



# **Brahmayya Bulletin**

February 2017

## Editorial

With the impending dawn of February - the Budget month, it is time to take stock of the activities, creativities and outcomes. With the two key decisions of implementing GST and demonetization, taken last year, Budget 2017 was announced amidst huge anticipation. A special and historic budget because the Modi government broke the legacy of announcing a separate Railway Budget after 92 years and merging it with the Union Budget. Budget was announced on 1st February as against the historic practice of announcing it on the last day of February.

Three major challenges of lower capital inflows & higher outflows, uncertainty around commodity prices and potential of affecting exports were to be addressed. Considering

these aspects and ensuring that the economy continues on its growth trajectory (exhibited through reduction in CPI Inflation Index, decline in current account deficit and increase in FDI; in first half of 2016-17); the Finance Minister focused the budget on ten distinct themes centered around farmers, rural population, youth, poor and the underprivileged, infrastructure, financial sector, digital economy, public service, prudent fiscal management and tax administration. Facilitated by demonetization, there is an expectation of a steady increase in the GDP ratio. Government initiatives to promote cashless economy is an essential feature of the Budget.

Recent improved tax collections due to IDS, 2016 and demonetization drive may help our Government

in shoring up their ambitious programmes of Skill India, Make in India and Start-Up India.

A separate article on Budget 2017 is also available as part of "Our News" Section in the website. Readers may peruse the article for better clarity and sectoral updates.

As the industry gears up for the close of the financial year, challenges are inevitable. Government in its continued efforts to clarify regulations, have tried to simplify various regulations. Brahmayya&Co. continues to update the readers effectively. Watch this space for more 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.01/2017 - Dated 22nd February 2017**

The Stakeholders have sought the clarification for applicability of Chapter XX (Winding Up) provisions, after the Section 391 (2) of the Companies Act 2013, came in force from 15th December 2016. The Section states that for closure of business in India by foreign company, Chapter XX provisions will be applicable.

The Ministry of Corporate Affairs has clarified the applicability of provisions to the Foreign Companies, which has issued prospectus or Indian Depository Receipts in India pursuant of Chapter XXII of the Companies Act, 2013.

### **F.No.1/5/2016-CL-V Dated 28th February 2017**

The Central Government has amended the Companies (Transfer of Pending Proceedings) Rules, 2016. The said rules were notified in December 2016. The time lines for submitting the information by the petitioner to the Tribunal in respect of cases filed to High Court for winding up on the ground of inability to pay the debts has been amended to 6 months from 60 days.

## Central Board of Direct Taxes (CBDT)

### **Press Information Bureau – Dated 7th February, 2017**

CBDT has entered into four more unilateral Advance Pricing Agreements (APAs). The four APAs signed pertain to the Manufacturing, Financial and Information Technology sectors. The international transactions covered in these agreements include Contract Manufacturing, IT Enabled Services and Software Development Services. With this, the total number of APAs entered into by the CBDT has reached 130. The CBDT expects more APAs to be concluded and signed before the end of the current fiscal. The APA Scheme was introduced in the Income Tax Act in 2012 and the “Rollback” provisions were introduced in 2014. The scheme endeavors to provide certainty to taxpayers in the domain of transfer pricing by specifying the methods of pricing and determining the prices of international transactions in advance.

### **Notification No. 9/2017 - Dated 9th February 2017**

The Central Board of Direct Taxes has notified the Income Tax (2nd Amendment) Rules, 2017 which shall come into force on the date of their publication in the Official Gazette. The Amendment has been made to provide new procedure and common application form for allotment of PAN & TAN. Accordingly, an applicant may apply for allotment of PAN or TAN through a common application form notified by the Central Government in the Official Gazette, and the Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems) shall specify the classes

of persons, forms and formats along with procedure for safe and secure transmission of such forms and formats in relation to furnishing of PAN or TAN.

### **Notification No. 12/2017 - Dated 21st February 2017**

Section 138(1) pertains to permissibility regarding disclosure of information, whereas, Section 138(2) relates to non-disclosure of information as specified by order notified in Official Gazette.

Notification No. 137/2003 issued under section 138(2) provides for a general prohibition on disclosure of information, record, and document to any person or authority by the IT authorities. Two exceptions were however specified, one related to providing of information by DGIT (Systems) with respect to PAN/TAN and second was related to disclosure of information in accordance with notifications issued under section 138 from time to time.

The implication of the notification appeared to be that the information could be provided only to authorities which are so notified u/s 138(1)(a)(ii) of the Income Tax Act by the CG while disclosure u/s 138(1)(a)(i) and 138(1)(b) of the Act was prohibited. This created an apprehension that the said notification undermines the powers of the authorities mentioned in sub sections 1(a)(i) and 1(b) of section 138.

In order to remove ambiguity, CBDT retrospectively amends its earlier Notification No. 137/2003 issued under section 138(2) so as to harmonize it with the provisions of Sec 138 and enable ‘disclosure of information’ in accordance with Sec 138(1).

### **Circular No. 08/2017 - Dated 23rd February 2017**

In continuance to the Guiding Principles for determining POEM of company issued vide Circular No. 6/2017 dated 24th January, 2017, it is clarified that the provision of Clause (ii) of Section 6(3) of the Income Tax Act which provides that a company is said to be resident in India if its place of effective management is in India, shall not apply to a company having turnover or gross receipts of Rs. 50 Crores or less in a financial year.

Section 6(3)(ii) substituted by Finance Act 2016 is applicable w.e.f 1st April 2017.

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

#### **Notification No. 4/2017 - Dated 2nd February, 2017**

Central Government has amended Rule 6(3D) and Rule 10 of the CENVAT Credit Rules, 2004. Explanation I to Sub Rule 3D states that for purpose of Rule 6(3) and Rule 6(3A), 'Value' shall not include value of services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount. This exclusion is actually meant for manufacturers and service providers occasionally giving loans or making deposits. Hence, a proviso has been added by the said notification which states that this clause shall not apply to a banking company, financial institution and NBFC engaged in providing services by way of extending deposits, loans or advances. This is only an amendment intended to bring further clarity. This notification further amends Rule 10 which prescribes the time period for granting permission to transfer CENVAT Credit from one factory to another.

As per Rules 10(1) and 10(2), if a manufacturer shifts his factory to another site or provider of output services shifts his business or a manufacturer/service provider transfers his factory/business on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of factory to a joint venture, the manufacturer/service provider can transfer unutilized CENVAT credit to the transferred/ sold /merged/ leased or amalgamated factory / business. Central Government via the said notification has inserted Sub Rule (4), to Rule 10 which provides that on receipt of application for transfer of credit under Rule 10, Assistant/Deputy Commissioner shall grant permission within 3 months, provided requirements of Rule 10(3) regarding transfer of stock, WIP and capital goods to new site are satisfied. This time period can be extended for further period upto maximum 6 months by Principal Commissioner / Commissioner for reasons to be recorded in writing. Earlier, no time limit for granting permission was specified.

#### **Notification No. 5/2017 - Dated 2nd February, 2017**

Central Government has amended the Central Excise Rules, 2002, which provides that the present Rule 21 shall be re-numbered as Sub Rule (1) thereof, and after Sub Rule (1), a new Sub Rule (2) shall be inserted. Rule 21, Sub Rule (1) of the Central Excise Rules, 2002 provides that where the Principal Commissioner or Commissioner is satisfied that the goods have been lost or destroyed by natural causes or by unavoidable accident or are claimed by the manufacturer as unfit for consumption or for marketing, at any time before removal, he may remit the duty payable on such goods, subject to such conditions as may be imposed by him by order in writing.

Central Government has inserted Sub Rule (2) which provides that the Principal Commissioner or Commissioner shall within a period of 3 months from the date of receipt of an application, decide the remission of duty.

It further provides that on showing of sufficient cause and reasons to be recorded in writing the period specified in Sub Rule (2) may be extended for a further period not exceeding 6 months by an authority next higher than the authority before whom the application for remission of duty is pending.

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

#### **Notification No. 7/2017 - Dated 2nd February, 2017**

In the Service Tax Mega Exemption List (Notification No.25/2012, dated the 20th June, 2012) following entries are inserted:

- Entry 23A - Exemption from service tax is being provided in respect of the amount of viability gap funding (VGF) payable to the selected airline operator for the services of transport of passengers, with or without accompanied belongings, by air, embarking from or terminating in a Regional Connectivity Scheme (RCS) Airport. The said exemption is being provided for a period of one year from the date of commencement of operations of the RCS airport as notified by Ministry of Civil Aviation. Therefore, the insertion of entry 23A is to further incentivize the RCS and expand the regional air connectivity and market.

- Entry 26D - Services of life insurance business provided or agreed to be provided by the Army, Naval and Air Force Group Insurance Funds to members of the Army, Navy and Air Force, respectively, under the Group Insurance Schemes of the Central Government

Entry 30 shall be substituted with the following which exempts services relating to:

- any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption;
- any intermediate production process as job work not amounting to manufacture or production in relation to
  - i. agriculture, printing or textile processing
  - ii. cut and polished diamonds and gemstones, or gold jewellery
  - iii. any goods excluding alcoholic liquors for human consumption, on which appropriate duty is payable by the principal manufacturer
  - iv. processes of electroplating, zinc plating, anodizing, heat treatment, powder coating, painting including spray painting or auto black, during the course of manufacture of parts of cycles or sewing machines upto an aggregate value of taxable service of the specified processes of Rs. 1.50 Crores in a FY subject to the condition that such aggregate value had not exceeded Rs. 1.50 Crores during the preceding financial year.

**Circular No.204/2/2017 - Dated 16th February, 2017**

It is clarified that service tax shall not be applicable on the services by way of transportation of goods by a vessel from a place outside India to the customs station in India w.r.t. goods intended for transshipment to any country outside India.

Rule 10 of the Place of Provision of Services Rules, 2012 prescribes that "destination of the goods" is the instrumental factor for charging service tax on the service of transportation of goods by air/sea, other than by mail or courier. Thus with respect to goods imported into a customs station in India intended for transshipment to any country outside India, the destination of goods is not a place in the taxable territory in India but outside India, provided that the same fact is mentioned in the import manifest or the import report of the goods.

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

**SEBI/HO/CFD/CMD/CIR/P/2017/10 - Dated 6th February 2017**

SEBI has prescribed Integrated Reporting by Listed Entities through which it has mandated the requirement of submission of Business Responsibility Report ('BRR') for top 500 listed entities under Regulation 34(2)(f) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("SEBI LODR"). Integrated Reporting may be adopted on a voluntary basis from the FY 2017-18 by top 500 companies which are required to prepare BRR. The information related to Integrated Reporting may be provided in the annual report separately or by incorporating in Management Discussion & Analysis or by

preparing a separate report (annual report prepared as per Integrated Reporting Framework). As a green initiative, the companies may host the Integrated Report on their website and provide appropriate reference to the same in their Annual Report.

**SEBI/LAD/NRO/GN/2016-17/029 - Dated 15th February 2017**

SEBI has notified the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2017. A new Sub Regulation (6) has been inserted as Regulation 37 which exempts the requirement for filing of draft schemes with stock in case merger of a wholly owned subsidiary with its holding company. However, the draft scheme shall continue to be filed with the stock exchanges for the purpose of disclosures under Regulation 30.

**SEBI/LAD/NRO/GN/2016-17/032 - Dated 15th February 2017**

SEBI has issued consultation paper for Consolidation and re-issuance of debt securities issued under the SEBI (Issue and Listing of Debt Securities) Regulations, 2008. Section 121 of the erstwhile Companies Act 1956 had specific provisions relating to consolidation and reissuance. However, the recently notified Companies Act, 2013 is silent regarding the company's power to reissue their bonds. In this regard, the Ministry of Corporate Affairs (MCA) has clarified that since Companies Act 2013 is silent on the issue, it may be assumed that such reissuance is possible if there is enabling provision in this behalf in the articles of the company. In view of the clarification provided by MCA, SEBI provided an enabling framework for consolidation and re-issuance. An amendment was

made to the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (ILDS) in the year 2015, wherein regulation 20A was inserted, to provide for consolidation and re-issuance of debt securities. In the light of the above, public comments are invited on the consultation paper latest by 28th February, 2017.

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

**RBI/2016-17/234  
IDMD.CDD.No.2187/14.04.050/2016  
-17 - Dated 23rd February, 2017**

Government of India has announced Sovereign Gold Bonds Scheme (SGB) 2016-17- Series IV. This scheme will be open for subscription from 27th February, 2017 to 3rd March, 2017 & the date of issuance of these bonds shall be 17th March, 2017. The Bonds shall be repayable on the expiration of eight years from the date of issue of Gold bonds.

The Bonds under this Scheme may be held by a person resident in India, being an individual, in his capacity as such individual, or on behalf of minor child, or jointly with any other individual. A Trust, Charitable Institution or University is also eligible to hold bonds under this scheme.

The Bonds shall bear fixed interest rate of 2.50 % per annum on the amount of initial investment. Interest shall be paid in half-yearly rests and the last interest shall be payable on maturity along with the principal. Further Interest on the Bonds shall be taxable as per the provisions of the Income Tax Act, 1961. However, capital gains tax arising on redemption of SGB to an individual has been exempted under this scheme. The indexation benefits will be provided to long term capital gains arising to any person on transfer of bond.

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