been replaced with Rs. 1.02 Crores and Rs. 5 Lakhs has been replaced with Rs. 8.50 Lakhs

G.S.R. 639(E) - Dated 29th June 2016

Companies (Acceptance of Deposit) Rules, 2014, has been amended. Details of such amendments has been dealt with as a separate article as part of "Our News" section in our Website.

Central Board of Direct Taxes (CBDT)

Circular No. 22/2016 - Dated 8th June 2016

In order to reduce the cash transactions in sale of goods and services, Finance Act 2016 has expanded the scope of section 206C (1D) by inserting clause (iii) to provide that a seller shall collect tax at the rate of 1% from the purchaser on sale in cash of any goods (other than bullion and jewellery) or providing of any services (other than payment on which tax is deducted at source under Chapter XVII-B) exceeding Rs. 2 Lakhs.

Further, with a view to bring high value transactions within the tax net, subsection (1F) is inserted in section 206C of the Act which provides that the seller who receives consideration for sale of a motor vehicle exceeding Rs. 10 Lakhs, shall collect 1% of the sale consideration as tax from the buyer.

The amendments to section 206C of the Act raised a lot of queries with regard to the scope of the provision and the procedure to be followed, accordingly, CBDT has issued FAQs clarifying some aspects:

- TCS provisions will apply only on retail sale. TCS provisions will not apply on sale of motor vehicles by manufacturers to dealers or distributors

- TCS provisions will apply on sale of any motor vehicle in excess of Rs. 10 Lakhs and not just on sale of luxury cars.
- TCS provisions will not apply in case of sale to Government, Notified Institutions, Embassies, Consulates, High Commission, Legation, Commission and Trade Representation of a foreign state.
- TCS provisions will be applicable in respect of each sale transaction. A similar position will apply in case of sale of specified goods or services in cash.
- TCS provision will be applicable in case of sale of motor vehicle by an individual liable to tax audit
- TCS provisions will be applicable in case of sale of motor vehicles in excess of Rs. 10 Lakhs, irrespective of the mode of payment (i.e. whether by cash or cheque)
- In case of sale of motor vehicles in excess of Rs. 10 Lakhs, TCS will be applicable at the rate of 1% (not 2%) irrespective of the mode of payment. On sale of a motor vehicle in cash in excess of Rs. 2 Lakhs, but less than Rs. 10 Lakhs, TCS will apply @ 1%

Circular No. 24/2016 - Dated 27th June 2016

The Income Declaration Scheme, 2016 incorporated as Chapter IX of the Finance Act, 2016 provides an opportunity to persons who have not paid full taxes in the past to come forward and declare the undisclosed income and pay tax, surcharge and penalty totaling in all 45% of such undisclosed income declared. Subsequently queries have been received from the public about various provisions of the Scheme and are suitably clarified

Insights on clarifications issued by the Department has been dealt with as a separate article as part of “Our News” section in our Website.

Notification No. 09/2016 - Dated 9th June 2016

The existing provisions of section 197A provides that tax shall not be deducted, if the recipient of certain payment on which tax is deductible furnishes the payer a self-declaration in Form No. 15G/15H. The manner of filing such declarations and the particulars have been laid down in Rule 29C of the Income-tax Rules, 1962. The CBDT has clarified that the due date for quarterly furnishing of 15G/15H declarations received by the payer from 1st April 2016 onwards on the e-filing portal shall be as given below:

Quarter Ending	Due date
30th June	15th July
30th September	15th October
31st December	15th January
31st March	30th April

The payer shall furnish 15G/15H declarations received during the period from 1st October 2015 to 31st March 2016 on e-filing portal (<http://incometaxindiaefiling.gov.in>) in the given format on or before 30th June, 2016.

Notification No. 42/2016 - Dated 2nd June 2016

CBDT has notified the Cost inflation index for financial year 2016-17 as 1125.

Section 14A of the Act provides for disallowance of expenditure incurred in relation to earning of exempt income. Rule 8D of the Income tax Rules, 1962 provides for the mechanism to determine the quantum of such disallowance, which was calculated as aggregate of the following:

- Expenses directly incurred to earn exempt income;
- Interest expense (not directly attributable to any exempt income) worked out on the basis of a prescribed formula; and
- 0.5% of the average value of investments yielding exempt income on the first day and the last day of the previous year.

There was no exclusion for interest that was specifically incurred for taxable services and the prescribed formula gave inequitable results. Further, application of prescribed formula lead to situations where the actual disallowance could exceed the expenditure claimed by the taxpayer. Due to these reason, Rule 8D has always been a subject matter of litigation.

Through this notification Rule 8D has been amended. The expenditure in relation to exempt income shall be aggregate of the following amount:

- The amount of expenditure directly relating to the exempt income; and
- An amount equal to 1% of annual average of the monthly averages of value of investment income yielding exempt income.

Further, a cap has been provided in the amended rules so as to limit the amount of disallowance to the total expenditure actually claimed by the assessee.

Notification 45/2016 - Dated 14th June, 2016

Under section 56(2)(viib) of the Act, if an Indian Company receives share subscription amount from an Indian resident which exceeds the fair value of shares, then the excess amount is taxed as “income from other sources” of the Indian Company.

In case of start-up’s which receive consideration, determination of fair market value (FMV) of shares is difficult as the company and its business is at conceptualization or development stage. In majority of the cases, FMV is significantly lower than the value at which the capital investment is made, since Start-ups are valued on the basis of their future growth prospects and uniqueness of the idea. Due to the rigorous provisions of section 56(2)(viib), any amount received in excess of the FMV was getting taxed at as high as 30%, which was seen as a big deterrent to investments in domestic funds. In order to encourage seed-capital investment in Startups it was proposed to exempt investments above FMV in Startups from provision of section 56(2)(viib) of the Act. Providing the much awaited boost to the resident angel investors, domestic family offices or domestic funds which were not registered as venture capital fund, CBDT has exempted start-ups from the so called “Angel Tax” by including start-ups in the specified “class of persons” under section 56(2)(viib) of the Act.

Notification No. 47/2016 - Dated 17th June 2016

CBDT has notified that no deduction of tax shall be made on the payments of the nature specified below, in case such payment is made by a person to a bank listed in the Second

Schedule to the Reserve Bank of India Act, 1934, excluding a foreign bank, or to any Payment Systems Company authorized by the Reserve Bank of India under Section 4(2) of the Payment and Settlement Systems Act, 2007, namely:

- bank guarantee commission;
- cash management service charges;
- depository charges on maintenance of DEMAT accounts;
- charges for warehousing services for commodities;
- underwriting service charges;
- clearing charges (MICR charges) including interchange fee or any other similar charges by whatever name called charged at the time of settlement or for clearing activities under the Payment and Settlement Systems Act, 2007;
- credit card or debit card commission for transaction between merchant establishment and acquirer bank

Notification No 53/2016 - Dated 24th June 2016

Section 206AA provides for TDS at the higher of rate specified in the relevant provision of the Act or rate in force or at the rate of 20% in case of non-furnishing of PAN by the deductee to the deductor. Section 206AA(7) has been substituted by the Finance Act 2016 to provide that the provisions of the said section would not apply to a non-resident, not being a Company, or to a foreign Company subject to conditions to be prescribed.

CBDT has inserted new Rule 37BC to provide for relaxation from deduction of tax at higher rate under section 206AA.

The provisions of section 206AA shall not apply to a non-corporate non-resident, or to a foreign Company not having PAN in respect of payments in the nature of interest, royalty, fees for technical services and payments on transfer of any capital asset on furnishing to the deductor information like name, e-mail id, contact number, address in the country or specified territory outside India of which the deductee is a resident and tax identification number/unique number of the deductee in the country or specified territory of residence

Notification No 54/2016 - Dated 27th June 2016

CBDT has inserted a new Rule 128 in the Income-tax Rules, 1962 allowing resident assessee to claim credit of taxes paid in a foreign country from income chargeable to tax in India. These rules shall come into force on 01.04.2017. The resident assessee shall be allowed credit for any foreign tax paid in the year in which the income corresponding to such tax has been offered to tax or assessed to tax in India. Further, in a case where income on which foreign tax has been paid or deducted, is offered to tax in more than one year, credit of foreign tax shall be allowed across those years in the same proportion in which the income is offered to tax or assessed to tax in India.

The Rule also deals with the situation where MAT and AMT under section 115JB and 115JC, respectively, is applicable and the manner in which credit of foreign tax shall be allowed against such tax payable. Further, it provides for documents to be furnished for claiming foreign tax credit which includes Statement in Form No 67 verified in the specified manner.

It is mandatory to furnish Form No 67 in a case where the carry backward of loss of the current year results in refund of foreign tax for which credit has been claimed in any earlier previous year or years.

Press Release, dated 20th June 2016

CBDT has clarified that an eligible person, whose total turnover or gross receipts of the relevant previous year does not exceed Rs. 2 Crores and who opts for presumptive taxation scheme under section 44AD of the Act, shall not be required to get his accounts audited under section 44AB of the Act. The higher threshold for non-audit of accounts has been given only to assessee opting for presumptive taxation scheme under section 44AD.

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

Notification No. 30/2016-Central Excise (N.T.) & Circular No. 1032/20/2016- CX - Dated 28th June 2016

An assessee who is registered as a First Stage Dealer is exempt from obtaining registration as an importer and vice-versa. A single registration would suffice for both the activities at the option of assessee. It has also been clarified that assessee opting for a single registration for both activities need to file a single quarterly return giving details of transactions as a first stage dealer and an importer, one after the other in the same table of the return.

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

**Notification No. 32/2016,
Notification No. 33/2016,
Notification No. 34/2016 - Dated
1st June 2016**

Mega Exemption Notification No. 25/2012 has been amended, to exempt services provided by a Senior Advocate by way of legal services to any person other than a business entity; or a business entity with a turnover up to Rs. 10 Lakhs in the preceding financial year.

Also, Notification No. 33/2016 has amended ST rules, to provide that services provided by senior advocates would be covered under reverse charge mechanism. Additionally, if the senior advocate is engaged by another lawyer, the Service Tax is to be paid by the litigant under reverse charge. Further, Notification No. 34/2016 has amended Reverse Charge Notification No. 30/2012 – ST to provide 100% payment of tax by the recipient of the service provided by senior advocates. Therefore, services provided by senior advocate to a business entity with a turnover of more than Rs. 10 Lakhs are taxable under reverse charge mechanism and the whole of the tax is to be paid by the client who is litigating.

**Notification No. 35/2016 - Dated
23rd June 2016**

This notification exempts KKC in cases where the invoice for the service is issued on or before 31st May, 2016 if provision of services has been completed on or before 31st May, 2016.

**Notification No. 36/2016 - Dated
23rd June 2016**

This notification provides exemption from service tax on transportation of goods by vessel from outside India up to the

customs station in India, where invoice is issued on or before 31st May, 2016 if import manifest or import report required to be delivered under Customs Act has been delivered on or before 31st May, 2016 and service provider or recipient produces Customs certified copy of such import manifest or import report.

Central Board of Excise and Customs (CBEC) – Customs

**Circular No. 24/2016 – Customs –
Dated 2nd June 2016**

It has been provided that while making an application for licensing of a private bonded warehouse, an applicant (importer) will be required to furnish a solvency certificate from a scheduled bank in addition to providing details of maximum amount of duty involved on the goods proposed to be stored in the private bonded warehouse at any point of time. This Solvency Certificate would be equivalent to the amount of duty involved as per Regulation 3 (1) (c) of the Private Warehouse Licensing Regulations, 2016. Further, where the applicant is the Central Government, State Government or a Union Territory administration or their undertakings or EoU/EHTP/STPI units there will be no need to obtain any solvency certificates. EoU/EHTP/STPI units will furnish a bank guarantee/security as per Chapter 6 of Foreign Trade Policy.

**Circular No.25/2016 – Customs -
Dated 8th June 2016**

Regulation 11 of the Warehouse (Custody and Handling of Goods) Regulations, 2016 requires the licensee to maintain detailed records of the receipt, handling, storage and removal of goods into and from the warehouse and file monthly returns regarding the same. This circular provides that every

licensee is required to maintain the aforesaid records electronically in prescribed Form A accurately and immediately upon the goods being deposited in or removed from the warehouse. The software for maintaining the electronic records must have a feature of audit trail. A licensee will file a monthly return of the receipt, storage, operations and removal of the goods in Form A within 10 days after the close of the month. Where the period specified of warehousing is expiring in a particular month, the return in Form B needs to be filed on or before the 10th day of the preceding month. Upon receipt of the goods in a warehouse, the licensee will send an acknowledgement to AC/or warehouse keeper.

Reserve Bank of India (RBI)

**Circular No.
DBR.No.BP.BC.103/21.04.132/2015-
16 - Dated 13th June 2016**

RBI has released a new set of guidelines involving co-ordinated deep financial restructuring of stressed assets where the aggregate exposure (including accrued interest) of all institutional lenders in the account is more than Rs. 500 Crores. The eligibility conditions require that the project must have commenced commercial operations and the debt must be sustainable. The guidelines also define Sustainable Debt, provide for the resolution plan for such assets and deal with valuation and provisioning for such assets.

**RBI Circular no.
DBR.BP.BC.No.106/21.07.001/2015
-16 - Dated 23rd June 2016**

Banks have already been directed by RBI to be in preparedness to submit proforma Ind AS Financial Statements from the half-year ended September 30, 2016 and onwards.

RBI has directed that Banks shall also refer to the Report of the Working Group on "Implementation of Ind AS by Banks in India". The Proforma Ind AS Financial Statements shall include the Balance Sheet including Statement of Changes in Equity, Profit and Loss Account and Notes. The circular also lays down the various disclosure requirements for significant accounting policies and the approach on exemptions under Ind AS 101, First Time Adoption of Indian Accounting Standards.

Foreign Exchange Management Act (FEMA)

A.P. (DIR Series) Circular No. 77 - Dated 23rd June 2016

RBI currently allows Indian startups, having an overseas subsidiary, to open a foreign currency account with a bank outside India for the purpose of crediting to the account the foreign exchange earnings out of exports/sales made by the said startup or its overseas subsidiary. The balances in such accounts to the extent they represent exports from India, shall be repatriated to India within the period prescribed in Foreign Exchange Management (Export of Goods and Services) Regulations, 2015 dated 12th January 2016, as amended from time to time, for realisation of export proceeds.

In addition, payments received in foreign exchange by an Indian startup arising out of sales/export made by the startup or its overseas subsidiaries will be a permissible credit to the EEFC account maintained by the startup in India.

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