



Brahmayya Bulletin

August 2016

Editorial

The Government continues to pursue its quest to implement the GST Act vigorously and it is anticipated that the scheme would create positive effects to the Government. CBDT continues to provide clarifications on the Income Declaration Scheme to facilitate smooth and wilful declarations. The number of clarifications provide, prove that the Scheme has indeed picked up considerable momentum.

The CBEC has issued new directives for provisions relating to filing of returns. More importantly, CBEC has relied on the Apex Court's judgement and issued a stern directive in regard to concluding on "transfer of right" to use the goods. This event has been subject to multiple litigations.

The Reserve Bank of India has permitted FDI through the approval route to Food Processing Industry and has amended regulation for foreign investment in the Non-Banking Finance Companies. RBI has launched a scheme for grant of Permanent Residency Status (PRS) to foreign investors subject to the relevant conditions as specified in the FDI Policy notified by the government.

We urge our readers to follow the "Our News" Section of our website for further insights and updates. We also request the readers to provide your valuable comments and feedback to contact@brahmaya.com.

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

Central Board of Direct Taxes (CBDT)

Notification No. 10/2016 - Dated 31st August 2016

CBDT has extended the due dates for uploading of Form 15G/15H

- for the forms received during the period 1st October 2015 to 31st March 2016 date is extended to 31st October 2016 from the original due date 30th June 2016,
- for the period 1st April 2016 to 30th June 2016 date is extended to 31st October 2016 from the original due date of 15th July 2016 and
- for the period 1st July 2016 to 30th September 2016 date is extended to 31st October 2016 from the original due date of 15th October 2016.

The due date for furnishing of 15G/15H declarations for the 3rd & 4th Quarter of FY 16-17 will remain the same as specified in the Notification No. 9/2016 dated 9th June 2016 i.e. 15th January 2017 and 30th April 2017 respectively.

Press Release - Dated 19th August 2016

The benefit of deduction under Section 35AC is available only up to previous year ending 31st March 2017 in respect of the payments made to association or institution already approved by the National Committee for carrying-out any eligible project or scheme. In view of the above, it may be noted that requests received after 31st December, 2016 for the grant/modification/extension of approval beyond 31st March, 2017 under Section 35AC shall not be considered / entertained by the National Committee.

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

Notification No. 42/2016 - Central Excise (N.T.) - Dated 11th August, 2016

- An assessee, who has filed a return may submit a revised return by the end of the same calendar month in which the original return is filed.
- An assessee who has filed Annual Return within the due date, may submit a revised return within a period of one month from the date of submission of the said Annual Return.

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

Notification No. 38/2016-ST - Dated 30th August, 2016

CBEC has amended Abatement Notification by inserting a new entry 5A to grant service tax abatement of 90% on the value of service of transport of passengers, with or without accompanied belongings, by air, embarking from or terminating in a RCS Airport subject to the condition that CENVAT credit on inputs, capital goods and input services, used for providing the taxable service has not been taken by the service provider under the provisions of the CENVAT Credit Rules, 2004. The abatement will be valid for a period of 1 year from the date of commencement of operations of the RCS Airport as notified by the Ministry of Civil Aviation.

Circular No. 198/08/2016 – ST – Dated 17th August, 2016

CBEC, in order to determine if there is transfer of the right to use the goods, has relied on the criteria provided by the Supreme Court in the case of Bharat Sanchar Nigam Limited vs. Union of India, reported in 2006 (2) STR 161 SC, which specifies that:

- There must be goods available for delivery;
- There must be a consensus ad idem as to the identity of the goods;
- The transferee should have a legal right to use the goods - consequently all legal consequences of such use, including any permissions or licenses required therefor should be available to the transferee;
- For the period during which the transferee has such legal right, it has to be to the exclusion to the transferor this is the necessary concomitant of the plain language of the statute - viz. A "transfer of the right" to use and not merely a licence to use the goods;
- Having transferred the right to use the goods during the period for which it is to be transferred, the owner cannot again transfer the same right to others.

The terms of the contract must be studied carefully vis-a-vis the aforesaid criteria in order to determine whether service tax liability will arise in a given case. Cases decided under the Sales Tax/ VAT legislations have to be considered against the background of those particular legislative provisions and terms of contract in that case.

Circular No. 199/09/2016-ST – Dated 22nd August, 2016

With respect to contractors providing the service of construction of tube wells for the Government made liable to service tax, CBEC has clarified that exemption is available to the following services provided to the Government, a local authority or a governmental authority, by way of

- a. construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of pipeline, conduit or plant for (i) water supply (ii) water treatment, and
- b. water supply It has further been clarified that the term “water supply” will involve providing users, access to a source of water which may be natural or artificial like tanks, wells, tube wells etc. Providing users access to such a source will involve construction of the source (if artificial), the transmission of water to the user and activities like drilling, laying of pipes, valves, gauges etc., fitting of motors, testing etc., so as to eventually result in the supply of water.

Central Board of Excise and Customs (CBEC) – Customs

Notification No.113/2016 - Customs (N.T.) & Circular No. 38/2016 - Customs - Dated – 22nd August, 2016

CBEC has provided that wherever, duty is to be assessed provisionally, the importer shall:

- I. for the purposes of undertaking to pay on demand the deficiency, if any, between the duty as may be finally assessed and the duty provisionally assessed, execute a bond in the prescribed form; and
- II. furnish such Bank Guarantee or Cash deposit to be obtained as security of the differential duty for the payment of the duty deficiency, prescribed as per his class.

It has further been reiterated that the amount of security will be determined on the basis of duty differential and not the CIF value of goods. Also provisional assessments under Section 18 will be carried out with respect to cases only where the duty is in dispute.

Circular No.41/2016 – Customs - Dated 30th August, 2016

Consequent to supersession of Central Excise Rules, 1944 by Central Excise Rules, 2002 EOU's can avail CENVAT Credit of Inputs/Capital Goods. It has further been clarified that on conversion from a DTA unit to EOU, the transfer of unutilised CENVAT credit lying in the books of DTA unit on the date of conversion into EOU unit is admissible under Rule 10 of CENVAT Credit Rules, 2004 which provides that if manufacturer transfers his factory on account of change in ownership or lease, then the manufacturer shall be allowed to transfer the CENVAT credit lying unutilised in his accounts to transferred entity.

Reserve Bank of India (RBI)

DBS.CO.PPD.05/11.01.005/2016-17 - Dated 25th August 2016

RBI has advised that Banks may appoint retired officers of the bank for assisting in internal audit subject to certain terms and conditions prescribed by RBI including Board approved policy, prevention of conflict of interest etc.

Foreign Exchange Management Act (FEMA)

Press Release - Dated 31st August 2016

RBI permits 100% FDI under government approval route for trading, including through e-commerce, in respect of food products manufactured or produced in India. Applications for FDI in food products retail trading would be processed in the Department of Industrial Policy & Promotion before being considered by the Government for approval. However, Cabinet has further relaxed the norms for FDI in respect of trading of food products manufactured or produced in India and it has now been provided that 100% FDI under automatic route for trading, including through E-commerce, is permitted in respect of food products manufactured and/or produced in India.

Press Release - Dated 10th August, 2016

The Union Cabinet has given its approval to amend regulation for foreign investment in the Non-Banking Finance Companies (NBFCs). The present regulations on NBFC stipulates that FDI would be allowed on automatic route for only 18 specified NBFC activities after fulfilling prescribed minimum capitalisation norms mentioned therein. In the proposed amendments are as under:

- FDI in “Other Financial Services” will be permitted under automatic route provided such services are regulated by any other regulator (Reserve Bank of India, Securities and Exchange Board of India, Pension Fund Regulatory and Development Authority etc.)/ Government Agencies.
- FDI in “Other Financial Services” not regulated by any regulators/government agencies will be permitted under approval route.

- Minimum capitalisation norms specified for NBFCs will be eliminated as most of the regulators have already fixed minimum capitalisation norms.

Press Release - Dated 31st August, 2016

The Union Cabinet has approved the scheme for grant of Permanent Residency Status (PRS) to foreign investors subject to the relevant conditions conditions as specified in the FDI Policy notified by the government from time to time. Under the PRS scheme, suitable provisions will be incorporated in the Visa Manual to provide for the grant of PRS to foreign investors. In order to avail this scheme, the foreign investor will have to:

- a. invest a minimum of Rs. 10 Crores to be brought within 18 months or Rs. 25 Crores to be brought within 36 months.
- b. the foreign investment should result in generating employment to at least 20 resident Indians every financial year.

PRS will be granted for a period of 10 years initially with multiple entry facility, which can be renewed for another 10 years. PRS will serve as a multiple entry visa without any stay stipulation and PRS holders will be exempted from the registration requirements. PRS holders will be allowed to purchase one residential property for dwelling purpose. The spouse/dependents of the PRS holder will be allowed to take up employment in private sector (in relaxation to salary stipulations for Employment Visa) and undertake studies in India. The scheme is expected to encourage foreign investment in India and facilitate Make in India Programme.

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