Legal Update

Circulars/Notifications

Given below are the important Circulars and Notifications issued by the CBDT, CBEC, FEMA, MCA, and RBI during the last month for information and use of members. Readers are requested to use the citation/website or weblink to access the full text of desired circular/notification. You are requested to please submit your feedback and suggestions on the column at **eboard@icai.in**

(Matter on Direct Taxes has been contributed by the Direct Taxes Committee of the ICAI)

A. INCOME TAX

I. NOTIFICATIONS

1. 'Atal Pension Yojna' notified under Section 80CCD(1)-Notification No. 7/2016 dated 19-02-2016

In exercise of the powers conferred by Section 80CCD(1), the Central Government has notified the 'Atal Pension Yojana (APY)' as published in the Gazette of India, Extraordinary, Part I, Section 1, *vide* number F. No. 16/1/2015-PR dated the 16th October, 2015 as a pension scheme for the purposes of the said Section. The notification shall come into force from the date of its publication in the Official Gazette.

2. Competition Commission of India notified under Section 10(46)-Notification No. 8/2016 dated 19-02-2016

In exercise of the powers conferred by Section 10(46), the Central Government has notified for the purpose of the said clause, the Competition Commission of India, a Commission established under Section 7(1) of the Competition Act, 2002, in respect of the specified income arising to the said Commission subject to the specified conditions as mentioned in the Notification. The Notification shall be applicable for the specified income of the Competition Commission of India for the financial years 2016-2017 to 2020-2021.

3. Madhya Pradesh State AIDS Control Society notified under Section 10(46)-Notification No. 9/2016 dated 25-02-2016

In exercise of the powers conferred by Section 10(46), the Central Government has notified for the purpose of the said clause, the Madhya Pradesh State AIDS Control Society, a body constituted by the Government of Madhya Pradesh, in respect of the specified income arising to the said Society subject to the specified conditions as mentioned in the Notification. The Notification shall be deemed to apply for the period 01.06.2011 to 31.03.2013 and shall apply with respect to the financial years 2013-2014, 2014-2015 and 2015-2016. Further, the grants received by the society shall be received and applied in accordance with the prevailing rules and regulations.

4. Income Tax (3rd Amendment) Rules, 2016–Substitution of Rule 45 and Form No. 35 - Notification No. 11/2016 dated 01-03-2016

Rule 45 and Form No. 35 relating to form of appeal to Commissioner (Appeals) has been substituted. The substituted Rule provides that Form No. 35 would now be electronically filed by all assessees going in appeal to first appellate authority. The electronic filing of Form No. 35 shall be either with digital signature or with electronic verification code. Further, any document accompanying Form No. 35 shall also be furnished electronically. The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) shall be the designated authority for carrying the specified activities in relation to e-filing of Form No. 35. The substituted Rule 45 shall come into force on the date of its publication in the Official Gazette.

5. State Load Despatch Centre Unscheduled Interchange Fund–West Bengal State Electricity Transmission Company Limited notified under Section 10(46)-Notification No. 12/2016 dated 02-03-2016

In exercise of the powers conferred by Section 10(46), the Central Government has notified for the purpose of the said clause, the State Load Despatch Centre Unscheduled Interchange Fund–West Bengal State Electricity Transmission Company Limited (PAN AAIAS0980J), a trust constituted under the Electricity Act, 2003, in respect of the specified income arising to the said Society subject to the specified conditions as mentioned in the Notification. The notification shall be deemed to be applicable to the financial years 2012-2013, 2013-2014, 2014-2015 and applicable for the financial years 2015-2016 and 2016-2017.

6. Income-tax (4th Amendment) Rules, 2016–Oil wells included under Plant and Machinery-Notification No. 13/2016 dated 03-03-2016

In exercise of the powers conferred by Section 295 read with Section 32, the Central Board of Direct Taxes has amended the Income Tax Rules, 1962 and has now included oil wells under plant and machinery head in new Appendix I. The amendment shall come into force on the 1st day of April 2016.

The complete text of the above Notifications can be downloaded from the link below: http://www.incometaxindia.gov.in/Pages/communications/notifications.aspx

II. CIRCULARS

1. Clarification regarding nature of share buy-back transactions under the Income-tax Act, 1961–Circular No. 03/2016, Dated 26-2-2016

As per the provisions of Section 46A of the Income-tax Act, 1961, applicable with effect from 1-4-2000, any consideration received by a shareholder or a holder of other specified securities from any company on purchase of its own shares/other specified securities shall be,

subject to provisions contained in Section 48, deemed to be capital gains. Further, Section 2 (22) (iv) of the Act excludes any payment made by a company on purchase of its own shares in accordance with the provisions contained in Section 77A of the Companies Act from the ambit of 'dividend'. Finance Act, 2013 subsequently introduced Section 115QA (w.e.f. 1-6-2013) to provide that any amount of distributed income by a company on buy-back of unlisted shares shall be charged to tax and the company so distributing its income shall be liable to pay additional income tax at the rate of twenty per cent of the distributed income.

It has been brought to the notice of the CBDT that the provisions of law regarding buy-back of shares since introduction of dividend distribution tax ('DDT') under Section 115-O of the Act w.e.f. 1-4-2003 till 31-5-2013 are being interpreted in a conflicting manner by the tax authorities and taxpayers, thereby giving rise to disputes on this issue. It has been contended that subsequent to introduction of Section 115QA in the Act and placing reliance on a decision of the Authority for Advance Ruling (AAR No. P of 2010), income tax authorities, in some cases have sought to re-characterise the purchase consideration received on account of buy-back of shares, undertaken prior to 1-6-2013, as dividend and accordingly, subjecting the amounts so distributed by the companies to DDT.

The matter has been examined. Between the period 1-4-2000 till 31-5-2013 as mentioned in para 1 above, provisions of Section 46A read with Section 2 (22)(iv) of the Act clearly provide that the income arising to a shareholder on buy-back of shares was to be treated as income from capital gains and not dividend income. Further clarity on this issue emerges on perusal of Circular No. 779 dated 14.09.1999 of CBDT, in which para 28 has mentioned following reasons for introducing Section 46A in the Statute:

> *"28 Clarification of tax issues arising out of the provision to allow buy-back of shores by the companies —*
> *28.1 The Companies (Amendment) Ordinance, 1998 [subsequently enacted as the Companies (Amendment) Act, 1999], inserted Section 77A in the Companies Act, 1956, which allows a company to purchase its own shares subject to certain conditions. The shares bought back have to be extinguished and physically destroyed and the company is precluded from making any further issue of securities within a period of 24 months from such buy-back.*
> *28.2 The above newly introduced provisions of buy-back of shares threw up certain issues in relation to the existing provisions of the Income Tax Act. The two principal issues are whether it would give rise to deemed dividend under Section 2(12) of the Income Tax Act and whether any capital gains would arise in the hands of the shareholder.* ***The legal position on both the issues was far from clear and settled and there was apprehension that there will be unnecessary litigation unless the issues are clarified with finality.***
> *28.3 The Act, therefore, has amended clause (22) of Section 2 of the Income Tax Act by inserting a new clause to provide that dividend does not include any payment made by a company on purchase of its own shares in accordance with the provisions contained in Section 77A of the Companies Act, 1956. It has also inserted a new section, namely, Section 46A in the Income Tax Act, to provide that any consideration received by a shareholder, or a holder of other specified securities from any company on purchase of its own shares or other specified securities shall be, subject to provisions contained in Section 48, deemed to be the capital gains."*

Accordingly, the CBDT has clarified that consideration received on buy-back of shares between the period 1-4-2000 till 31-5-2013 would be taxed as capital gains in the hands of the recipient in accordance with Section 46A of the Act and no such amount shall be treated as dividend in view of provisions of Section 2 (22)(iv).

With a view to bring about further clarity on this issue as a step towards non-adversarial tax regime, the CBDT has vide this circular directed that as a matter of general principle, no fresh notice for assessment/reassessment/non-deduction of TDS at source shall be issued where buy-back of shares has taken place prior to 1-6-2013 and the case is covered under Section 46A read with Section 2(22)(iv) of the Act. In cases where notices have already been issued and assessment proceedings are pending, tax authorities shall complete the assessment keeping in view the above legal position.

2. Tax deduction at Source on payments by Broadcasters or Television Channels to Production Houses for production of content or programme for telecasting– Circular No. 04/2016, Dated 29-2-2016

The issue of applicability of TDS provisions on payments made by broadcasters/telecasters to production houses for production of content or programme for broadcasting/telecasting has been examined by CBDT in view of representations received in this regard.

It has been noted that disputes have arisen on the issue as to whether payments made by the broadcaster/telecaster to production houses for production of content/programme are payments under a 'work contract' or a contract for `professional or technical services' and, therefore, liable for TDS under Section 194C or Section 194J of the Income-tax Act, 1961.

While applying the relevant provision of TDS on a contract for content production, a distinction is required to be made between (i) a payment for production of content/programme as per the specifications of the broadcaster/telecaster and (ii) a payment for acquisition of broadcasting/telecasting rights of the content already produced by the production house.

In the first situation where the content is produced as per the specifications provided by the broadcaster/telecaster and the copyright of the content/programme also gets transferred to the telecaster/broadcaster, it is hereby clarified that such contract is covered by the definition of the term `work' in Section 194C of the Act and, therefore, subject to TDS under that Section. This position clearly flows from the definition of `work' given in clause (iv)(b) of the Explanation to Section 194C and the same has also been clarified *vide* Qn. No. 3 of Circular No. 715 dated 8.8.1995.

However, in a case where the telecaster/broadcaster acquires only the telecasting/ broadcasting rights of the content already produced by the production house, there

is no contract for `carrying out any work, as required in Section 194C(1). Therefore, such payments are not liable for TDS under Section 194C. However, payments of this nature may be liable for TDS under other Sections under Chapter XVII-C of the Act.

3. Tax Deduction at Source (TDS) on payments by television channels and publishing houses to advertisement companies for procuring or canvassing for advertisements–Circular No. 05/2016, Dated 29-2-2016

The issue of applicability of TDS provisions on payments made by television channels or media houses publishing newspapers or magazines to advertising agencies for procuring and canvassing for advertisements has been examined by the CBDT in view of representations received in this regard.

It is noted that there are two types of payments involved in the advertising business:

(i) Payment by client to the advertising agency, and
(ii) Payment by advertising agency to the television channel/newspaper company.

The applicability of TDS on these payments has already been dealt with in Circular No. 715 dated 8-8-1995, where it has been clarified in Question Nos. 1 & 2 that while TDS under Section 194C (as work contract) will be applicable on the first type of payment, there will be no TDS under Section 194C on the second type of payment, for example, payment by advertising agency to the media company.

However, another issue has been raised in various cases as to whether the fees/charges taken or retained by advertising companies from media companies for canvasing/booking advertisements (typically 15% of the billing) is 'commission' or 'discount'. It has been argued by the assessees that since the relationship between the media company and the advertising company is on a principal-to-principal basis, such payments are in the nature of trade discount and not commission and, therefore, outside the purview of TDS under Section 194H. The Department, on the other hand, has taken the stand in some cases that since the advertising agencies act on behalf of the media companies for procuring advertisements, the margin retained by the former amounts to constructive payment of commission and, accordingly, TDS under Section 194H is attracted.

The issue has been examined by the Allahabad High Court in the case of *Jagran Prakashan Ltd.* and Delhi High Court in the matter of *Living Media Limited* and it was held in both the cases that the relationship between the media company and the advertising agency is that of a 'principal-to-principal' and, therefore, not liable for TDS under Section 194H. The SLPs filed by the Department in the matter of Living Media Ltd. and Jagran Prakashan Ltd. have been dismissed by the Supreme Court *vide* order dated 11-12-2009 and order dated 5-5-2014, respectively. Though these decisions are in respect of print media, the ratio is also applicable to electronic media/ television advertising as the broad nature of the activities involved is similar.

In view of the above, the CBDT has clarified that no TDS is attracted on payments made by television channels/ newspaper companies to the advertising agency for booking or procuring of or canvassing for advertisements. It is also further clarified that 'commission' referred to in Question No.27 of the CBDT's Circular No. 715 dated 8-8-1995 does not refer to payments by media companies to advertising companies for booking of advertisements but to payments for engagement of models, artists, photographers, sportspersons, *etc.* and, therefore, is not relevant to the issue of TDS referred to in this Circular.

4. Issue of taxability of surplus on sale of shares and securities-capital gains or business income-instructions in order to reduce litigation– Circular No. 06/2016, Dated 29-2-2016

Section 2(14) of the Income-tax Act, 1961 defines the term "capital asset" to include property of any kind held by an assessee, whether or not connected with his business or profession, but does not include any stock-in-trade or personal assets subject to certain exceptions. As regards shares and other securities, the same can be held either as capital assets or stock-in-trade/trading assets or both. Determination of the character of a particular investment in shares or other securities, whether the same is in the nature of a capital asset or stock-in-trade, is essentially a fact-specific determination and has led to a lot of uncertainty and litigation in the past.

Over the years, the courts have laid down different parameters to distinguish the shares held as investments from the shares held as stock-in-trade. The CBDT has also, through Instruction No. 1827, dated August 31, 1989 and Circular No. 4 of 2007 dated June 15, 2007, summarised the said principles for guidance of the field formations.

Disputes, however, continue to exist on the application of these principles to the facts of an individual case since the taxpayers find it difficult to prove the intention in acquiring such shares/securities. In this background, while recognising that no universal principal in absolute terms can be laid down to decide the character of income from sale of shares and securities (i.e. whether the same is in the nature of capital gain or business income), CBDT realising that major part of shares/securities transactions takes place in respect of the listed ones and with a view to reduce litigation and uncertainty in the matter, in partial modification to the aforesaid Circulars, further instructs that the Assessing Officers in holding whether the surplus generated from sale of listed shares or other securities would be treated as Capital Gain or Business Income, shall take into account the following—

a) Where the assessee itself, irrespective of the period of holding the listed shares and securities, opts to treat them as stock-in-trade, the income arising from transfer of such shares/securities would be treated as its business income,

b) In respect of *listed shares and securities* held for a period of more than 12 months immediately preceding the date of its transfer, if the assessee desires to treat the income arising from the transfer thereof as capital gain, the same shall not be put to dispute by the Assessing Officer. However, this stand, once taken by the assessee in a particular assessment year, shall remain applicable in subsequent assessment years also and the taxpayers shall not be allowed to adopt a different/contrary stand in this regard in subsequent years;

c) In all other cases, the nature of transaction (i.e. whether the same is in the nature of capital gain or business income) shall continue to be decided keeping in view the aforesaid Circulars issued by the CBDT.

It is, however, clarified that the above shall not apply in respect of such transactions in shares/securities where the genuineness of the transaction itself is questionable, such as bogus claims of long term capital gain/short term capital loss or any other sham transactions.

It is reiterated that the above principles have been formulated with the sole objective of reducing litigation and maintaining consistency in approach on the issue of treatment of income derived from transfer of shares and securities. All the relevant provisions of the Act shall continue to apply on the transactions involving transfer of shares and securities.

5. Clarification regarding taxability of Consortium members– Circular No. 07/2016, Dated 07-03-2016

1. A consortium of contractors is often formed to implement large infrastructure projects, particularly in Engineering Procurement and Construction ('EPC') contracts and Turnkey Projects. The tax authorities, in many cases have taken a position that such a consortium constitutes an Association of Persons ('AOP') *i.e.* a separate entity for charging tax. The claim of taxpayers, on the other hand, is contrary to this view. This has led to tax disputes particularly in those cases where each member of the consortium, although jointly and severally liable to the contractee, has a clear distinction and role in scope of work, responsibilities and liabilities of the consortium members.
2. The term AOP has not been specifically defined in the Income-tax Act, 1961 ('Act'). The issue as to what would constitute an AOP was considered by the Apex Court in some cases. Although certain guidelines were prescribed in this regard, the Court opined that there is no formula of universal application so as to conclusively decide the existence of an AOP and it would rather depend upon the particular facts and circumstances of a case. In the specific context of the EPC contracts/ Turnkey projects, there are several contrary ruling of various Courts on what constitutes an AOP.
3. With a view to avoid tax disputes and to have consistency in approach while handling these cases, the CBDT has decided that a consortium arrangement for executing EPC/Turnkey contracts which has the following attributes may not be treated as an AOP:
   a. each member is *independently* responsible for executing its part of work through its own resources and also bears the risk of its scope of work *i.e.* there is a clear demarcation in the work and costs between the consortium members and each member incurs expenditure only in its specified area of work;
   b. each member earns profit or incurs losses, based on performance of the contract falling strictly within its scope of work. However, consortium members may share contract price at gross level only to facilitate convenience in billing;

c. the men and materials used for any area of work are under the risk and control of respective consortium members;
d. the control and management of the consortium is not unified and common management is only for the *inter-se* co-ordination between the consortium members for administrative convenience.

4. There may be other additional factors also which may justify that consortium is not an AOP and the same shall depend upon the specific facts and circumstances of a particular case, which need to be taken into consideration while taking a view in the matter.
5. This Circular shall not be applicable in cases where all or some of the members of the consortium are Associated Enterprises within the meaning of Section 92A of the Act in such cases, the Assessing Officer will decide whether an AOP is formed or not keeping in view the relevant provisions of the Act and judicial jurisprudence on this issue.

6. Clarification on applicability of Circular No 21/2015, dated 10-12-2105 – Letter F. No. 279/Misc./M-142/2007 - ITJ (Part), Dated 08-03-2016

The monetary limits for filing appeals before the Income Tax Appellate Tribunals and High Courts were raised to ₹10 lakh and ₹20 lakh, respectively, by Circular 21 of 2015 dated 10.12.2015. Doubts were raised regarding the applicability of Circular 21 of 2015 to cross objections filed by the Department before the ITAT under Section 253(4) of the Income-tax Act and to references to the High Court under Sections 256(1) and 256(2) of the Act.

The CBDT has examined the matter and clarified that the monetary limit of ₹10 lakh for filing appeals before the ITAT would apply equally to cross objections under Section 253(4) of the Act. Cross objections below this monetary limit, already filed, should be pursued for dismissal as withdrawn/ not pressed. Filing of cross objections below the monetary limit may not be considered henceforth.

Similarly, references to High Courts below the monetary limit of ₹20 lakh should be pursued for dismissal as withdrawn/not pressed. References below this limit may not be considered henceforth.

The detailed circulars can be downloaded from the link below: http://www.incometaxindia.gov.in/Pages/communications/circulars.aspx

III. PRESS RELEASES/INSTRUCTIONS/OFFICE MEMORANDUM

1. CBDT resolves disputes of ₹5000 crore under mutual agreement procedure (MAP) of tax treaties- Press Release dated February 16 , 2016

Double Taxation Avoidance Agreements (DTAAs) *i.e.* Tax Treaties signed by India with various countries contain an Article to relieve taxpayers from double taxation through a Mutual Agreement Procedure (MAP). Internationally, the MAP is an important mechanism to resolve tax disputes between countries. The MAP program is led by one or more

Competent Authorities designated by the signatory countries to resolve tax disputes under the provisions of each treaty. In the last two years, increased focus on MAP has resulted in resolution of large number of disputes relating to double taxation.

Since 1st April, 2014 till date, the CBDT has resolved 180 cases under MAP. The total amount of income locked up in dispute in these cases is approximately ₹5,000 crore. The resolved cases pertain to various sectors of the economy like software services, IT enabled services, manufacturing, consultancy services, *etc.* The countries with which cases have been resolved are USA, Japan, United Kingdom and China.

MAP has emerged as an effective alternative tax dispute resolution mechanism. Its use to resolve disputes has provided comfort to foreign investors and also reduced the number of cases under litigation. This is one of the actions taken by CBDT to ensure a fair and judicious dispute resolution regime to encourage foreign investment.

2. Clarifications for implementation of FATCA and CRS-Press Release dated February 19 , 2016

An Inter-Governmental Agreement between India and USA was signed for implementation of Foreign Account Tax Compliance Act (FATCA). The Government of India has also joined the Multilateral Competent Authority Agreement (MCAA) for Automatic Exchange of Information as per Common Reporting Standard (CRS). To provide guidance for implementation of FATCA and CRS, a Guidance Note was released on 31st August 2015 which was subsequently updated on 31.12.2015.

Based on comments and feedback received from the financial institutions, a clarification has been issued in February, 2016.

3. Amendment of Instruction No.1914, Dated 21-3-1996 to provide for guidelines for stay of demand at first appeal stage– Office Memorandum dated February 29 , 2016

Instruction No. 1914 dated 21-3-1996 contains guidelines issued by the Board regarding procedure to be followed for recovery of outstanding demand, including procedure for grant of stay of demand.

In part 'C' of the Instruction, it has been prescribed that a demand will be stayed only if there are valid reasons for doing so and that mere filing of an appeal against the assessment order will not be a sufficient reason to stay the recovery of demand. It has been further prescribed that while granting stay, the field officers may require the assessee to offer a suitable security (bank guarantee, *etc.*) and/or require the assessee to pay a reasonable amount in lump sum or in installments.

It has been reported that the field authorities often insist on payment of a very high proportion of the disputed demand before granting stay of the balance demand. This often results in hardship for the taxpayers seeking stay of demand.

In order to streamline the process of grant of stay and standardise the quantum of lump sum payment required to be made by the assessee as a pre-condition for stay of demand disputed before CIT (A), the following modified guidelines are being issued in partial modification of Instruction No. 1914:

A. In a case where the outstanding demand is disputed before CIT (A), the assessing officer shall grant stay of demand till disposal of first appeal on payment of 15% of the disputed demand, unless the case falls in the category discussed in para (B) hereunder.

B. In a situation where,

   a) the assessing officer is of the view that the nature of addition resulting in the disputed demand is such that payment of a lump sum amount higher than 15% is warranted (e.g. in a case where addition on the same issue has been confirmed by appellate authorities in earlier years or the decision of the Supreme Court or jurisdictional High Court is in favour of Revenue or addition is based on credible evidence collected in a search or survey operation, *etc.*) or,

   b) the assessing officer is of the view that the nature of addition resulting in the disputed demand is such that payment of a lump sum amount lower than 15% is warranted (e.g. in a case where addition on the same issue has been deleted by appellate authorities in earlier years or the decision of the Supreme Court or jurisdictional High Court is in favour of the assessee, *etc.*), the assessing officer shall refer the matter to the administrative Pr. CIT/CIT, who after considering all relevant facts shall decide the quantum/proportion of demand to be paid by the assessee as lump sum payment for granting a stay of the balance demand.

C. In a case where stay of demand is granted by the assessing officer on payment of 15% of the disputed demand and the assessee is still aggrieved, he may approach the jurisdictional administrative Pr. CIT/ CIT for a review of the decision of the assessing officer.

D. The assessing officer shall dispose of a stay petition within 2 weeks of filing of the petition. If a reference has been made to Pr. CIT/CIT under para 4 (B) above or a review petition has been filed by the assessee under para 4 (C) above, the same shall also be disposed of by the Pr. CIT/CIT within 2 weeks of the assessing officer making such reference or the assessee filing such review, as the case may be.

E. In granting stay, the Assessing Officer may impose such conditions as he may think fit. He may, *inter alia*,-

   i. require an undertaking from the assessee that he will cooperate in the early disposal of appeal failing which the stay order will be cancelled;

   ii. reserve the right to review the order passed after expiry of reasonable period (say 6 months) or if the assessee has not co-operated in the early disposal of appeal, or where a subsequent pronouncement by a higher appellate authority or court alters the above situations;

   iii. reserve the right to adjust refunds arising, if any, against the demand, to the extent of the amount required for granting stay and subject to the provisions of section 245.

4. Setting up of a dedicated structure for delivery and monitoring of tax payer services in the Income Tax Department-Press Release dated March 7 , 2016

Grievance redressal is a major aspect of citizen centric governance and is an important feature of the activities of the Income Tax Department. The Income Tax Department is addressing grievances through multi-layered grievance redressal machinery including Centralised Public Grievance Redress and Monitoring System (CPGRAMS), Aayakar Seva Kendras (ASK), online grievance redressal through Central Processing Centre (CPC), *etc.*

Taking another step in this direction, the Central Board of Direct Taxes has issued an Order setting up a dedicated structure for delivery and monitoring of tax payer services in the Income Tax Department. Member (Revenue and Tax Payer Services) will oversee the delivery and monitoring of taxpayer services in CBDT. Two separate Directorates, called Directorate of Tax Payer Services I and Directorate of Tax Payer Services II have been set up. Together, these Directorates will be responsible for delivery and monitoring of taxpayers services in the field offices and e-services deliverable through various electronic platforms of the Department. They will oversee and co-ordinate all matters relating to grievances of taxpayers and ensure their timely redressal. These Directorates will report to the Member (R and TPS), CBDT through the Principal Director General of Income Tax (Administration).

The responsibility for delivery of tax payer services has also been specifically assigned at every level in the field offices. This will ensure accountability of officials in redressing grievances in a time bound manner.

The Tax Administration Reforms Commission's (TARC) Report has also accorded considerable importance to redressal of grievances and a customer focused approach in the Department through creation of a tax payer services vertical. The creation of this structure will fulfill some of the most significant recommendations of the TARC.

With this initiative, the CBDT expects a noteworthy reduction in taxpayer grievances and enhanced taxpayer satisfaction.

5. Non-enforcement of recovery of demand against the assessee where tax has been deducted but not deposited by the deductor-Press Release dated March 11, 2016

The Central Board of Direct Taxes had issued directions to the field offices that taxpayers whose tax has been deducted at source but not deposited to the Government's account by the deductor, will not be asked to pay the demand to the extent tax has been deducted from his income. A letter to this effect was issued on 01.06.2015. Through this letter an embargo had been put on direct demand against the assessees in cases where the tax demand is on account of tax-credit mismatch due to non-payment of TDS to the Government account by the deductor.

Instances have come to the notice of the Board that these directions are not being strictly followed in field offices. An Office Memorandum has therefore been issued on

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11.03.2015 reiterating the contents of the letter. It has been re-emphasised that the assessing officers shall not enforce demands created on account of mismatch of credit due to non-payment of TDS amount to the credit of the Government by the deductor.

(Matter on Indirect Taxes has been contributed by the Indirect Taxes Committee of the ICAI)

A. SERVICE TAX

1. Any Services Provided by Government to Business Entity will be Liable to Service Tax excluding Exempted Business Entity

Finance Act (No. 20), 2015 had substituted the words 'support services' provided by Government or a local authority to a business entity by the words 'any services' under the Negative List. Now, all services provided by the Government or local authority to a business entity, except the services that are specifically exempted, or covered by any another entry in the Negative List, shall be liable to service tax w.e.f. 1st April, 2016. Such transactions would be covered under the Reverse Charge Mechanism.

However, to provide relief to small taxpayers, a new entry has been inserted (No. 48) under the *Mega Exemption Notification* to provide that services provided by Government or a local authority to a business entity with a turnover up to ₹10 lakh in the preceding financial year will be out of the purview of service tax from 01.04.2016 onwards.

[Notification No. 06/2016-Service Tax, dated February 18, 2016 & Notification No. 07/2016-Service Tax dated 18th February, 2016]

2. Rationalisation of Abatement Provisions: Notification No. 26/2012

CBEC *vide* Notification No. 08/2016-Service Tax, dated March 01, 2016 has amended and rationalised the abatement provisions provided in Notification No. 26/2012- Service Tax, dated 20.06.2012, w.e.f. 1st April, 2016 unless otherwise provided, as follows:

S. No.	Particulars	Existing Taxable Value	Post amendment Taxable Value (effective from 01.04.2016 unless otherwise provided)
2	Transport of goods by Indian railways	30% (without any CENVAT Credit)	30% (with credit of Input Services)
2A ***(new entry)***	Transport of goods in containers by rail by any person other than Indian Railways	30% (without any CENVAT Credit)	40% (with credit of Input Services)
3	Transport of passengers, with or without accompanied belongings by rail	30% (without any CENVAT Credit)	30% (with credit of Input Services)
7A ***(new entry)***	Services of goods transport agency in relation to transportation of used household goods	30%	40%
8 ***(new entry)***	Services provided by a foreman of chit fund in relation to chit	Nil	70% (without any CENVAT Credit)
9A (c) ***(new entry) (w.e.f. 01.06.2016)***	Transport of passengers, with or without accompanied belongings, by **a stage carriage**	Not- taxable	40% (without any CENVAT Credit)
10	Transport of goods in a vessel	30% (without any CENVAT Credit)	30% (with credit of Input Services)
11(i)	Services by a tour operator in relation to a tour, only for the purpose of arranging or booking accommodation for any person	10% (without any CENVAT Credit)	10% with CENVAT credit on only input services of a tour operator used for providing the taxable service
11(ii)	Tours other than (i) above	25% or 40% as the case may be with following: CENVAT credit on inputs, capital goods and input services other than the input service of a tour operator, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.	30% with following: CENVAT credit on inputs, capital goods and input services other than input services of a tour operator, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.

S. No.	Particulars	Existing Taxable Value	Post amendment Taxable Value (effective from 01.04.2016 unless otherwise provided)
12	Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate by the competent authority	25% in case of a residential unit having carpet area of less than 2000 sq. ft. and costing < ₹1 crore or 30% in other cases, as the case may be with CENVAT Credit on capital goods & input services	30% with CENVAT Credit on capital goods & input services

It has further been provided that for the purpose of *"Renting of Motor cab"* (Sl. No. 9), the amount charged shall be the sum total of the amount charged for the service including the fair market value of all goods (including fuel) and services supplied by the recipient(s) in or in relation to the service, whether or not supplied under the same contract or any other contract; provided that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.

[Notification No. 08/2016-Service Tax dated 1st March, 2016]

3. Amendments in Mega Exemption Notification No. 25/2012

CBEC *vide Notification No. 09/2016-Service Tax, dated March 01, 2016* has amended Mega Exemption Notification, effective 01.04.2016 unless otherwise provided, as follows:

(i) Exemptions are withdrawn on services provided by
- a senior advocate to an advocate, partnership firm of advocates providing legal service. *(Entry 6 clause b amended)*
- a person represented on an arbitral tribunal to an arbitral tribunal. *(Entry 6 clause c omitted)*

(ii) Exemption from service tax to
- Services provided by the Indian Institutes of *Management w.e.f. 01.03.2016*, as per the guidelines of the Central Government, to their students, by way of the following educational programmes, except Executive Development Programme -
  (a) two year Post Graduate Diploma in Management, conducted by the Indian Institute of Management admitted through CAT;
  (b) Fellow Programme in Management;
  (c) five year Integrated Programme in Management. *(New Entry 9B inserted)*
- Services of assessing bodies empanelled under Skill Development Initiative (SDI) Scheme. *(New Entry 9C inserted)*
- Services provided by training providers under Deen Dayal Upadhyaya Grameen Kaushalya Yojana by way of offering skill or vocational training courses certified by National Council for Vocational Training. *(New Entry 9D inserted)*

(iii) Exemption to services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -
  a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;
  b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or(iii) an art or cultural establishment; or
  c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause (44) of Section 65 B of the said Act;

was withdrawn with effect from 01.04.2015. The same is being restored for the services provided under a contract which had been entered into prior to 01.03.2015 and on which appropriate stamp duty, where applicable, had been paid prior to that date. *The exemption is being restored till 31.03.2020.* The services provided during the period from 01.04.2015 to 29.02.2016 under such contracts are also proposed to be exempted from the service tax. *(New Entry 12A inserted)*

(iv) Exemption *w.e.f. 01.03.2016* to services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of:
- a civil structure or any other original works pertaining to the 'In-situ rehabilitation of existing slum dwellers using land as a resource through private participation" under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana, only for existing slum dwellers. *(Entry 13 new item (ba) inserted)*
- a civil structure or any other original works pertaining to the 'Beneficiary-led individual house construction/enhancement under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana. *(Entry 13 new item (bb) inserted)*

(v) Exemption *w.e.f. 01.03.2016* to services by way of construction, erection, commissioning, or installation of original works pertaining to:
- railways, excluding monorail and metro;
- low cost houses up to a carpet area of 60 square meters per house in a housing project approved by the competent authority.

(vi) Exemption *w.e.f. 01.03.2016* to services by way of construction, erection, commissioning, or installation of original works pertaining to an airport or port provided under a contract which had been entered into prior to 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date;

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provided that the Ministry of Civil Aviation or the Ministry of Shipping in the Government of India, as the case may be, certifies that the contract had been entered into before the 1st March, 2015;
provided further that nothing contained in this entry shall apply on or after the 1st April, 2020. *(New Entry 14A inserted)*

(vii) The threshold exemption limit of consideration charged for services provided by a performing artist in folk or classical art forms of music/ dance/theatre, is being increased from ₹1 lakh to ₹1.5 lakh. *(Amendment in Entry 16)*

(viii) Exemption *w.e.f. 01.06.2016* to transport of passengers, with or without accompanied belongings, by stage carriage other than air-conditioned stage carriage; *(Entry 23 new clause (bb) inserted)*
Exemption withdrawn *w.e.f. 01.06.2016* to transport of passengers, with or without accompanied belongings by ropeway, cable car or aerial tramway. *(Entry 23 clause (c) omitted)*

(ix) Exemption to services of general insurance business provided under Niramaya Health Insurance Scheme implemented by Trust constituted under the provisions of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999). *(Entry 26 new clause (q) inserted)*

(x) Exemption to services of life insurance business provided by way of annuity under the National Pension System regulated by Pension Fund Regulatory and Development Authority of India (PFRDA) under the Pension Fund Regulatory and Development Authority Act, 2013 (23 of 2013); *(New Entry 26C inserted)*

(xi) Exemption to:

- Services provided by Employees' Provident Fund Organisation (EPFO) to persons governed under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952). *(New Entry 49 inserted)*
- Services provided by the Insurance Regulatory and Development Authority of India (IRDA) to insurers under the Insurance Regulatory and Development Authority of India Act, 1999 (41 of 1999). *(New Entry 50 inserted)*
- Services provided by the Securities and Exchange Board of India (SEBI) set up under the Securities and Exchange Board of India Act, 1992 (15 of 1992) by way of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market. *(New Entry 51 inserted)*
- Services provided by the National Centre for Cold Chain Development under the Ministry of Agriculture, Cooperation and Farmer's Welfare by way of cold chain knowledge dissemination. *(New Entry 52 inserted)*
- Services by way of transportation of goods by an aircraft from a place outside India up to the customs station of clearance in India *w.e.f. 01.06.2016. (New Entry 53 inserted)*

[Notification No. 09/2016-Service Tax, dated March 01, 2016]

4. Point of Taxation for new levy on services

To resolve the disputes in regards to new levy, CBEC *vide Notification No. 10/2016-Service Tax, dated March 01, 2016* has inserted an explanation to Rule 5 of the Point of Taxation Rules, 2011 to provide that Rule 5 would be applied in case of new levy on services and that the exclusion to pay service tax on new levy or tax shall only be upon fulfillment of conditions provided in the said rule.

[Notification No. 10/2016-Service Tax, dated March 01, 2016]

5. Services in relation to Information Technology Software recorded on a media bearing RSP exempted

CBEC *vide Notification No. 11/2016-Service Tax, dated March 01, 2016* has exempted from service tax service in relation to information technology software when such information technology software is recorded on a media under Chapter 85 of the First Schedule to the Central Excise Tariff Act, 1985, on which it is required, under the provisions of the Legal Metrology Act, 2009 to declare on package of such media thereof, the retail sale price; subject to the condition specified in the notification.

[Notification No. 11/2016-Service Tax, dated March 01, 2016]

6. Exemption to services provided by the bio-incubators approved by the Biotechnology Industry Research Assistance Council

CBEC *vide Notification No. 12/2016-Service Tax, dated March 01, 2016* has extended the exemption from service tax provided to a Technology Business Incubator (TBI) or a Science and Technology Entrepreneurship Park (STEP) (N.N. 32/2012 -Service Tax dated 20th June, 2012) further to services provided by the bio-incubators approved by the Biotechnology Industry Research Assistance Council, under Department of Biotechnology, Government of India *w.e.f 01.04.2016.*

[Notification No. 12/2016-Service Tax dated 1st March, 2016]

7. Revised interest rates for delayed payment of service tax

CBEC *vide Notification No. 13/2016-Service Tax, dated March 01, 2016* has provided that with effect from the date the Finance Bill, 2016 receives the assent of the President, the rate of interest for delayed payment of any amount as service tax would be as under:

Serial Number	Situation	Rate of simple interest p.a.
1.	Collection of any amount as service tax but failing to pay the amount so collected to the credit of the Central Government on or before the date on which such payment becomes due	24 %
2.	Other than in situations covered in Sl. No. 1 above	15 %

[Notification No. 13/2016-Service Tax dated 1st March, 2016]

8. Amendments in Reverse Charge Notification No. 30/2012

CBEC *vide Notification No. 18/2016-Service Tax, dated March 01, 2016* has amended Reverse Charge Notification, effective 01.04.2016, as follows:

a) The taxable services provided or agreed to be provided by a mutual fund agent or distributor, to a mutual fund or asset management company are now outside the purview of reverse charge. From now, tax would be payable by the service provider. *(Para A(ib) omitted)*

b) The taxable services provided or agreed to be provided by a selling or marketing agent of lottery tickets in relation to a lottery in any manner to a lottery distributor or selling agent of the State Government under the provisions of the Lottery (Regulations) Act, 1998. *(Para I clause A(ic) substituted)*

c) The taxable services provided or agreed to be provided by a firm of advocates or an individual advocate other than senior advocate, by way of legal services *(Para I clause A(iv)(B) substituted) (Rule 2(1)(d)(i) (D)(II) of the Service Tax Rules amended)*

S. No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by any person liable for paying service tax other than the service provider
~~1B~~	~~in respect of services provided or agreed to be provided by a mutual fund agent or distributor, to a mutual fund or asset management company~~	~~Nil~~	~~100%~~
1C	~~in respect of service provided or agreed to be provided by a selling or marketing agent of lottery tickets to a lottery distributor or selling agent~~ *in respect of services provided or agreed to be provided by a selling or marketing agent of lottery tickets in relation to lottery in any manner to a lottery distributor or selling agent of the State Government under the provisions of the Lottery (Regulations) Act, 1998 (17 of 1998)*	Nil	100%

S. No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by any person liable for paying service tax other than the service provider
5A	~~in respect of services provided or agreed to be provided by a director of a company or a body corporate to the said company or the body corporate~~ *in respect of services provided or agreed to be provided by a firm of advocates or an individual advocate other than a senior advocate by way of legal services*	Nil	100%
6.	in respect of services provided or agreed to be provided by Government or local authority ~~by way of support services~~ excluding,- (1) renting of immovable property, and (2) services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994	Nil	100%

[Notification No. 18/2016-Service Tax dated 1st March, 2016 & Notification No. 19/2016-Service Tax dated 1st March, 2016]

9. Amendments in the Service Tax Rules, 1994

CBEC *vide Notification No. 19/2016-Service Tax, dated March 01, 2016* has amended Service Tax Rules, 1994 effective 1st April 2016, as follows:

- Rule 6 of the Service Tax Rules, 1994 to be amended to extend the benefit of quarterly payment of service tax to one person company (OPC) whose aggregate value of services provided is up to ₹50 lakh in the previous financial year, and an HUF. Further, payment of service tax on receipt basis is also extended to such OPC.
- Presently, in cases where the amount allocated for investment or savings on behalf of policy holder is not intimated to the policy holder at the time of providing of service, an insurer is required to pay tax @ 3.5% of the premium charged from policy holder in the first year and 1.75% of the premium charged from policy holder in the subsequent years. Now, Rule 6(7A) to be amended to provide that the service tax liability on single premium annuity (insurance) policies is being rationalised and the effective alternate service tax rate (composition rate) is being prescribed at 1.4% of the total premium charged, in cases where the amount allocated for investment or savings on behalf of policy holder is not intimated to the policy holder at the time of providing of service.
- Every assessee would be required to submit an annual return for the financial year to which the return relates, in specified format by the 30th day of November of the succeeding financial year. The annual return may be revised within a period of one month from the date of submission of the said annual return. Upon delay in filing the return, an assessee would be required to pay a penalty calculated at the rate of ₹100 per day for the period of delay in filing of such return, subject to a maximum of ₹20,000.

  [Notification No. 19/2016-Service Tax dated 1st March, 2016]

CENVAT CREDIT RULES

10. Amendments in CENVAT Credit Rules, 2004

CBEC *vide Notification No. 13/2016-Central Excise (NT), dated March 1, 2016* has amended the CENVAT Credit Rules, 2004, effective 01.04.2016, as follows:

- Equipment and appliance used in an office located within a factory are being included in the definition of capital goods so as to allow CENVAT credit on the same. *(Rule 2a)*
- CENVAT credit on inputs and capital goods used for pumping of water, for captive use in the factory, is being allowed even where such capital goods are installed outside the factory.
- All capital goods having value up to ₹10,000 per piece are being included in the definition of "inputs" which would enable an assessee to take whole credit on such capital goods in the same year in which they are received. *(Rule 2k)*
- In order to allow shipping lines to take credit on inputs and input services, service by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India is being excluded from the definition of "exempted service". *(Rule 2e)*
- CENVAT credit on tools of Chapter 82 of the Central Excise Tariff in addition to credit on jigs, fixtures, moulds & dies, when intended to be used in the premises of job-worker or another manufacturer who manufactures the goods as per specification of manufacturer of final products is also being allowed. These tools can be sent directly to such other manufacturer or job worker without bringing the same to manufacturer's premises. *(Rule 2a)*
- Validity of the permission given by an Assistant Commissioner or Deputy Commissioner to a manufacturer of the final products for sending inputs or partially processed inputs outside his factory to a job-worker and clearance there from on payment of duty has been extended to 3 years as against present one year. *(Rule 4(6))*
- CENVAT credit of service tax paid on amount charged for assignment by Government or any other person of a natural resource such as radio-frequency spectrum, mines, etc. shall be spread over the period of time for which the rights have been assigned. Further, if in any financial year, the manufacturer of goods or provider of output service having such rights further assigns them

to another person against a consideration, balance CENVAT credit not exceeding the service tax payable on the consideration charged by him for such further assignment, shall be allowed in the same financial year. Also, CENVAT credit of annual or monthly user charges payable in respect of such assignment shall be allowed in the same financial year.

- An invoice issued by a service provider for clearance of inputs or capitals goods is also listed as a valid document for availing CENVAT credit. *(Rule 9)*
- A manufacturer of final products or provider of output services shall submit to the Superintendent of Central Excise an annual return for each financial year, by the 30th day of November of the succeeding year, in the form as specified by a notification by the Board. (Rule 9A)
- FIFO method of utilising credit as specified in Rule 14(2) has been done away with. Now, whether a particular credit has been utilised or not shall be ascertained by examining whether during the period under consideration, the minimum balance of credit in the account of the assessee was equal to or more than the disputed amount of credit. *(Rule 14)*

Amendment in Rule 6: Reversal of CENVAT Credit

Rule 6 of CENVAT Credit Rules is being redrafted with the objective of simplifying and rationalising the same without altering the established principles of reversal of such credit.

The changes are as follows:

- Inputs and input services used in an activity which is not a 'service' under the Finance Act, 1994 also to attract reversal provisions under Rule 6.
- For the capital goods used for the manufacture of exempted goods or provision of exempted service, no CENVAT credit shall be allowed for two years from the date of commencement of commercial production or provision of service. This means if the goods/services become dutiable/taxable within a span of two years of purchase of capital goods, CENVAT credit of such goods can be availed.
- CENVAT credit shall not be allowed on such quantity of input and input services as is used in or in relation to manufacture of exempted goods and exempted service.
- A manufacturer who exclusively manufactures exempted goods for their clearance up to the place of removal or a service provider who exclusively provides exempted services shall reverse the entire credit and is not be eligible for credit of any inputs and input services used.
- When a manufacturer/provider of output service manufactures/provides two classes of goods/services for clearance up to the place of removal, *i.e.* exempted goods/services and final products/output services excluding exempted goods/services then manufacturer or provider of output service has following two options:

i) Pay an amount equal to 6% of value of the exempted goods and 7% of the value of the exempted services, subject to a maximum of the total credit taken. The purpose of the rule is to deny credit of such part of the total credit taken, as is attributable to the exempted goods or exempted services and under no circumstances this part can be greater than the whole credit.

ii) Option (ii) (Rule 3A) provides the procedures and conditions for calculation of credit allowed and credit not allowed and directs that such credit not allowed shall be paid, provisionally for each month. The four key steps for calculating the credit required to be paid are :

- Credit of inputs/input services used exclusively in manufacture of exempted goods or provision of exempted services is not available;
- Full credit is available of input or input services used exclusively in final products excluding exempted goods or output services excluding exempted services;
- Balance Common Credit shall be attributed as follows:

$$\text{Credit Attributable to Exempted Goods/ Services} = \text{Common Credit} \times \frac{\text{Value of exempted goods/ services}}{\text{Total turnover of exempted and non-exempted goods and exempted and non-exempted services in the previous financial year}}$$

- Final reconciliation and adjustments are provided for after close of financial year by 30th June of the succeeding financial year, as provided in the existing rule.

- On failing to follow the procedure of giving intimation, a manufacturer/provider of output service may be allowed by competent Central Excise Officer to follow the procedure and pay the amount prescribed subject to payment of interest calculated at the rate of 15% per annum.
- The existing Rule 6 of CCR would continue to be in operation up to 30.06.2016, for the units who are required to discharge the obligation in respect of financial year 2015-16.
- Banks and other financial institutions are to be allowed to reverse credit in respect of exempted services, on actual basis also, in addition to the option of 50% reversal.
- Credit taken on inputs and input services used in providing a service by way of "transportation of goods by a vessel from customs station of clearance in India to a place outside India" shall not be required to be reversed by the shipping lines.

Amendment in Rule 7: Input Service Distributor (ISD)

- An ISD can now distribute the input service credit to an outsourced manufacturing unit also in addition to its own manufacturing units.
- As against the present method of distribution of credit based on turnover, now an ISD will distribute CENVAT credit in respect of service tax paid on the input services to its manufacturing units or units providing output service or to outsourced manufacturing units subject to, *inter alia*, the following conditions:
  - i) Credit attributable to a particular unit shall be attributed to that unit only.
  - ii) Credit attributable to more than one unit but not all shall be attributed to those units only and not to all units.

iii) Credit attributable to all units shall be attributed to all the units.

- Credit shall be distributed pro rata on the basis of turnover as is done in the present rules.
- An outsourced manufacturing unit shall maintain separate account of credit received from each of the ISD and shall use it for payment of duty on goods manufactured for ISD concerned.
- Provisions of Rule 6 will apply to units availing the CENVAT credit distributed by ISD and not to the ISD.
- Now, manufacturers with multiple manufacturing units are allowed to maintain a common warehouse for inputs and distribute inputs with credits to the individual manufacturing units.

[Notification No. 13/2016-Central Excise (NT) dated 1st March, 2016]

B. CENTRAL EXCISE

11. Certificate evidencing payment of Central Excise duty by SSIs

Circular No. 620/11/2002-CX, dated 20.02.2002 extended the facility of issuing of Certificate as proof of payment of central excise duty to small scale industries.

Now, *w.e.f. 1st March 2016*, as a matter of trade facilitation, the same facility has been extended to the entire industry.

[Circular No. 1017/5/2016-CX dated 29th February, 2016]

12. Withdrawal from prosecution in cases older than 15 years involving duty less than rupees five lakhs

CBEC *vide Circular No. 1018/6/2016-CX, dated February 29, 2016* has provided that prosecution cases would be withdrawn where evasion of central excise duty is less than ₹5 lakh and pending in court for more than 15 years.

[Circular No. 1018/6/2016-CX dated 29th February, 2016]

13. Change in rate of interest on goods warehoused for export and cleared to DTA

Goods warehoused for export when cleared for home consumption are liable to interest at the prescribed rate on the amount of duty payable on such goods from the date of clearance from the factory of production or any other premises approved, till the date of payment of duty and clearance.

CBEC *vide Circular No. 1019/7/2016-CX, dated February 29, 2016* has provided that, *w.e.f. 1st April 2016*, the rate of interest for export goods cleared for home consumption would be 15% as against earlier rate of 24%.

[Circular No. 1019/7/2016-CX dated 29th February, 2016]

14. Regarding manufacturers of articles of jewellery

Manufacturer engaged in the manufacture or production of articles of jewellery other than articles of silver jewellery may take centralised registration where centralised billing/ accounting has been done and condition of prior physical verification of premises has been done away.

Further, CBEC *vide Notification No. 7/2016-Central Excise (N.T.), dated March 1, 2016* has withdrawn the requirement of fixing the tariff value of articles of jewellery (other than silver jewellery), falling under sub-heading No. 7113 of the First Schedule to the Central Excise Tariff Act, 1985 at the rate of 30% of the transaction value as declared in the invoice.

[Notification Nos. 5/2016-Central Excise (N.T.), 6/2016-Central Excise (N.T.) and 7/2016-Central Excise (N.T.) all dated 1st March, 2016]

15. Amendments in the Central Excise Rules, 2002

CBEC *vide Notification No. 8/2016-Central Excise (NT), Dated: March 1, 2016* has amended Central Excise Rules, 2002 as follows:

- In case of finalisation of provisional assessment, the interest will be chargeable from the original date of payment of duty at the rate of 15% p.a.
- For assessees engaged in the manufacture or production of articles of jewellery, other than articles of silver jewellery but inclusive of articles of silver jewellery studded with diamond, ruby, emerald or sapphire, falling under chapter heading 7113 of the First Schedule of the Tariff Act, the eligibility for classifying as a Small Scale Industry would be when aggregate value of clearances of all excisable goods for home consumption in the preceding financial year did not exceed ₹12 crore. In all other cases, it would be ₹4 crore only.
- The condition of self-attestation by the manufacturer where the duplicate copy of the invoice meant for transporter is digitally signed has been done away with.
- Reduction of the number of returns to be filed by a central excise assessee above a specified threshold to 13, from 27, that is, 1 annual return required to be filed by the 30th day of November of the succeeding financial year and 12 monthly returns. A revised return may be submitted by the end of the calendar month in which the original return is filed. For the calculation of interest, the date of revised return would be taken into consideration.
- 100% Export Oriented Unit is also required to file an annual return.

[Notification No. 8/2016-Central Excise (NT) dated 1st March, 2016]

16. Amendment in the Procedure for filing Refund Claim of CENVAT Credit

CBEC *vide Notification No. 14/2016-Central Excise (N.T), dated March 1, 2016* has amended procedure for filing of refund claim of CENVAT credit as follows:

An application in Form A for claiming the refund shall be filed:

(i) in case of manufacturer : before the expiry of 1 year from the relevant date as per Section 11B of the Central Excise Act, 1944;

(ii) in case of service provider, before the expiry of 1 year from the date of:

(a) receipt of payment in convertible foreign exchange, where provision of service had been completed prior to receipt of such payment; or

(b) issue of invoice, where payment for the service had been received in advance prior to the date of issue of the invoice."

[Notification No. 14/2016-Central Excise (N.T) dated 1st March, 2016]

17. Change in Interest Rate for Delayed Payment of Duty

CBEC *vide Notification No. 15/2016-Central Excise (N.T), dated March 1, 2016* has provided that ***w.e.f. 1st April 2016*** for delay in payment of excise duty, interest @ 15% p.a. would be payable as against earlier rate on 18% p.a.

[Notification No. 15/2016-Central Excise (N.T) dated 1st March, 2016]

18. Registration of Two or More Premises as One Registrant in Central Excise

CBEC *vide Notification No. 19/2016-Central Excise (N.T.), dated March 1, 2016* has provided that the Commissioner of Central Excise may allow single registration for two or more premises of the same factory are located in a close area, if

- these premises are within the jurisdiction of a Central Excise Range;
- the process undertaken there are interlinked;
- the units are not operating under any of the area based exemption notifications;
- proper accounting of the movement of goods from one premise to other and such other conditions and limitations as prescribed are being followed.

Old provisions relating thereto also stand amended to this effect from 1st March 2016.

[Notification No. 19/2016-Central Excise (N.T.) dated 1st March, 2016 & Circular No. 1016/4/2016-CX dated 29th February, 2016]

19. Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules

CBEC *vide Notification No. 20/2016-Central Excise (N.T.), dated March 1, 2016* has provided new Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2016 effective 01.04.2016 in suppression of the old rules to provide as follows:

- An un-registered manufacturer including manufacturers of exempted goods or non-excisable goods will be eligible to avail the benefits of the provisions of these rules after taking registration under Rule 9 of the Central Excise Rules, 2002.
- An applicant manufacturer will provide information in duplicate in the Form I as against earlier requirement of quadruplicate to the jurisdictional Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise.
- The applicant manufacturer may either provide separate information in respect of each of the supplier manufacturer of subject goods or provide combined information for multiple supplier manufacturers with details of each of them in Form I.
- An additional condition is introduced with existing provisions wherein applicant manufacturer will provide the information from time to time to receive subject goods in quantities in commensuration with expected

consumption in the manufacturing process for a period of one year or less.

- Applicant manufacturer, after maintaining the required records, needs to submit quarterly returns in Form II by the tenth day of the month following each quarter of the financial year.
- A proviso has been added in 'Recovery of duty in certain cases' before existing proviso which provides that when the applicant manufacturer is found to be non-existent, the supplier manufacturer will be liable to pay the amount equal to the difference between the duty leviable on such goods but for the exemption and that already paid, if any, at the time of removal from the factory of the supplier manufacturer of the subject goods, along with interest and the provisions of Section 11A except the time limit mentioned in the said Section and Section 11AA of the Act will apply mutatis mutandis, for effecting such recoveries.
- It has also been clarified that subject goods will be deemed not to have been used for the intended purpose even if any of the quantity of the subject goods is lost or destroyed by natural causes or by unavoidable accidents during transport from the place of procurement to the applicant manufacturer's premises or from the supplier manufacturer's premises to the place of procurement or during handling or storage in the applicant manufacturer's premises.

[Notification No. 20/2016-Central Excise (N.T.) dated 1st March, 2016]

20. Amendments in Procedures Relating to Rebate of Duty on Excisable Goods used in Manufacture/Processing of Export Goods

CBEC *vide Notification No. 21/2016-Central Excise (N.T) dated March 1, 2016* has provided for the following changes in procedures & conditions relating to relating to rebate of duty on excisable goods used in manufacture/processing of export goods, *w.e.f. 1st March 2016*:

- The declaration regarding the finished goods proposed to be manufactured or processed would now be accompanied by a Chartered Engineer's certificate in respect of correctness of the ratio of input and output in accordance with the Standard Input Output Norms notified by Director General of Foreign Trade, Ministry of Commerce.
- The Assistant/Deputy Commissioner of Central Excise will grant permission to the applicant for manufacture or processing and export of finished goods before commencement of export on the basis of certificate issued by the Chartered Engineer and the declaration filed. In case of doubt in respect of the correctness of such declaration, they may visit the factory and verify correctness. The earlier requirement of total verification by Assistant/Deputy Commissioner of Central Excise has been done away with.
- The manufacturer or processor may procure materials from registered dealers but no CENVAT credit will be availed by him.
- The provisions of CENVAT Credit Rules, 2004 would apply consistently for entire procedure.
- The claim for rebate of duty paid on materials used in the manufacture or processing of goods shall be lodged before expiry of one year from the relevant date with the Assistant/Deputy Commissioner of Central Excise.

[Notification No. 21/2016-Central Excise (N.T) dated 1st March, 2016]

C. CUSTOMS

21. Village Jattipur, Haryana notified as Inland Container Depot

CBEC *vide Notification No. 27/2016-CUSTOMS (N.T.), dated February 18, 2016* has declared the following as Inland Container Depot in State of Haryana for the purpose mentioned against it:

S. No.	Place	Purpose
1.	"(ix) Village Jattipur, near Samalkha, Panipat	Unloading of imported goods and loading of export goods

[Notification No. 27/2016-CUSTOMS (N.T.) dated 18th February, 2016]

22. Sikta in West Champaran District, Bihar notified for Import and Export of Goods

CBEC *vide* Notification No. 28/2016-CUSTOMS (N.T.), dated February 18, 2016 has declared the following as Land Customs Station in State of Bihar for the purpose mentioned against it:

S. No.	Place	Purpose
1.	"(26) Sikta in West Champaran District, Bihar	Road connecting Sikta in West Champaran District, Bihar in India and Bhiswabazar in Nepal".

[Notification No. 28/2016-CUSTOMS (N.T.) dated 18th February, 2016]

23. Baggage Rules, 2016

CBEC *vide Notification No. 30/2016-Cus.,(N.T.), dated March 1, 2016* has provided the new Baggage Rules, 2016 applicable *w.e.f. 01.04.2016* in suppression of the old rules to provide the following:

- The norms relating to duty free clearances for passengers arriving from Nepal, Bhutan or Myanmar or other countries would be as provided in revised Customs Baggage Declaration Regulations. Where the passenger is an infant, only used personal effects shall be allowed duty free. Further, where the passenger from Nepal, Bhutan or Myanmar, is arriving by land, only used personal effects will be allowed duty free.
- The free allowance of a passenger will not be allowed to be pooled with the free allowance of any other passenger.
- A passenger residing abroad for more than 1 year, on return to India, will be allowed clearance free of duty in his bona fide baggage of jewellery as provided in the revised Customs Baggage Declaration Regulations.

- A person, who is engaged in a profession abroad, or is transferring his residence to India will in addition to above (excluding jewellery) be allowed a clearance free of duty for articles in his bonafide baggage as follows:

Duration of stay abroad	Articles allowed free of duty	Conditions	Relaxation
From three months up to six months	Used personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III up to an aggregate value of sixty thousand rupees.	Indian passenger	-
From six months up to one year	Used personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III, up to an aggregate value of one lakh rupees.	Indian passenger	-
Minimum stay of one year during the preceding two years	Used personal and household articles, other than those mentioned in Annexure I but including articles mentioned in Annexure II or Annexure III, up to an aggregate value of two lakh rupees.	The Indian passenger should not have availed this concession in the preceding three years.	-
Minimum stay of two years or more	Used personal and house household articles, other than those mentioned in at Annexure I but including those mentioned in Annexure II or Annexure III, up to a value limit of five lakh rupees.	(i) Minimum stay of two years abroad, immediately preceding the date of his arrival on transfer of residence; (ii) Total stay in India on short visit during the two preceding years should not exceed six months; and (iii) Passenger has not availed this concession in the preceding three years.	(a) For condition (i), shortfall of upto two months in stay abroad can be condoned by the Deputy Commissioner of Customs or Assistant Commissioner of Customs if the early return is on account of - (i) terminal leave or vacation being availed of by the passenger; or (ii) any other special circumstances for reasons to be recorded in writing. (b) For condition (ii), the Principal Commissioner or Commissioner of Customs may condone short visits in excess of six months in special circumstances for reasons to be recorded in writing. No relaxation.

- The import and export of currency under these rules will be governed in accordance with the provisions of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000.
- For unaccompanied baggage the same rules would apply provided it was in possession of passenger abroad and is dispatched within 1 month of his arrival in India or within such further period as the Deputy/Assistant Commissioner of Customs may allow. Further, such baggage must land in India upto 2 months before the arrival of the passenger or within such period, not exceeding one year as the Deputy/Assistant Commissioner of Customs may allow.
- These rules will also apply to the members of the crew engaged in a foreign going conveyance for importation of their baggage at the time of final pay off on termination of their engagement.

[Notification No. 30/2016-Cus.,(N.T.) dated 1st March, 2016]

24. Amendment in Customs Baggage Declaration Regulations

CBEC *vide Notification No. 31/2016-Cus.,(N.T.), dated March 1, 2016* has amended the Custom Baggage Declaration Rules for *"All passengers who come to India and have anything to declare or are carrying dutiable or prohibited goods"* to provide the following:

- Passengers need to declare if they are bringing ***Drones*** to India;

Legal Update

- Customs Duty Free Allowance has been amended as follows:

Eligible passenger	Origin country	Duty free allowance on & after 1st April 2016	Duty free allowance till 31st March 2016
Passengers of Indian origin and foreigners residing in India, excluding infants Tourists of foreign origin, excluding infants	Other than Nepal, Bhutan, Myanmar	₹50, 000/- ₹15,000/-	₹45,000/-
Passengers of Indian origin and foreigners residing in India, excluding infants Tourists of foreign origin, excluding infants	Nepal, Bhutan, Myanmar	By air - ₹15,000/- By land - Nil	₹6,000/-
Indian passenger who has been residing abroad for over one year	Anywhere	Gold jewellery: Gentleman – 20 gms with a value cap of ₹50,000/- Lady - 40 gms with a value cap of ₹1,00,000/-	Gold jewellery: Gentleman - ₹50,000 Lady - ₹1,00,000
All passengers	Anywhere	Alcohol liquor or wine: 2 liters	Alcohol liquor or wine: 2 liters
All passengers	Anywhere	Cigarettes: 200 numbers or Cigars upto 50 or Tobacco 250 grams One laptop computer (note book computer)	Cigarettes : 100 numbers or Cigars upto 25 or Tobacco 125 grams
Passenger of 18 years and above	Anywhere	One laptop computer (note book computer)	One laptop computer (note book computer)

Further, CBEC *vide Circular No. 8/2016-Cus., dated March 8, 2016* has provided that the domestic passengers who board international flights in the domestic leg are not required to file the Customs Baggage declaration form.

[Notification No. 31/2016-Cus. (N.T.) dated 1st March, 2016 & Circular No. 8/2016-Cus. Dated 8th March, 2016]

25. Interest Rate for Delayed Payment of Duty

CBEC *vide Notification No. 33/2016-Cus.,(N.T.), dated March 1, 2016* has provided that *w.e.f. 1st April 2016* for delay in payment of customs duty, interest @ 15% p.a. would be payable as against earlier rate on 18% p.a.

[Notification No. 33/2016-Cus.,(N.T.) dated 1st March, 2016]

26. Restriction on Denomination of Indian Currency Rescinded

CBEC *vide Circular No. 51/99 dated 12.08.1999* had allowed Merchant Ship to carry Indian currency notes of ₹100/- denomination for disbursement of wages, *etc.* on board of foreign going vessel.

Now *vide Circular No. 7/2016-Cus. dated March 7, 2016* in light of revised RBI guidelines, the restriction on denomination of Indian currency imposed *vide* earlier Circular has been withdrawn.

[Circular No. 7/2016-Cus. Dated 7th March, 2016]

D. VALUE ADDED TAX

JHARKHAND VAT:

27. Amendement in Section 18 & 63 of Jharkhand Value Added Tax Act, 2005

With retrospective effect from 01.04.2015, Section 18 & Section 63 of the Act have been amended as follow:

Section 18 (Input Tax Credit)

Substitution of provision for sub-Section (4), under-	Input Tax Credit on-	Purpose-	Input Tax Credit allowed-
Clause (ii)	Goods purchased within Jharkhand from a registered dealer	For sales in the course of interstate trade and commerce	To the extent of Central Sales Tax (CST) payable on such sales. Balance input tax shall not be available for adjustment against any tax, penalty or interest payable.
Clause (iii)		Used for manufacturing/ processing/mining of such goods sold in course of interstate trade and commerce	

Clause (ix) of sub-Section (8) states that no input tax credit shall be claimed or allowed to a registered dealer for goods consumed for manufacture of goods for inter-State transfer of stock. However, with effect from 13.05.2015, input tax credit may be allowed on the tax paid in excess of 5% (earlier 4%) on such materials used in the manufacture of finished products.

Section 63 (Audit of Accounts)

Sub-Section (1) has been substituted with effect from 01.04.2015 to provide that the turnover limit of ₹40 lakh be revised to ₹60 lakh for dealers who are required to get their accounts audited.

[Jharkhand Act 05, 2016]

DELHI VAT:

28. Creation of Specific Ward & E-commerce Zones for E-commerce Companies

The Trade & Taxes Department has created Ward No. 300 and also a new zone with the name 'E-Commerce Zone' to deal with e-commerce companies. All the e-commerce companies currently registered shall be shifted to this newly created Ward. Further, future new registrations will also be dealt with in this Ward.

[Order No. F.III/7)/T&T/Misc/Estt/Pt.File-I/1067-71 dated 12th February, 2016]

29. Framing of Central Assessments

Registered dealers who have effected sales against declarations in Form C/F/H are required to file details of such forms in a reconciliation return (Form 9). Dealers who have not filed such reconciliation return (Form 9) or have filed, but have stated deficiency of forms and have not paid the tax due for such deficiency, and interest thereon, are required to be assessed within the given time frame. Further, no hard copies of statutory forms for which Form 9 has been filed are to be accepted while framing the assessment.

[Circular No. 38 of 2015-16 No. F.3(636)/Policy/VAT/2016/1463-69 dated 18th February, 2016]

30. Filing of e-Form DVAT 16 or DVAT 17 with Digital Signatures

The Delhi Government *vide* Notification No. F3/643 has specified with immediate effect that registered dealers shall furnish returns in e-Form DVAT 16 (DVAT Return) or in e-Form DVAT 17 (Composition Tax Return Form) with digital signatures in accordance with the provisions of the Information Technology Act, 2000 for the tax periods following the year during which the gross turnover exceeds ₹50 lakhs.

Dealers filing return with digital signatures are not required to submit the return verification form in Form DVAT 56 for acknowledgement of the return separately.

[Notification No. F.3(643)/Policy/VAT/2016/1585-1597 dated 1st March, 2016]

31. Safeguards for Scrutiny of Returns

The Delhi Government vide Circular No. 40 has directed its officers to keep a watch on following classes of dealers along with an advisory to safeguard revenue and to curb unscrupulous practices of paying little or no tax:

- newly registered dealers having sharp vertical growth in GTO;
- dealers downloading statutory forms of huge amount without showing matching sale/stock transfer;
- frequent change in trade practice/commodities;
- circular trading;
- dealers stopping return filing within a period of less than an year of registration;
- dealers applying for cancellation within a year or so, of registration;
- dealers filing 'Nil' GTO return continuously for a period exceeding one year;
- return defaulters;
- frequent refund claimants;
- non-tax payers;
- continuously carrying forward excess ITC for a period exceeding one year.

The Circular also encourages ward inspectors to persuade unregistered dealers functioning in their respective wards, liable to register, to obtain registration.

[Circular No. 40 of 2015-16 F.3(639)/Policy/VAT/2016/1642-48 dated 8th March, 2016]

DAMAN & DIU VAT:

32. Statutory Forms from Other States/ UTs can now be Uploaded on Website

Registered dealers can now upload the details of the statutory forms (C, F, H and E-l & E-ll forms) received from other States/UTs on website www.ddvat.gov.in by uploading the relevant XML files on a quarterly basis. The submission of physical copy shall only be submitted on demand of the assessing officer at the time of assessment.

[Circular No. DMN/VAT/VATSoft/2013-14/502 dated 18th February, 2016]

MAHARSHTRA VAT:

33. Correction of Mistakes made or Miscellaneous Refunds of Excess Payment of Taxes

To facilitate ease of doing business, the Joint Commissioner has been empowered to receive the refund application after the due date for filing of return from the assessee in cases where incorrect or double payment of taxes has been made. Earlier the said application was accepted only at the end of the year.

[Trade Circular No. 6T of 2016 dated 23rd February, 2016]

34. Changes in the Automation Processes and Other Changes in Procedures

The Maharashtra Government has implemented a new application envisaging certain changes in the processes of registration, filing of returns, applications for refund, requisitions for CST declarations forms and is also slated to cause changes in processes like audit/assessments, appeals, *etc.* It may be noted that the contents are in the form of a proposal.

Under the proposed changes, a dealer will be able to-

- Edit his profile to make certain changes in the registration record.
- Comply with filing obligations including returns, audit report, refund applications, application for CST declarations.
- File appeals and appoint his authorised representatives, auditors.
- See the pending assessments, recoveries.
- Seek appointments for hearing.
- Issue TDS Certificates, *etc.*
- Seek No dues and Tax dues Certificates.
- Pay taxes online through the Electronic Payment Gateways.
- The design of the web portal will be maintained in such a manner so as to provide effective ease of operation to the dealers.

New processes for Registration, Return, Assessment, Refund, Appeal, e-CST declarations have also been provided in the said circular.

[Trade Circular No. 7T of 2016 dated 25th February, 2016]

KERALA VAT:

35. Amendments proposed by Kerala Finance Bill, 2016

Following amendments have been proposed by the Kerala Finance Bill, 2016:

Presumptive Taxation:

It has been proposed to increase the turnover limit of presumptive taxation from ₹60 lakh to ₹75 lakh for any registered dealer other than specified dealers to pay tax at the rate of 0.5%.

Compounded Taxation:

It has been proposed that works contract awarded by Government of Kerala, Kerala Water Authority or Local Authorities up to 31.03.2016 shall be taxed at 3% of the whole contract amount along with tax under sub-Section (2) of Section 6.

[The Kerala Finance Bill, 2016, Bill No. 396]

PUNJAB VAT:

36. Compulsory E-filing of Application for Grant of Registration

With effect from 01.03.2016, all applications for the grant of registration under the PVAT Act, 2005 and the CST Act, 1956 will only be accepted through the online mode leading to discontinuation of the manual submission of the applications for the same.

[Dated 26th February 2016 from the Assistant Excise and Taxation Commissioner, U.T., Chandigarh]

CHHATTISGARH VAT:

37. Amendment in Rule 55 of Chhattisgarh Value Added Tax Rules, 2006

W.e.f. 01.03.2016, entry no. (4) of Rule 55 has been amended to provide for the designation of officers to make an

assessment/reassessment of tax and/or to impose penalty/ interest or to grant further time to pay such tax/interest/ penalty or to allow the payment in installment, to set aside an ex-parte order and to exercise all other powers-

Designation of Officers	Upto a turnover and/or aggregate of purchase price of
Assistant CTO	₹1 crore
CTO	₹10 crore (Earlier ₹3 crore)
Assistant Commssioner	In respect of every dealer

[Notification No. F-10-03 /2016/CT/V (12) dated 27th February, 2016]

38. Extension in Date for Filing Form 18 for Financial Year 2013-14 & 2014-15

Chhattisgarh government has extended the date for filing Form 18 (Statement showing details of the particulars furnished in the quarterly return for the year) as provided below table:

Class of Registered Dealers (except dealer who deals in goods specified in S. No. 5 of part-III of Schedule-II)	For the FY	Furnish Form 18 upto	Others reports to be furnished before CTO-
Whose annual turnover is less than ₹1 crore	2013-14 2014-15	30.04.2016 30.06.2016	-
Whose annual turnover is less than ₹10 crore			Copy of Audit Report u/s 44(AB) of Income Tax Act, 1961
Whose annual turnover is ₹10 crore or more			Copy of Audit Report in Form-50

[Notification No. F-10-08 /2016/CT/V (15) dated 8th March, 2016]

UTTRAKHAND VAT:

39. Lorry Challan to be Prepared by Transporter

Every transporter shall prepare a Lorry Challan who intends to transport goods to any place outside the State of Uttrakhand or from one place to another within the State or from one place to another in the State passing through any other State.

[Notification No. 126/2016/03(120)/XXXVII(8)/2016 dated 3rd March, 2016]

GUJARAT VAT:

40. Gujarat 2016-17 -Budget Highlights

- **E-Commerce Transactions to be covered under the purview of Entry Tax**
  It has been proposed to impose entry tax on the goods entering the State through e-commerce since the trade of the State dealers is affected adversely. Further, the State suffers loss of tax revenue due to sale of goods in the State from outside the State under e-commerce transactions. The amended provisions are awaited.
- **100% Provisional Refund within 30 Days to Small Dealers**
  In order to promote trade friendly measures in case of small dealers, it has been proposed to grant 100% provisional refund within 30 days from the date of submission of all documents where refund due is upto ₹1 lakh. This will be subject to the following conditions:
  - ✓ The dealers whose annual refund upto ₹1 lakh has been paid in the previous year will get this benefit in the subsequent year.
  - ✓ The dealer should be holding Registration Certificate for more than 2 years.
- **Proposal of Amnesty Scheme for Recovery of Tax Dues**
  Following are the essential features of the proposed scheme:
  - ✓ Dues outstanding upto 31.12.2015 in the Sales Tax Act, VAT Act, Motor Spirit Act and CST Act will be covered under the scheme.
  - ✓ Interest and penalty will be remitted on full payment of outstanding principal tax amount. However in case of tax evasion, full amount of principal tax, interest and 25% of penalty amount will have to be paid.
  - ✓ The scheme will extend to those cases in appeal also where the appeal has been withdrawn.

RAJASTHAN VAT:

41. Rajasthan Budget Highlights 2016-17

Following amendments have been proposed to Sections 2, 13, 24, 33, 51A & 53 of Rajasthan Value Added Tax, 2003:

- Generating set for generation of electrical energy used in manufacturing to be treated as capital goods.
- Reduction in time limit from 60 days to 30 days for intimating change in principal place of business outside the territorial jurisdiction of the present assessing authority.
- Assessment orders for the year 2013-14 shall be made within 31.07.2016.
- Period of 1 year for the rectification of mistake shall be reduced to 6 months from the date of presentation of application to the assessing authority. Further, the application pending before assessing authority on 1.04.2016 shall be disposed of within 30.09.2016 or within 1 year from the date of presentation, whichever is earlier.
- Earlier, the State Government was authorised to reduce or waive interest or penalty. Now it has been proposed to authorise such State Government to reduce or waive late fee also.
- The Commissioner of VAT has been empowered to grant refund in cases where tax amount has been wrongly deposited or in excess of the amount due.

Legal Update

42. Amendment in Rule 17A, 19, 21, 22A, 27, 38, 40 & 47 of Rajasthan Value Added Tax Rules, 2006

- **Option for payment of lump sum in lieu of tax (Rule 17A):** Any registered developer or builder who is a works contractor undertaking the activity of construction may opt for payment of tax in lump sum for any project undertaken by submitting an application in Form VAT-69A electronically through www.rajtax.gov.in within 30 days from date on which any amount is received from the purchase against an agreement related to projects.
  Further, it has been provided that the developer or builder shall not be allowed to opt out of the scheme for the project(s) for which an option to pay lump sum amount of tax has been exercised by him once.
- **Returns (Rule 19):** Dealers exclusively engaged in the sale of exempted goods or class of persons mentioned in Schedule-II on the condition of payment of exemption fee shall submit VAT-11, where any incidental sale has been made of leftover taxable goods along with the statement of sale of leftover goods in Form VAT-08A within 60 days of the end of the relevant quarter.
- Deputy Commissioner after recording the reasons in writing may allow the dealer to submit an application (for the incorrect particulars or any information furnished by him which he discovers is incorrect after generation of declaration in Form VAT-15) upto a period of 1 year from the date of generation of such declaration form or upto 30.09.2016, whichever is later.
- **Now digital signature on** VAT invoices has been permitted.
- **Procedure with regard to certificate of deduction of tax (Rule 40)**: The condition for issuance of certificate of deduction of tax to the contractor in Form VAT-41 has been deleted. Now such certificate would be issued by the officer authorised electronically through www.rajtax.gov.in to the contractor. Further, the time limit for issuance of no deduction certificate in Form VAT-40D by the authorised officer on receipt of application in Form VAT-40C has been substituted from 15 days to 30 days.
  Also A new sub-Rule (8B) has been inserted stating that when an awarder discovers any omission or error in the Form VAT-40E furnished by him, he may furnish a revised Form VAT-40E within 3 months from the close of the relevant year.
  The requirement of sub-rules **(12), (13), (14), (15)** & **(16)** have been deleted.
- Now at the option of the dealer, the audit shall be conducted by the auditor at the place of the business of the dealer or in the office of the auditor. Where the dealer fails to inform his option then audit shall be conducted at place of business.

HIMACHAL PRADESH VAT:

43. Himachal Pradesh Budget 2016-17 Highlights

Following points have been proposed in the Himachal Pradesh Budget- 2016-17:

- Area based VAT concessions to continue.
- To promote eco-friendly transport services in the State, electric vehicles have been proposed to be exempted from VAT, registration fee and token tax for 5 years.
- Solar cooker and solar lanterns will be exempted from VAT which are presently charged at the rate of 5%.
- VAT on LED lights reduced from 13.5% to 5%.
- Speedy disposal of VAT refunds.

TELANGANA VAT

44. Introduction of time limit for issuance of Registration Certificate under Rule 10 of Telangana VAT Rules, 2005

To facilitate ease of doing business, Telangana Government has provided that on submission of the complete application along with required documents by the assessee, the Registration Certificate shall be issued within 1 working day.

[Notification No. G. O. Ms No. 31 dated 24th February, 2016]

(Matter on FEMA has been contributed by CA Manoj Shah, Mumbai and CA. Hinesh Doshi, Mumbai)

A. Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2016

Notification No. FEMA.361/2016-RB dated February 15, 2016

Reserve Bank of India hereby makes the following amendments in the Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) Regulations, 2000 (Notification No. FEMA. 20/2000-RB dated 3rd May 2000) namely:-

Amendment to clause (viia) of Regulation 2 –

The following shall be substituted to the existing clause (viia) – Non Resident Indian (NRI) means an individual resident outside India who is a citizen of India or is an "Overseas Citizen of India" cardholder within the meaning of Section 7(A) of the Citizenship Act, 1955.

Amendment to Regulation 5(3) –

The following shall be substituted for existing regulation (3):

i) A Non- Resident Indian (NRI) may acquire securities or units on a Stock Exchange in India on repatriation basis under the Portfolio Investment Scheme, subject to the terms and conditions specified in Schedule 3.

ii) A Non- Resident Indian (NRI) may acquire securities or units on a non-repatriation basis, subject to the terms and conditions specified in Schedule 4.

Schedule 3 and 4 of the Regulations are also amended. For the details of amended Schedule 3, refer the amended regulations at–https://rbidocs.rbi.org.in/rdocs/notification/PDFs/FM361E7862E2EE31F4CF8A997AD32A0EE11B2.PDF

B. Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) (Second Amendment) Regulations 2016

Notification No. FEMA.362/2016-RB dated February 15, 2016

Reserve Bank of India hereby makes the following amendments in the Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) Regulations, 2000 (Notification No. FEMA. 20/2000-RB dated 3rd May 2000) namely:-

New clause (vii AA) is inserted in Regulation 2 introducing definition of Manufacture.

"Manufacture, with its grammatical variations, means a change in a non-living physical object or article or thing- (a) resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and use; or (b) bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure."

Clause (i) and (ia) of sub regulation 1 of Regulation 14 are amended and the same will be as under:

"(i) for the purpose of this regulation, the expression 'ownership and control' shall mean and include

(a) a company shall be considered as owned by resident Indian citizens if more than 50% of the capital in it is beneficially owned by resident Indian citizens and/or Indian companies, which are ultimately owned and controlled by resident Indian citizens. A Limited Liability Partnership will be considered as owned by resident Indian citizens if more than 50% of the investment in such an LLP is contributed by resident Indian citizens and/ or entities which are ultimately 'owned and controlled by resident Indian citizens' and such resident Indian citizens and entities have majority of the profit share;

(b) A company owned by non-residents shall mean an Indian company that is not owned by resident Indian citizens.

(ia) 'Control' shall include the right to appoint a majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements.

***Explanation:** For the purpose of Limited Liability Partnership, 'control' shall mean right to appoint majority of the designated partners, where such designated partners, with specific exclusions to others, have control over all the policies of Limited Liability Partnership."*

Sub regulation 5 of Regulation 14 containing guidelines for establishment of Indian companies/transfer of ownership or control of Indian companies, from resident Indian citizens to non-resident Indian entities, in sectors under Government approval route is also amended.

A company, trust and partnership firm incorporated outside India and owned and controlled by non-resident Indians will be eligible for investments under Schedule 4 of FEMA (Transfer or issue of Security by Persons Resident outside India) Regulations, 2000 and such investment will also be deemed domestic investment at par with the investment made by residents.

The changes in foreign investment caps and entry route in various sectors are amended in Annex B to the notification. For details of the changes refer the notification at– https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NOTO362159E3CD1EB9D41C1A1574D34242682F9.PDF

Legal Update

Schedule 9: - FDI in Limited Liability Partnerships (LLPs)

The existing para 4 of Schedule 9 is amended as under:

FDI in LLPs is permitted under automatic route in LLPs operating in sectors/activities where 100% FDI is allowed under automatic route and there are no FDI linked performance conditions. Further, an Indian company or an LLP, having foreign investment, will be permitted to make downstream investment in another company or LLP engaged in sectors in which 100% FDI is allowed under the automatic route and there are no FDI-linked performance conditions. Onus shall be on the Indian company/LLP accepting downstream investment to ensure compliance with the above conditions.

FDI in LLP shall also be subject to the compliance of the conditions of LLP Act 2008.

C. Grant of EDF waiver for Export of Goods Free of Cost

A.P. (DIR Series) Circular No. 53 dated March 03, 2016

In terms of A.P. (DIR Series) Circular No. 94 dated April 26, 2003 GR, waiver to exporters for export of goods free of cost had been enabled. The facility had been extended to the Status Holders *vide* para 2.52.1 of Handbook of Procedures-Vol-I of Foreign Trade Policy 2004-2009, in terms of which Status Holders shall be entitled to export freely exportable items on free of cost basis for export promotion subject to an annual limit of ₹10 lakh or 2% of average annual export realisation during preceding three licensing years, whichever is higher.

Government of India *vide* amendment Notification No. 9/2015-2020 dated June 4, 2015, has notified that the Status Holders shall be entitled to export freely exportable items on free of cost basis for export promotion subject to an annual limit of ₹10 lakh or 2% of average annual export realisation during preceding three licensing years whichever is lower. AD Category–I banks, may, therefore, consider requests from Status Holder exporters for grant of Export Declaration Form (EDF) waiver, for export of goods free of cost based on the revised norm.

CORPORATE LAWS

(Matter on Corporate Laws has been contributed by CA. Rahul Joglekar)

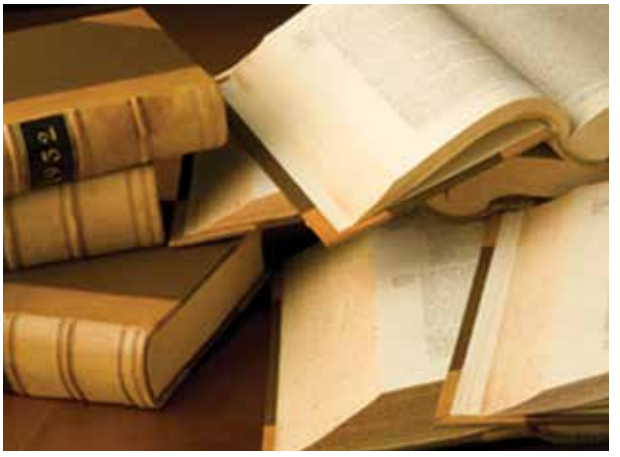
MCA (www.mca.gov.in)

MCA Notification No. GSR(E) dated 10th March 2016 – Companies (Share Capital and Debentures) Amendment Rules, 2016)

MCA has amended the said rules to provide that where the audited accounts of a company are more than 6 months old, the calculations with respect to buyback shall be on the basis of unaudited accounts not older than 6 months from the date of offer document which are subjected to limited review by the auditors of the company. For complete text of the notification, please refer the link: http://www.mca.gov.in/Ministry/pdf/Notification_11032016.pdf

RBI (www.rbi.org.in)

RBI Master Direction No. DBR.AML.BC.No.81/14.01.001/2015-16 dated 25th February 2016 - Know Your Customer (KYC) Direction, 2016



RBI had released its set of master direction in respect of Know Your Customer (KYC) guidelines. The provisions of these Directions shall apply to every entity regulated by Reserve Bank of India, except where specifically mentioned otherwise. This includes all Banks, All India Financial Institutions (AIFIs), all NBFCs, Miscellaneous Non-Banking Companies (MNBCs) and Residuary Non-Banking Companies (RNBCs), all Payment System Providers (PSPs)/System Participants (SPs) and Prepaid Payment Instrument Issuers (PPI Issuers) and all authorised persons (APs) including those who are agents of Money Transfer Service Scheme (MTSS), regulated by the Regulator. For a complete text of the direction, please refer the link: https://rbi.org.in/Scripts/NotificationUser.aspx?Id=10292&Mode=0

RBI Master Circular No. DBR.No.BP.BC.83/21.06.201/2015-16 dated 1st March 2016-Basel III Capital Regulations-Revision

RBI has taken a review of the Basel III regulations and revised guidelines in this regard have been issued. It has been decided to align, to some extent, the current regulations on treatment of these balance sheet items, for the purpose of regulatory capital, with the BCBS guidelines. The said amendments deal with treatment of revaluation reserves, treatment of foreign currency translation reserve and treatment of deferred tax assets for the purpose of CET 1 capital. For a complete text of the circular, please refer the link: https://rbi.org.in/Scripts/NotificationUser.aspx?Id=10294&Mode=0

RBI Master Direction No. DBR.Dir.No.85/13.03.00/2015-16 dated 3rd March 2016-Reserve Bank of India (Interest Rate on Advances) Directions, 2016 and RBI master direction no. DBR. Dir. No.84/13.03.00/2015-16 dated 3rd March 2016-Reserve Bank of India (Interest Rate on Deposits) Directions, 2016

RBI has released these set of directions which comprehensively cover all regulations pertaining to interest rates on advances and deposits. These directions are applicable to Scheduled Commercial Banks only at present. For a complete text of the direction, please refer the links: https://rbi.org.in/Scripts/NotificationUser.aspx?Id=10295&Mode=0 and https://rbi.org.in/Scripts/NotificationUser.aspx?Id=10296&Mode=0 ■