Legal Update

Circulars/Notifications

Given below are the important Circulars and Notifications issued by the CBDT, CBEC, FEMA, MCA, SEBI, 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. Notification of Cost Inflation Index for Financial Year 2015-16–Notification No. 60/2015, dated 24-7-2015

Clause (v) of Explanation to Section 48 defines "Cost Inflation Index", in relation to a previous year, to mean such Index as the Central Government may, by notification in the Official Gazette, specify in this behalf, having regard to 75% of average rise in the Consumer Price Index (Urban).

Accordingly, the Central Government has, in exercise of the powers conferred by clause (v) of Explanation to Section 48, specified the Cost Inflation Index for the financial year 2015-16 as 1081.

2. Notification of ITR forms 3,4,5,6,and 7-Notification No. 61/2015, dated 29.07.2015

In exercise of the powers conferred by Section 295 of the Income-tax Act, 1961, the CBDT has, through this notification, notified Income-tax (Tenth Amendment) Rules, 2015 which shall be deemed to have come into force from 1st April, 2015.

CBDT has notified new Income-tax Return Forms ITR-3, ITR-4, ITR-5, ITR-6 & ITR-7 for A.Y. 2015-16.

3. Income-tax (Eleventh Amendment) Rules, 2015–Notified Rules for registration of persons, due diligence and maintenance of information under Section 285BA-Notification No. 62/2015, dated 07.08.2015

Sub-Section (1) of Section 285BA requires that any person referred to under clauses (a) to (k) of the said sub section who is responsible for registering, or, maintaining books of account or other document containing a record of any specified financial transaction or any reportable account as may be prescribed, under any law for the time being in force, to furnish a statement in respect of such specified financial transaction or such reportable account which is registered or recorded or maintained by him and information relating to which is relevant and required for the purposes of this Act, to the income-tax authority or such other authority or agency as may be prescribed.

Further, sub-Section (7) of the said Section empowers the Central Government to make rules to specify:

(a) the persons referred to in sub-Section (1) to be registered with the prescribed income-tax authority;

(b) the nature of information and the manner in which such information shall be maintained by the persons referred to in clause (a); and

(c) the due diligence to be carried out by the persons for the purpose of identification of any reportable account referred to in sub-Section (1).

Consequently, in exercise of the powers conferred by Section 285BA read with Section 295 of the Income-tax Act, 1961, the Income-tax (11th Amendment) Rules, 2015 have been made by the Central Government with respect to registration of persons, due diligence and maintenance of information; and by the CBDT for matters relating to statement of reportable accounts. These rules shall come into force on the date of their publication in the official Gazette.

Rule 114G prescribes the information to be maintained and reported by a reporting financial institution in respect of each reportable account. Rule 114H prescribes the due diligence requirement. Rule 114F contains the definition for the purpose of the said Rule as well as Rule 114G and 114H.

Form 61B has been inserted in the said Rules in Appendix–II prescribing the format of Statement of Reportable account under Section 285BA(1). It contains two parts: PART A: Statement Details and PART B: Report Details.

4. Agreement for the exchange of information with respect to taxes–Notification No. 63/2015, dated 12-8-2015

In exercise of the powers conferred by Section 90 of

the Income-tax Act, 1961, the Central Government had notified that all the provisions of the agreement between the Government of the Republic of India and the Government of the Republic of San Marino on the exchange of information with respect to taxes, which was signed at Rome on 19.12.2013, shall be given effect to in the Union of India with effect from the 29.08.2014.

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

II. PRESS RELEASE/ORDER ETC.

1. Validation of returns of A.Y. 2013-14 and 2014-15 through EVC if ITR V is not yet sent–Order dated 20.07.2015

The CBDT vide Notification No. 41/2015 dated 15.04.2015, in cases of categories of 'persons' specified therein, has introduced Electronic Verification Code (EVC) as one of the modes for validation of return of income which are filed electronically on or after 01.04.2015.

In case of returns of income pertaining to Assessment Years 2013-14 and 2014-15 filed electronically (without digital signature certificate) between 1.04.2014 to 31.03.2015, time limit for submission of ITR-V to the CPC Bengaluru has already been extended till 31.10.2015 vide Notification No. 1/2015 dated 10.07.2015.In order to facilitate the process of validation of such returns, CBDT, in exercise of the powers conferred under section 119(1) of the Income-tax Act, 1961, through this order directs that the taxpayer can validate such returns of income within the said extended time through EVC also.

2. Signing Advance Pricing Agreements (APAs)–Press Release dated 06.08.2015

As a part of a major initiative to usher in certainty in taxation, the CBDT entered into two unilateral Advance Pricing Agreements (APAs) on August 3, 2015 with two Multi-National Companies (MNCs) which includes the first APA with a "Rollback" provision. With this, the CBDT has so far signed 14 APAs of which 13 are unilateral APAs and one is a bilateral

APA. The 14 APAs signed relate to various sectors like telecommunication, oil exploration, pharmaceuticals, finance/banking, software development services and ITeS (BPOs).

Unilateral APAs are agreed between Indian taxpayers and the CBDT, without involvement of the tax authorities of the country where the associated enterprise is based. Bilateral APAs include agreements between the tax authorities of the two countries. An APA with the "Rollback" provision extends tax certainty for nine financial years as against five years in APAs without "Rollback".

APAs settle transfer prices and the methods of setting prices of international transactions in advance. The Government is committed to conclude a large number of APAs to foster an environment of tax cooperation and certainty. Currently a number of unilateral as well as bilateral APAs with Competent Authorities of UK, Japan *etc.* are at advanced stage of negotiations.

A Framework Agreement was recently signed with United States under the Mutual Agreement Procedure (MAP) provision of the India-US Double Taxation Avoidance Convention (DTAC). This is a major positive development. About 200 past transfer pricing disputes between the two countries in Information Technology (Software Development) Services [ITS] and Information Technology enabled Services [ITeS] segments are expected to be resolved under this Agreement during the current year. So far, 35 disputes have been resolved and another 100 are likely to be resolved in the next three months.

The Framework Agreement with the US opens the door for signing of bilateral APA with the US. The MAP programs with other countries like Japan and UK are also progressing very well with regular meetings and resolution of past disputes. These initiatives will go a long way in providing stable tax environment to foreign investors doing business in India.

3. Manual on Exchange of Information

The Manual on Exchange of information was brought out by the Foreign Tax and Tax Research Division of the CBDT in the year 2013. This year, the CBDT has comprehensively revised the said manual. The Manual now provides detailed guidelines for framing requests for information under the provisions of tax treaties, as also guidelines for providing clarifications and feedback that would facilitate the receipt of information/evidence. Other forms of administrative assistance possible under the tax treaties, as well as assistance that can be sought under other legal instruments have been described in detail. Recent international developments in transparency including the global adoption of the new standards on automatic exchange of information have also been summarised in the Manual to give an overview of the future potential of our ability to receive and utilise information regarding Indians having financial accounts in offshore financial centers. The confidentiality that must permeate all forms of assistance obtained and provided under the treaties has been clearly brought out.

B. The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015

CBDT releases Java Utility for e-filing Form 6 to declare black money

The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 ('Black Money Act') has been enforced from July 1, 2015.

The Black Money Act provides for 30% tax on the value of undisclosed foreign income or assets and a penalty of three times of tax so computed. It further provides for prosecution up to 10 years in case of willful attempt to evade tax on foreign income or assets held outside India.

However, the Black Money Act allows one-time compliance window for the taxpayers to voluntarily disclose undisclosed foreign income or assets. The declaration can be made by September 30, 2015. Any person availing of benefit of compliance window is required to pay tax at the rate of 30% of value of undisclosed foreign income or asset and a penalty of 100% of tax. Such taxes and penalty are required to be paid by the declarant on or before December 31, 2015.

The Government has notified Form 6 to make declaration of undisclosed foreign income or asset under the compliance window. The taxpayer has an option to file the declaration either manually to CIT, Delhi or e-file it using the digital signature.

Therefore, for the purposes of e-filing of Form 6, the CBDT has released the Java utility. The taxpayer can now fill up Form 6 by downloading the Java utility from e-filing website https://incometaxindiaefiling.gov.in.

After filling the relevant information in Form 6 through Java Utility, the taxpayer needs to generate the .xml file and submit it under e-filing option available after login at https://incometaxindiaefiling.

gov.in. Declarant needs to attach relevant scanned documents (i.e., scanned copy of valuation report or FMV computation) in PDF or ZIP format along with XML file. The size of PDF/ZIP documents should not exceed 50MB.

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

A. CENTRAL EXCISE

1. Guidelines for Detailed Scrutiny of Central Excise Returns prescribed

Return scrutiny is the first line of verification carried out by the Department upon submission of tax return by the assessee. A returns scrutiny process consists of two parts viz. preliminary scrutiny and detailed scrutiny. While the preliminary scrutiny system covers all the returns filed online, detailed scrutiny system covers a few returns selected on the basis of identified risk parameters. *CBEC vide Circular No. 1004/11/2015-CX, Dated: July 21, 2015* has laid down the following guidelines for detailed scrutiny of Central Excise Returns:

(a) Detailed scrutiny of a minimum of 2% and maximum of 5% of the total returns received in a month shall be mandatorily performed by the proper officers.

(b) The assessees should be selected by the Commissionerates on the basis of Risk Score ascertained as per *letter F. No. 381/20/2015 dated 18.05.2015*.

(c) An assessee who has been selected for audit in a given financial year shall NOT be selected for detailed scrutiny.

(d) Once the return of an assessee has been selected for detailed scrutiny, the return of the assessee should NOT be selected again for the next 12 months for detailed scrutiny.

(e) Most recent return filed by that assessee should be used for conducting the detailed scrutiny.

(f) Ratio of returns for Service Tax & Central Excise to be scrutinised in a composite range will be the ratio of the number of assessees registered as Service Tax and Central Excise assessees respectively.

[Circular No. 1004/11/2015-CX, Dated: July 21, 2015]

2. Benefit of CVD Exemption available to importers

The Hon'ble Supreme Court, in the case of *M/s SRF Ltd. versus Commissioner of Customs. Chennai and M/s ITC Ltd. vs. Commissioner of Customs (I&G), New Delhi* - relating to CVD exemption, held that the benefit of excise duty exemption will also be available to the importers of such final products for the purposes of CVD on the ground that the importer was not availing the credit of duty on inputs or capital goods. This implied that all such final products when imported by manufacturer importer would have attracted concessional excise duty as CVD while the domestic manufacturer of such final products would have been required to forgo input tax credit to be eligible for such concessional rate which would put the domestic manufacturers at a disadvantage.

In this regard, CBEC *vide Circular No. 1005/12/2015-CX, Dated: July 21, 2015* has clarified the use of the phrase of "appropriate duty" and provided that the appropriate duty or appropriate additional duty or appropriate service tax for the purposes of the *Notifications No.30/2004-CE dated 09.07.2004, No.1/2011-CE dated 01.03.2011 and No.12/2012-CE dated 17.03.2012*/entries includes nil duty or tax or concessional duty or tax whether or not read with any relevant exemption notification for the time being in force. This means that the domestically manufactured goods covered under these notifications/entries continue to be exempt from excise duty or subject to concessional rate of excise duty as the case may be.

[Circular No. 1005/12/2015-CX, Dated: July 21, 2015]

B. VALUE ADDED TAX

ANDHRA PRADESH VAT:

3. Registration of commodities by Dealers for generating CST way bills

Andhra Pradesh Government has advised the dealers to register all the commodities deal-in by them till 14th of August 2015. CST e-Way bills may only be generated if the commodity is registered. Further, the use of Manual way bills for Sensitive Commodity is prohibited unless Sensitive Commodity is registered. It may be noted that a dealer may register 3 sensitive commodities.

[Circular No. CCTs Ref. No. CCW/152/2015, dated 6th August, 2015]

4. Procedure defined for availing Input Tax Credit and Net Credit Carry Forward by a dealer post bifurcation of Andhra Pradesh and Telangana Government

Following mechanism has been agreed by State of Andhra Pradesh and Telangana for allowing Input Tax Credit and Net Credit Carry Forward to a dealer:

i. **Dealers Registered in both States**
A dealer who is originally registered in state of Telangana and has taken registration in the State of Andhra Pradesh post bifurcation, will be allowed to avail the credit carry forward in Telangana only. No credit is allowed in Andhra Pradesh to such dealer and vice versa.

ii. **Migrated Dealers:** A dealer, who was registered in Telangana and after bifurcation migrated to Andhra Pradesh, is allowed to claim NCCF in Andhra Pradesh only. No credit is allowed in Telangana and *vice versa*. New Assessing Authority should contact the old assessing authority to find out the pending arrears before allowing credit.

iii. **For Verification and Reconciliation of NCCF:** An online system based procedure has also developed for finding out pending Net Credit Carry Forward.

[Circular No. CCTs Ref. No. AI(1)/12/2014, dated 28th July, 2015]

ASSAM VAT:

5. Linking of registration of dealer with PAN as a step towards migration in GST regime

Assam Government *vide* ***Circular No. 11/2015 No. CT/COMP-69/2015/3 Dated 5th August, 2015***, has prescribed steps to follow to enable the migration of current tax system into GST regime. As in GST Regime everything will be linked with PAN of a person, Assam Government is replacing all the TIN of the dealers with GSTIN on the basis of PAN of dealers. Dealers are advised to give correct PAN, if wrong or not given. Authorities are advised to upload Mobile No., e-mail address; details of PAN of dealers with utmost care in database.

[Circular No. 11/2015 No. CT/COMP-69/2015/3 Dated 5th August, 2015]

6. Clarification regarding filling of Form 13 for April to June 2015 (First Quarter)

Assam Government *vide* ***Circular No. 9/2015 No. CT/COMP-69/2015/2 Dated 20th July, 2015*** has clarified that Part G to Part N of Form 13 may be filled manually for the quarter April-June 2015. Part A to Part F of Form 13 is to be filed online only. July

2015 onwards all part of Form 13 will be filed online compulsory.

[Circular No. 9/2015 No. CT/COMP-69/2015/2 Dated 20th July, 2015]

DAMAN AND DIU VAT:

7. Punjab National Bank is now authorized to accept Taxes, Penalties etc.

Daman and Diu Government ***vide Notification No DMN/VAT-2015/2014-15/236 Dated 30th July, 2015***, has designated Punjab National Bank, Daman Branch as authorised bank for payment of Taxes, Penalty, Interest and any other dues payable in relation to person having place of business in Daman and Diu.

[Notification No DMN/VAT-2015/2014-15/236 Dated 30th July, 2015]

DADAR & NAGAR HAVELI AND DAMAN & DIU VAT:

8. Registration Certificate will be granted within 1 day for Non -Sensitive Goods.

Daman & Diu Government and Dadar & Nagar Haveli Government has announced that Registration Certificate will be granted within 1 day in respect of Non-Sensitive Goods. All goods except Petroleum Products, Chemicals, Acids *etc*. will be considered as Non-Sensitive Goods. One day will be calculated from the day on which all formalities i.e. Application for Registration Certificate, Deposit of Registration Fee, Security etc. are duly complied with. Later, an inspection will be carried out within three weeks and if facts are found incorrect then registration will be cancelled. For Sensitive goods process will remain as it was.

[Circular No. DMN/VAT/VATSoft/2013-14/254, Dated 12th August, 2015 and Circular No. DNH/VAT/CT-MMP/AMDT/Rules/2011/1215 Dated 5th August, 2015]

DELHI VAT:

9. Date Extended for filling Forms EC II and EC III till 30.9.2015

Delhi Government *vide* ***Circular No. 15 of 2015-16 No.F.3(515)/Policy/VAT/2015/430-436, Dated 21st July, 2015***, has extended the last date for filling Forms EC II and EC III till 30.09.2015. It may be noted that

Forms EC II and EC III is required to filed by a dealer engaged in the business of e-commerce.

[Circular No. 15 of 2015-16 No. F.3(515)/Policy/VAT/2015/430-436, Dated 21st July, 2015]

HARYANA VAT:

10. Electronic Governance is to be implemented for carrying out the provisions of Act and Rule

Haryana Government *vide* ***Order dated 5th August, 2015***, has ordered that Electronic governance is to be implemented with immediate effect for Registration, Furnishing of Return *etc.*

[Order Dated 5th August, 2015]

KERALA VAT:

11. Exemption is available to Sub-contractor also in reference to SEZ.

Kerala Government *vide* ***Circular No. 22/2015 No.C1-1/15/CT, Dated 7th August, 2015***, has clarified that exemption is also available to a Sub-contractor, if he has sold building material, industrial inputs *etc.* to SEZ unit. The declaration format is also given in the said circular for claiming exemption.

[Circular No. 22/2015 No.C1-1/15/CT, Dated 7th August, 2015]

12. Dealers are now allowed to download Delivery Notes without Digital signatures.

Kerala Government vide ***Circular No. 21/2015 No.C1-12107/12/CT Dated 3rd August 2015***, has permitted to download Delivery Notes for transporting goods without Digital Signature. This circular is applicable from 6th of August 2015. Earlier it was mandatory to Digitally Sign the Delivery Notes.

[Circular No. 21/2015 No.C1-12107/12/CT Dated 3rd August 2015, wef 6th of August 2015]

NAGALAND VAT:

13. Mandatory uploading of details of Sales and Purchase Invoices on Tax Administration Application Software (i.e. Taxsoft).

Nagaland Government *vide* ***Notification No. CT/LEG/130/2006: Dated 29th July 2015***, has mandated uploading of details Sales and Purchase Invoices on Tax Administration Application Software for settlement of Input Tax Credit. All dealers are now required to upload mandatorily the details on Tax Soft from 1.4.2015. A brief of Terms and Conditions are:

i. All dealers are required to obtain login user ID and password.
ii. Login and Upload Sales and Purchase Invoices details in the Taxsoft on www.nagalandtaxnic.in.
iii. No claim for Input Tax Credit will be entertained if it is not e-uploaded.

[Notification No. CT/LEG/130/2006: Dated 29th July 2015]

RAJASTHAN VAT:

14. Retrospective Exemption from 09.03.2010, in case of dealers who are selling food items which is cooked by them in heritage hotels and is categorised as 'Basic' by Government of India is now exempt over and above 5%.

Rajasthan Government *vide* ***Notification No. F. 12(75)FD/Tax/2015-59 and 60, Dated 21st July 2015***, in case of dealers who are selling food items which is cooked by them in heritage hotels and which are categorised as 'Basic' by Government of India, has provided exemption over and above 5%. It means such dealers are required to pay tax at the rate of 5%.

[Notification No. F. 12(75)FD/Tax/2015-59 and 60, Dated 21st July 2015]

TRIPURA VAT:

15. Fixation of amount of Security Deposit for Different Classes of Dealers for VAT and CST Registration

Tripura Government *vide* ***Notification No. F-1-6(30)-TAX/2004/9251-75, Dated 20th July, 2015***, has fixed the amount for Security Deposit for Different Class of Dealers as below:

Classes of Dealers	Amount of Security
(i) VAT Registration for re-seller.	
(a) Annual turnover < ₹10.00 lakh	₹500.00
(b) Annual turnover > ₹10.00 lakh	₹1,000.00
(c) SSI units & beneficiaries of PMRY scheme or any other unemployed youth starting business under any Govt. scheme.	₹500.00
(d) Govt. Department/Enterprises/ Undertaking.	Nil
(ii) VAT registration along with CST registration or Only CST registration	
(a) Inter-state business,	₹10,000.00
(b) SSI units & beneficiaries of PMRY scheme or any other unemployed youth starting business under any Govt. scheme and NGO. Self Help Group.	₹1,000.00

Classes of Dealers	Amount of Security
(c) Govt. Department/ Enterprises/undertaking	Nil
(d) Coal	₹1,00,000.00
(e) Foreign Trade (Import/Export)	
(i) Coal	₹1,00,000.00
(ii) Other than Coal	₹30,000.00
(iii) (a) Bricks Kiln	₹1,00,000.00
(b) Stone boulders/ Stone chips/gravels/ Metals and any kind of stone	₹15,000.00
(iv) All kind of Transporters	₹12,00,000.00
(v) Branch office of all kind of Transporters	₹12,00,000.00
(vi) Amendment of registration other than inclusion of branch office of transporters as mentioned at Sl.No. (v),	Nil

[Notification No. F-1-6(30)-TAX/2004/9251-75, Dated 20th July, 2015]

WEST BENGAL VAT

16. Deselected dealers may now generate online e-way bills

West Bengal Government *vide* ***Circular No. 15/2015 dated 7th August, 2015***, has allowed a deselected dealer (i.e. whose facility for generating of Demat Waybill is withdrawn by the Commissioner) for generating online e-way bills in a restrictive way subject to conditions and guidelines prescribed in the said circular.

[Circular No. 15/2015 dated 7th August, 2015]

17. Special Provisions for Large Tax Payer Units

West Bengal Government *vide* ***Trade Circular No. 14/2015 dated 24th July, 2015***, has stated special provisions and facilities that are available to Large Taxpayer Units (LTU). These are as follows:

i. A dealer who is in in Jurisdiction of Kolkata and whose net tax payable/paid in the previous year was more than ₹3 crore, or Total turnover of sales/transfer price in each of preceding 2 financial years, was more than ₹500 crore, may make an application for LTU.

ii. A Nodal Officer (Joint Commissioner (JC) or Senior JC) will be assigned to each LTU for assisting in all tax matters such as return filling, way bill issue, declaration form, refund, export etc. One window will be provided.

iii. LTUs are allowed to generate e-way bills without any upper limit.

iv. The selection for VAT audit would be based on 'risk assessment' and in consultation of LTU.

v. The refund claims will be disposed of ASAP.

vi. On Technical Ground alone, goods of LTU cannot be detained or searched during transportation. If any ground exists for its detention, photo copies of the relevant papers relating to the consigned goods and its movement would be retained for further investigation.

vii. Opportunity to explain non-payment of tax is to be given before initiating recovery proceeding.

viii. A dedicated email address will be given to LTU i.e. ltu@wbcomtax.gov.in. This e-mail will be monitored and responded to positively within two working days.

ix. This scheme is optional that means LTU are to opt this scheme for availing the benefits.

x. When dealers move out of LTU, cases will be handled in the normal manner.

[Trade Circular No. 14/2015 dated 24th July, 2015]

18. Amendment in VAT Act/Rule by VAT Amendment Act, 2015 or Notifications issued in pursuance thereof:

BIHAR VAT:

Bihar Government *vide* ***Notification No. S.O.189 F.No. Bikri kar/Sansodhan-02/2015/4110 Dated 3rd August, 2015***, has amended following Rules in Bihar VAT Rules:

(i) Insertion of new Rule for determining penalty U/s 32(2)

A new **Rule 24A has been** inserted for determining penalty under Section 32(2), which is as follows:

1) If an authority wants to impose penalty, he should determine tax at the suitable rate on the Value of suppressed turnover.

2) Such calculation of Tax will be limited to the extent of actual value of suppressed turnover.

3) This determination of Tax is for Penalty purpose only.

(ii) Disabling generation of electronic transaction identification number (Insertion of new sub-rule 7 in Rule 41):

If the authority is satisfied that an applicant for an electronic transaction identification number has defaulted in:

- furnishing Return/Statement
- payment of Tax/Interest
- furnishing Tax Audit Report

then he may disable such applicant for generation of electronic transaction identification number till he does not make the default good.

[Notification No. S.O.189 F.No. Bikri kar/ Sansodhan-02/2015/4110 Dated 3rd August, 2015]

MADHYA PRADESH VAT:

Following amendments have been made in Madhya Pradesh VAT Act:

i. Substitution of *proviso* to Section 4-A: Where an appeal was not disposed of within the given time of stay, the dealer may make an application to extend the time. The Appellate Board may grant extension of stay for maximum of 6 months if it is satisfied that delay was not due to dealer.

ii. Section 16-A(3): A new sub-Section has been inserted empowering Government to make a Scheme to liquidate the liabilities including arrears of Tax, Interest and Penalty of Sick or Closed Industrial Units.

iii. Penalty under Section 18(4)(d) has been reduced from 1000 per day to 500 per day after 30 days. Further, the maximum penalty has also been reduced from ₹50,000/- to ₹25,000/-

iv. Section 29(5C): A new sub-Section has inserted to provide that a amalgamated unit shall be entitled to take credit of Unadjusted Input Tax Rebate held by the amalgamating unit on the date of amalgamation provided that both the unit should be of same dealer.

KERALA VAT:

Following amendment have been made in Kerala VAT Act *vide* ***Notification No. 5959/Leg.A2/2015/Law Dated 29th July, 2015***:

(1) Fees for renewal of Registration [Section 16(7)]: For renewal of registration every year following fees is required to be paid:

Particulars	Amount in ₹
(a) in the case of a dealer who is not an importer	
(i) having a total turnover of up to ₹25 lakh in the previous year	₹500
(ii) having a total turnover of above ₹25 lakh in the previous year	₹1,000/-
(b) in the case of others	₹3000/-

(2) Revision of Return in two months [Section 21(2)]: A new sub-Section has been inserted to provide that a dealer may revise his return within two months from the last day of the return period if he founds any omission or mistake in the original return. If due to revision, his tax increases, dealer needs to file proof of payment of tax, interest and penal interest which would be twice the rate of interest.

(3) Date of completion of assessment is extended to 31st March 2016

The date of completion of audit and escaped assessment as provided in fourth and third Proviso to Section 24(1) and 25(1) respectively has been extended up to 31st March 2016. Earlier the said due date was 31st March 2015.

(4) Prior approval required for General Survey or Inquiry

A new *proviso* to section 54 has been inserted to provide that Prior approval of an Officer above the rank of Deputy Commissioner is required for General Survey or Inquiry.

(5) Monthly filing of details of goods sold by Companies maintain Electronic Commerce Website

A new Section 54A has been inserted to provide that all companies who are maintaining Electronic Commerce Website shall monthly file details of goods sold through such site in a month.

[Notification No. 5959/Leg.A2/2015/Law Dated 29th July, 2015]

JHARKHAND VAT:

Jharkhand Government *vide* ***Notification S.O.56 dated 24th July, 2015***, has amended Jharkhand VAT Rules, 2006 as follows:

Rule 3(c)(vi): A dealer may be given Registration Certificate with TIN in Form JVAT 106 within 1 day from the date of application if Registering authority is satisfied that information furnished to him is complete, true, correct and dealer deals in non-sensitive goods.

Rule 19(6): If a dealer claims for refund, such refund shall be granted within 60 days from the date

of filling of refund claim. This period was 90 days prior to this amendment.

Rule 19(7): If a dealer claims for refund in the Return on account of sales he may file an application accompanied with prescribed documents within 60 days from the date of furnishing of Return. Prior to this amendment this time period was 90 days. An application for refund made after sixty days may be admitted if the authority is satisfied that the dealer has sufficient cause for not making the application within time.

[Notification S.O.56 dated 24th July, 2015]

HARYANA VAT:

Haryana Government *vide* ***Notification No. Leg. 9/2015, Dated 3rd August, 2015***, has amended Haryana Vat Act vide Ordinance as follows:

1. **Section 15A:** If the assessing authority has evidence that dealer has evaded/avoided tax payment, then he may determine the taxable turnover of dealer on provisional basis to the best of his judgment and assess tax accordingly. The dealer will be given opportunity of being heard.
2. **Section 16:** If it is found by the assessing authority that a dealer is liable to pay tax and has not taken registration, then he can assess the due tax to the best of his judgment before the expiry of 6 years from the end of such period after giving Opportunity of being heard to such dealer. Prior to this amendment the said time period was 3 years.
3. **Section 17:** If it is found by the assessing authority that Turnover of a business is under assessed or has escaped assessment or excess input tax or refund has been allowed, then he can reassess the tax liability (Best Judgment also) after giving an opportunity of being heard to the dealer. Such reassessment can be done before the expiry of 8 years from the end of that year or within 3 years from the date of final assessment order, whichever is later.
4. **Second Proviso to Section 34(1)** has been amended to provide that no order will be revised after 6 years from the date of supply of order to assessee. In case of retrospective change in law, Tribunal, High Court, Supreme Court Decision order can be revised beyond 6 years also. Prior to this amendment the said time period was 3 years.
5. **Chapter XA:** A whole new chapter has been inserted to enable Electronic Governance as follows:

i. **54A: Implementation of electronic governance:**
   - **a)** Commissioner may implement electronic governance for carrying out the provisions.
   - **b)** He may amend or introduce forms for returns, applications, declarations, annexures, audit report *etc.* to be submitted electronically.
   - **c)** He can extend or reduce the period of act and rules for electronic governance.

ii. **54B: Automation:**
   - **a)** All the provisions of Information Technology Act relating to Digital Signatures, Digital Signatures Certificates, Electronic Governance, Acknowledgement and dispatch of electronic records, Attribution, Secure Electronic Records and Secure Digital Signatures shall apply for electronic governance also.
   - **b)** If the dealer has given consent to use the official website then only return, annexure, audit report, documents, certificate etc. filled electronically will be deemed to have been submitted. The dealer who has given consent cannot deny or withdraw documents submitted electronically.
   - **c)** A certificate, order, notice or communication which is prepared on automated data processing system and is sent to dealer need not to be signed by Commissioner/Officer. Even without signature it would not be considered invalid.

[Notification No. Leg. 9/2015, Dated 3rd August, 2015]

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

A. Issue of shares under Employees Stock Options Scheme and/or sweat equity shares to persons resident outside India

A. P. (DIR Series) Circular No. 4 dated July 16, 2015

Presently an Indian company can issue shares under Employees' Stock Option (ESOP) Scheme, by

whatever name called, to its employees or employees of its Joint venture or Wholly owned overseas subsidiary/subsidiaries who are resident outside India, directly or through a Trust, provided that the scheme has been drawn in terms of regulations issued under the SEBI Act, 1992 and face value of the shares to be allotted under the scheme to non-resident employees does not exceed 5 per cent of the paid up capital of the issuing company. The Trust or Indian company has to ensure compliance with the above conditions and comply with the reporting requirement.

On a review, it has been decided that an Indian company may issue "employees' stock option" and/or "sweat equity shares" to its employees/directors or employees/directors of its holding company or joint venture or wholly owned overseas subsidiary/subsidiaries who are resident outside India, provided that:

a) The scheme has been drawn either in terms of regulations issued under the Securities Exchange Board of India Act, 1992 or the Companies (Share Capital and Debentures) Rules, 2014 notified by the Central Government under the Companies Act 2013, as the case may be.
b) The "employee's stock option"/"sweat equity shares" issued to non-resident employees/directors under the applicable rules/regulations are in compliance with the sectoral cap applicable to the said company.
c) Issue of "employee's stock option"/"sweat equity shares" in a company where foreign investment is under the approval route shall require prior approval of the Foreign Investment Promotion Board (FIPB) of Government of India.
d) Issue of "employee's stock option"/"sweat equity shares" under the applicable rules/regulations to an employee/director who is a citizen of Bangladesh/Pakistan shall require prior approval of the Foreign Investment Promotion Board (FIPB) of Government of India.

The issuing company shall furnish to the Regional Office concerned of the Reserve Bank of India under whose jurisdiction the registered office of the company operates, within 30 days from the date of issue of employees' stock option or sweat equity shares, a return as per the Form-ESOP (given as Annex to this circular).

Reserve Bank has since amended the Principal Regulations through the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Fourth Amendment) Regulations, 2015 notified through Notification No. FEMA.344/2015-RB dated June 11, 2015, vide G.S.R. No. 484 (E) dated June 11, 2015.

B. Export factoring on non-recourse basis

A.P. (DIR Series) Circular No. 5 dated July 16, 2015

In order to facilitate exports, Authorised Dealer Category–I (AD Category –I) banks have been permitted to provide 'export factoring' services to exporters on 'with recourse' basis by entering into arrangements with overseas institutions for this purpose without prior approval from the Reserve Bank of India subject to compliance with guidelines issued by the Department of Banking Regulation in this regard.

Factoring of export receivable on non-recourse basis will be allowed subject to conditions as under:

a. AD banks may take their own business decision to enter into export factoring arrangement on non-recourse basis. They should ensure that their client is not over financed. Accordingly, they may determine the working capital requirement of their clients taking into account the value of the invoices purchased for factoring. The invoices purchased should represent genuine trade invoices.
b. In case the export financing has not been done by the Export Factor, the Export Factor may pass on the net value to the financing bank/Institution after realising the export proceeds.
c. AD bank, being the Export Factor, should have an arrangement with the Import Factor for credit evaluation & collection of payment.
d. Notation should be made on the invoice that importer has to make payment to the Import Factor.
e. After factoring, the Export Factor may close the export bills and report the same in the Export Data Processing and Monitoring System (EDPMS) of the Reserve Bank of India.
f. In case of single factor, not involving Import Factor overseas, the Export Factor may obtain credit evaluation details from the correspondent bank abroad.
g. KYC and due diligence on the exporter shall be ensured by the Export Factor.

C. Foreign Investment in India by Foreign Portfolio Investors

A.P. (DIR Series) Circular No. 6 dated July 16, 2015

In terms of Schedule 5 to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 notified *vide* Notification No. FEMA.20/2000- RB dated May 3, 2000, as amended from time to time and to A.P. (DIR Series) Circular No. 71 dated February 3, 2015 and A.P. (DIR Series) Circular No. 73 dated February 6, 2015 in terms of which all future investments by an FPI within the limit for investment in corporate bonds shall be required to be made in corporate bonds with a minimum residual maturity of three years.

The Reserve Bank has been receiving enquiries about the applicability of the aforesaid directions on investment by FPIs in security receipts (SRs) issued by the Asset Reconstruction Companies (ARCs). It is clarified that the restriction on investments with less than three years residual maturity shall not be applicable to investment by FPIs in SRs issued by ARCs. However, investment in SRs shall be within the overall limit prescribed for corporate debt from time to time.

D. Introduction of Composite Caps for simplification of Foreign Direct Investment (FDI) Policy to attract foreign investments

DIPP Press Note No. 8 (2015 Series) dated July 30, 2015.

The Government of India has reviewed the extant FDI Policy on various sectors and made following amendments in the Consolidated FDI Policy Circular 2015, effective from May 12, 2015 by introducing composite caps, so that uniformity and simplicity are brought in across the sectors in FDI Policy for attracting foreign investments.

Following amendments to the relevant paragraphs of Consolidated FDI policy were approved:

a. Para 3.6.2 (vi) of the consolidated FDI Policy Circular 2015 is amended and read as under:

It is also clarified that Foreign investment shall include all types of foreign investments, direct and indirect, regardless of whether the said investments have been made under Schedule 1 (FDI), 2 (FII), 2A (FPI), 3 (NRI), 6 (FVCI), 8 (QFI), 9 (LLPs) and 10 (DRs) of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations. FCCBs and DRs having underlying instruments which can be issued under Schedule 5, being in the nature of debt, shall not be treated as foreign investment. However, any equity holding by a person resident outside India resulting from conversion of any debt instrument under any arrangement shall be reckoned as foreign investment.

b. Para 4.1.2 of the Consolidated FDI Policy Circular of 2015 is amended to read as under:

For the purpose of computation of indirect foreign investment, foreign investment in an Indian company shall include all types of foreign investments regardless of whether the said investments have been made under Schedule 1 (FDI), 2 (FII holding as on March 31), 2A (FPI holding as on March 31), 3 (NRI), 6 (FVCI), 8 (QFI holding as on March 31), 9 (LLPs) and 10 (DRs) of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations. FCCBs and DRs having underlying of instruments which can be issued under Schedule 5, being in the nature of debt, shall not be treated as foreign investment. However, any equity holding by a person resident outside India resulting from conversion of any debt instrument under any arrangement shall be reckoned as foreign investment.

c. Para 3.1.4 (i) of the Consolidated FDI Policy Circular of 2015 is amended to read as under:

An FII/FPI/QFI (Schedule 2, 2A and 8 of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations, as the case may be) may invest in the capital of an Indian company under the Portfolio Investment Scheme which limits the individual holding of an FII/FPI/QFI below 10% of the capital of the company and the aggregate limit for FII/FPI/QFI investment to 24% of the capital of the company. This aggregate limit of 24% can be increased to the sectoral cap/statutory ceiling, as applicable, by the Indian company concerned through a resolution by its Board of Directors followed by a special resolution to that effect by its General Body and subject to prior intimation to RBI. The aggregate FII/FPI/QFI investment, individually or in conjunction with other kinds of foreign investment will not exceed sectoral/statutory cap.

d. Para 6.2 of the Consolidated FDI Policy Circular of 2015 is amended to read as under:

(i) In the sectors/activities mentioned as per annexure, foreign investment up to the limit indicated against each sector/activity is allowed, subject to the conditions of

the extant policy on specified sectors and applicable laws/regulations; security and other conditionalities. In sectors/activities not listed therein, foreign investment is permitted up to 100 percent on the automatic route, subject to applicable laws/regulations; security and other conditionalities. Wherever there is a requirement of minimum capitalisation, it shall include share premium received along with the face value of the share, only when it is received by the company upon issue of the shares to the non-resident investor. Amount paid by the transferee during post-issue transfer of shares beyond the issue price of the share, cannot be taken into account while calculating minimum capitalisation requirement.

(ii) Sectoral cap i.e. the maximum amount which can be invested by foreign investor, unless provided otherwise, is composite and includes all types of foreign investments, direct and indirect, regardless of whether the said investments have been made under Schedule 1 (FDI), 2 (FII), 2A (FPI), 3 (NRI), 6 (FVCI), 8 (QFI), 9 (LLPs) and 10 (DRs) of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations. FCCBs and DRs having underlying of instruments which can be issued under Schedule 5, being in the nature of debt, shall not be treated as foreign investment. However, any equity holding by a person resident outside India resulting from conversion of any debt instrument under any arrangement shall be reckoned as foreign investment under the composite cap.

(iii) Foreign investment in sectors under Government approval route resulting in transfer of ownership and/or control of Indian entities from resident Indian citizens to non-resident entities will be subject to Government approval. Foreign investment in sectors under automatic route but with conditionalities, resulting in transfer of ownership and/or control of Indian entities from resident Indian citizens to non-resident entities, will be subject to compliance of such conditionalities.

(iv) The sectors which are already under 100 percent automatic route and are without conditionalities would not be affected.

(v) Notwithstanding anything contained in paragraphs (i) and (iii) above portfolio investment, upto aggregate foreign investment level of 49% or sectoral/statutory cap, whichever is lower, will not be subject to either government approval or compliance of sectoral conditions, as the case may be, if such investment does not result in transfer of ownership and/or control of Indian entities from resident Indian citizens to non-resident entities. Other foreign investments will be subject to conditions of Government approval and compliance of sectoral conditions as laid down in the FDI Policy.

(vi) Total foreign investment, direct and indirect, in an entity will not exceed the sectoral/ statutory cap.

(vii) Any existing foreign investment already made in accordance with the policy in existence would not require any modification to conform to these amendments.

(viii) The onus of compliance of above provisions will be on the investee company.

e. It is clarified that there are no sub-limits of portfolio investment and other kinds of foreign investments in commodity exchanges, credit information companies, infrastructure companies in the securities market and power exchanges.

f. In defence sector, portfolio investment by FPIs/FIIs/NRIs/QFIs and investments by FVCIs together will not exceed 24% of the total equity of the investee/joint venture company. Portfolio investments will be under automatic route.

g. In Banking-Private sector, where sectoral cap is 74%, FII/FPI/QFI investment limits will continue to be within 49% of the total paid up capital of the company.

h. There is no in the entry route i.e. government approval requirement to bring foreign investment in a particular sector/activity. Further, subject to the amendments mentioned in this Press Note, there is no change in other conditions mentioned in the Consolidated FDI Policy Circular of 2015 and subsequent press notes.

For more details please refer the said Press Note available on the DIPP website at–http://dipp.nic.in/English/acts_rules/Press_Notes/pn8_2015.pdf

Legal Update

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

MCA(www.mca.gov.in)

MCA Circular no.11/2015 dated 21st July 2015 – Clarification with regard to circulation and filing of financial statements under relevant provisions of the Companies Act, 2013

MCA had received requests or clarification with respect to certain provisions pertaining to applicability of shorter notice for circulation of financial statements if conditions under section 101 are fulfilled. MCA has clarified that a company holding a general meeting after giving a shorter notice as provided under Section 101 of the Act may also circulate financial statements (to be laid/considered in the same general meeting) at such shorter notice. It has also been clarified that in case of a foreign subsidiary, which is not required to get its accounts audited as per legal requirements prevalent in the country of its incorporation and which does not get such accounts audited, the holding/parent Indian may place/file such unaudited accounts to comply with requirements of Section 1C6i1) and 137(1) as applicable. For a complete text of the circular, please refer the link: http://www.mca.gov.in/Ministry/pdf/General_Circular_11-2015_21072015.pdf

SEBI (www.sebi.gov.in)

SEBI Notification No. SEBI/ LAD-NRO/GN/2015-16/006 dated 15th July 2015 - Issue and Listing of Debt Securities by Municipalities) Regulations, 2015

SEBI has released this notification dealing with issue of securities by Municipalities. These regulations deal with the concepts of Eligible municipalities, requirements for public issue, disclosures in the offer documents, utilisation of issue proceeds, listing of debt securities etc. For a complete text of the circular, please refer the link: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1436964571729.pdf

RBI (www.rbi.org.in)

RBI Circular No. FIDD.No.FSD.BC.59/05.04.02/2015-16 dated 13th August 2015 - Union Budget - 2015-16 Interest Subvention Scheme

RBI has advised that the Govt. of India has approved the implementation of the Interest Subvention Scheme for the year 2015-16 for short term crop loans upto ₹3.00 lakh. There are various conditions stipulated for availing the benefits under this scheme by Public Sector Banks (PSBs) and the Private Sector Scheduled Commercial Banks. There are provisions for submission of claims to the RBI duly certified by the Statutory Auditors of the Banks. For a complete text of the circular, please refer the link: https://rbi.org.in/Scripts/NotificationUser.aspx?Id=9984&Mode=0

RBI Circular No.DBS.CO.ARS.No. BC. 2/08.91.021/2015-16 dated 16th July 2015 - Concurrent Audit System in Commercial Banks - Revision of RBI's Guidelines

In view of the changes in banks' organizational structure, business models, use of technology etc. RBI has revised the guidelines for concurrent audit systems in commercial Banks. RBI has also advised that every Bank should once in a year, review the effectiveness of the system and take necessary measures to correct the lacunae in the implementation thereof. For a complete text of the circular, please refer the link: https://rbi.org.in/Scripts/NotificationUser.aspx?Id=9949&Mode=0

RBI Circular No.FIDD.CO.Plan.BC.08/04.09.01/2015-16 dated 16th July 2015 - Priority Sector Lending – Targets and Classification

In an effort to increase direct lending to agriculture, RBI has revised the target for direct lending to small and marginal farmers under the recently revised Priority Sector Norms to 7% for 2015-16 and to 8% for 2016-17. Banks are also directed to ensure that their overall direct lending to non-corporate farmers does not fall below the system-wide average of the last three years achievement failing which they will attract the usual penalties for shortfall. For a complete text of the circular, please refer the link: https://rbi.org.in/Scripts/NotificationUser.aspx?Id=9948&Mode=0

RBI Circular No. DBR.BP.BC.No.31/21.04.018/2015-16 dated 16th July 2015 - Deposits placed with NABARD/ SIDBI/NHB for meeting shortfall in Priority Sector Lending by Banks-Reporting in Balance Sheet

RBI has directed that for accounting periods commencing on or after April 1, 2015, deposits placed with NABARD/SIDBI/NHB on account of shortfall in priority sector targets should be included under Schedule 11- 'Other Assets' under the subhead 'Others' of the Balance Sheet. Banks should also disclose the details of such deposits, both for the current year and previous year, as a footnote in Schedule 11 of the Balance Sheet. Further, while presenting the balance sheet for the year ending March 31, 2016, the previous year amounts may be appropriately regrouped. For a complete text of the circular, please refer the link: https://rbi.org.in/Scripts/NotificationUser.aspx?Id=9943&Mode=0 ■