# Circulars/Notifications

***Given below are the important Circulars and Notifications issued by the CBDT, CBEC, FEMA, MCA 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*** **eboard@icai.in**

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

## A. INCOME TAX

### I. NOTIFICATIONS

#### 1. Computation of period of stay in India for an Indian citizen, being a member of the crew of a foreign bound ship leaving India– Notification No. 70/2015, dated 17.8.2015

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

Section 6(1) of the Income-tax Act, 1961 provides that an individual is said to be resident in India in any previous year, if he—

(a) is in India in that year for a period or periods amounting in all to one hundred and eighty-two days or more; or

(c) having within the four years preceding that year been in India for a period or periods amounting in all to three hundred and sixty-five days or more, is in India for a period or periods amounting in all to sixty days or more in that year.

Thus, under Section 6(1), the conditions to be satisfied by an individual to be a resident in India are provided. The residential status is determined on the basis of the number of days of his stay in India during a previous year.

However, in case of foreign bound ships where the destination of the voyage is outside India, there is uncertainty regarding the manner and the basis of determining the period of stay in India for an Indian citizen, being a crew member.

To remove this uncertainty, Explanation 2 has been inserted to Section 6(1) to provide that in the case of an individual, being a citizen of India and a member of the crew of a foreign bound ship leaving India, the period or periods of stay in India shall, in respect of such voyage, be determined in the prescribed manner and subject to the prescribed conditions.

Accordingly, this notification has inserted Rule 126 in the Income-tax Rules, 1962 to compute the period of stay in such cases. According to Rule 126, for the purposes of Section 6(1), in case of an individual, being a citizen of India and a member of the crew of a ship, the period or periods of stay in India shall, in respect of an eligible voyage, not include the period commencing from the date entered into the Continuous Discharge Certificate in respect of joining the ship by the said individual for the eligible voyage and ending on the date entered into the Continuous Discharge Certificate in respect of signing off by that individual from the ship in respect of such voyage.

The Explanation to this rule defines the meaning of the following terms:

| Terms | Meaning |
|---|---|
| Continuous Discharge Certificate | This term has the meaning assigned to it in the Merchant Shipping (Continuous Discharge Certificate-cum-Seafarer's Identity Document) Rules, 2001 made under the Merchant Shipping Act, 1958. |
| Eligible voyage | A voyage undertaken by a ship engaged in the carriage of passengers or freight in international traffic where-<br>i. for the voyage having originated from any port in India, has as its destination any port outside India; and<br>ii. for the voyage having originated from any port outside India, has as its destination any port in India |

### 2. Notification of certain districts of Bihar as backward districts under the first proviso to clause (iia) of Section 32(1) and Section 32AD(1)-Notification No. 71/2015, dated 17.8.2015

In order to encourage the setting up of industrial undertakings in the backward areas of the States of Andhra Pradesh, Bihar, Telangana and West Bengal, Section 32AD(1) provides for a deduction of an amount equal to 15% of the actual cost of new plant and machinery acquired and installed in the assessment year relevant to the previous year in which such plant and machinery is installed, if the following conditions are satisfied by the assessee –

(a) The assessee sets up an undertaking or enterprise for manufacture or production of any article or thing on or after 1st April, 2015 in any backward area notified by the Central Government in the State of Andhra Pradesh or Bihar or Telangana or West Bengal; and

(b) The assessee acquires and installs new plant and machinery for the purposes of the said undertaking or enterprise during the period between 1st April, 2015 and 31st March, 2020 in the said backward areas.

Further, in order to encourage acquisition and installation of plant and machinery for setting up of manufacturing units in the notified backward areas of the States of Andhra Pradesh, Bihar, Telangana and West Bengal, first *proviso* has been inserted to Section 32(1)(iia) to allow higher additional depreciation at the rate of 35% (instead of 20%) in respect of the actual cost of new machinery or plant (other than a ship and aircraft) acquired and installed during the period between 1st April, 2015 and 31st March, 2020 by a manufacturing undertaking or enterprise which is set up in the notified backward areas of these specified States on or after 1st April, 2015.

Accordingly, the Central Government has notified 21 districts of the State of Bihar as backward areas under the first *proviso* to Section 32(1)(iia) and Section 32AD(1).

### 3. Notified news agency for exemption under Section 10(22B) of the Income-tax Act, 1961–Notification No. 72/2015, dated 24.8.2015

Section 10(22B) of the Income-tax Act, 1961, empowers the Central Government to notify any news agency set up in India solely for collection and distribution of news. The income of such news agency will not be included in computing the total income of a previous year of such agency. Accordingly, the Central Government has, through this notification, notified the Press Trust of India Limited, New Delhi as a news agency set up in India solely for collection and distribution of news for three assessment years 2016-17 to 2018-19 provided that agency applies its income or accumulates it for application solely for collection and distribution of news and does not distribute its income in any manner to its members.

### 4. Guidance Note on Implementation of Reporting Requirements under Rules 114F to 114H of the Income-tax Rules–Notification F. No. 500/137/2011-FTTR-III dated 31.8.2015

In view of the government's commitment to implementation of Common Reporting Standard (CRS) on Automatic Exchange of Information (AEOI) and also the Inter-Governmental Agreement (IGA) with USA, and with a view to provide information to other countries, necessary legislative changes have been made through Finance (No. 2) Act, 2014 by amending section 285BA of the Income-tax Act, 1961. Income-tax Rules, 1962 were amended *vide* notification No. 62 of 2015 dated 7th August, 2015 by inserting Rules 114F to 114H and Form 61B to provide a legal basis for the Reporting Financial Institutions (RFIs) for maintaining and reporting information about the Reportable Accounts. These Rules have been developed in consultation with Regulators and Financial Institutions in order to smoothen the reporting requirements and to address their concerns wherever possible.

Accordingly, the Ministry of Finance has come out with a Guidance Note on implementation of reporting requirements under Rules 114F to 114 H of the Income-tax Rules, 1962. The purpose of the Guidance Note is to provide guidance to the Financial Institutions, Regulators and officers of the Income-tax department for ensuring compliance with the reporting requirements provided in Rules 114F to 114 H and Form 61B of the Income-tax Rules, 1962. The Guidance Note is intended to explain the complex reporting requirements and provide further guidance wherever required. Since a large part of the Rules is based on Common Reporting Standard (CRS)

on Automatic Exchange of Information (AEOI), the Financial Institutions may refer the CRS and its commentary to get further understanding of the terms used. In the Guidance Note, reference to the CRS and commentary has been given for further reference.

Note: RBI has issued a Circular regarding reporting requirement under Foreign Account Tax Compliance (FATCA) and Common Reporting Standards (CRS) which states that all the concerned financial institutions should refer the amended rules and take steps for complying with the reporting requirements. All the concerned financial institutions required to register on the related e-filing portal of Income Tax Department as Reporting Financial Institution by submitting the requisite details and thereafter the reports have to be submitted online by using the digital signature of the 'Designated Director' by either uploading the Form 61B or 'NIL' report. Further, the RBI has also identified some important issues which need to be kept in mind while complying with the reporting requirements.

### 5. Procedure for registration and submission of report under section 285BA(1)(k) of the Income-tax Act, 1961 read with Rule 114G(7) of the Income-tax Rules, 1962–Notification No. 4/2015, dated 04.9.2015

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).

Rule 114G prescribes the information to be maintained and reported by a reporting financial institution in respect of each reportable account. Sub-rule (7) of Rule 114G prescribes that the statement of reportable account required to be furnished under Section 285BA (1)(k) shall be furnished by a reporting financial institution in respect of each account which has been identified, pursuant to due diligence procedure specified in Rule 114H, as a reportable account, provided that where pursuant to such due diligence procedures no account is identified as a reportable account, a nil statement shall be furnished by the reporting financial institution.

As per sub-rule (9)(a) of Rule 114G of the Income-tax rules, the statement referred to in sub-rule (7) of rule 114G shall be furnished through online transmission of electronic data to a server designated for this purpose under the digital signature in accordance with the data structure specified in this regard by the Principal Director General of Income-tax (Systems). Further, as per sub-rule (9)(b) of Rule 114G Principal Director General of Income-tax (Systems) shall specify the procedures, data structures and standards for ensuring secure capture and transmission of data, evolving and i mplementing appropriate security, archival and retrieval policies.

In exercise of the powers delegated by the CBDT under sub-rules (9)(a) and 9(b) of Rule 114G of the Income-tax Rules 1962, the Principal Director General of Income-tax (Systems) has, vide this Notification, laid down the procedures, data structure and standards for ensuring secure capture and transmission of data, evolving and implementing appropriate security, archival and retrieval policies.

**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 on certain issues related to grant of approval and claim of exemption u/s 10(23C)(vi) of the Income-tax Act, 1961-Circular No. 14/2015, dated 17.8.2015

Section 10(23C)(vi) of the Income-tax Act, 1961 prescribes that income of any university or other educational institutions, existing solely for educational purposes and not for purposes of profit, shall be exempt from tax if such entities are approved by the prescribed authorities. Further, such approval is not required in cases of university or educational institutions wholly or substantially financed by the Government [sub–clause (iiiab) of section 10(23C)] or if their aggregate annual receipts do not exceed ₹1 crore [sub–clause (iiiad) of section 10(23C) read with Rule 2BC]. Thus, while granting approval to entities covered under sub-clause (vi), the prescribed authority has to ensure that the applicant institution must exist *'solely for educational purposes and not for purposes of profit'.* There are several *provisos* to Section 10(23C)(vi)and prescribe, *interalia*, various monitoring conditions subject to fulfillment of which only, the exemption can be availed.

These monitoring conditions include mode and manner of application of funds, maintenance and audit of books of accounts in certain situations etc. Some other *Provisos* prescribe the manner of making application u/s 10(23C)(vi) and the circumstances when an approval granted earlier can be withdrawn.

The CBDT has made the following clarifications in this regard:

1. Scope of enquiry while granting approval -

i. Clarification has been sought on the scope of enquiry that can be made by the prescribed authority while granting approval u/s 10(23C)(vi), i.e., whether it would be sufficient for the prescribed authority to consider the nature, existence for non-profit purposes and genuineness of the applicant institution or the conditions prescribed under various *Provisos*

are also required to be considered at the stage of granting approval.

ii. In this connection, attention is drawn to the decision of the Hon'ble Supreme Court in the case of *American Hotel and Lodging Association Educational Institute vs. CBDT [301 ITR 86] (2008)* in which it has been held that at the time of granting approval u/s 10(23C)(vi), the prescribed authority is to be satisfied that the institution existed during the relevant year solely for educational purposes and not for profit. Once the prescribed authority is satisfied about fulfillment of this criteria i.e. the threshold pre-condition of actual existence of an educational institution under Section 10(23C)(vi), it would not be justifiable, in denying approval on other grounds, especially where the compliance depends on events that have not taken place on the date on which the application for grant of approval has been made.

iii. However, the prescribed authority is eligible to grant approval u/s 10(23C)(vi), subject to such terms and conditions as deemed necessary including those falling within the framework of various *Provisos* to the said clause of section 10. It has also been clarified in the said judgment that the compliance of prescribed conditions can be gauged while monitoring the case and in case of any breach thereof, the approval can be withdrawn. It is, therefore, clarified that the principle laid down by the Apex Court in American Hotels case (*supra*) must be followed while considering the applications filed seeking approval for exemption u/s 10(23C)(vi).

2. Necessity for registration u/s 12AA while seeking approval/claiming exemption u/s 10(23C)(vi)

i. Section 10(23C)(vi) does not prescribe any stipulation which makes registration u/s 12AA a mandatory pre or post condition. In fact, provisions of Section 11 and 10(23C) are two parallel regimes and operate independently in their respective realms although some of the compliance criteria may be common to both. Hence, obtaining prior registration before granting approval u/s 10(23C) cannot be insisted upon.

ii. However, in case of a trust or an institution having obtained registration u/s 12AA as well as approval u/s 10(23C)(vi), if registration is withdrawn at some point of time due to certain adverse findings, the withdrawal of approval u/s 10(23C)(vi) shall not be automatic but will depend upon whether these adverse findings also impact the conditions necessary to keep approval u/s 10(23C)(vi) alive.

3. Generation of surplus out of gross receipts

A doubt has been raised whether generation of surplus out of gross receipts would necessarily 'breach' the threshold condition that the educational institution should exist 'solely for educational purpose and not for the purpose of profit'. Perusal of prescribed provisions clearly reveal that mere generation of surplus cannot be a basis for rejection of application u/s 10(23C)(vi) on the ground that it amounts to an activity of the nature of profit making. In fact, the third Proviso to the said clause clearly provides that accumulation of income is permissible subject to the manner prescribed therein provided such accumulation is to be applied "wholly and exclusively to the objects for which it is established". Hence, it is clarified that mere generation of surplus by educational institution from year to year cannot be a basis for rejection of application u/s 10(23C)(vi) if it is used for educational purposes unless the accumulation is contrary to the manner prescribed under law.

4. Collection of amounts under different heads of fee from students -

It has been brought to the notice that collection of small amounts from students by way of application fee, examination fee, fee for issuing transfer certificate, subscription fee for library *etc.* is being treated by some Assessing Officers as profit making activity resulting in denial of exemption u/s 10(23C)(vi). Collection of small and reasonable amounts under different heads of fee, which are essentially in the nature of fee connected with imparting education and do not violate any Central or State regulation does not, in general, represent a profit making activity. Hence, there is no justification for treating the charging of small amounts under different heads of fee as profit making activity unless the amount in the nature of 'capitation fee' is charged directly or indirectly.

5. Impact of extraordinary powers of the Managing Trustees to appoint remove or nominate other trustees.

i. Doubt has been expressed whether extraordinary powers to the Managing Trustees to appoint or remove other trustees and also to nominate their successor affect the nature of charitable activity of the trust and whether in such an eventuality, exemption can be denied.

ii. There is no provision under the Act which calls for denial of exemption merely on account of appointment or removal of trustees. Although answer to such a situation would normally depend on the factual implication of such arrangement, the same should generally not be a ground for denying exemption unless the nature of activities of the trust or institution get changed or modified or no longer remain to exist 'solely for educational purpose and not for purposes of profit'. Hence denial of exemption would not be justifiable only on the ground of induction of new trustees or removal of existing ones.

6. The CBDT has advised that the above position has to be kept in mind while dealing with the matters of approval/exemption u/s 10(23C)(vi). Similar principles would also apply to cases covered u/s 10(23C)(via) of the Act.

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

## III. PRESS RELEASES/ INSTRUCTIONS/LETTERS/ OFFICE MEMORANDUM

### 1. Guidelines for grant of reward to informants leading to recovery of irrecoverable taxes, 2015 – Instruction No. 7/2015, dated 26.8.2015

CBDT has issued fresh guidelines for granting reward to informants leading to recovery of taxes of tax defaulters whose names have been published in the public domain under Section 287 of the Income-tax Act, 1961.

### 2. Compulsory manual selection of cases for scrutiny during Financial Year 2015-16–Instruction No.8/2015, dated 31.8.2015

In supersession of earlier Instructions on the above subject, the Board has laid down the procedure and criteria for compulsory manual

section of returns/cases for scrutiny during the financial year 2015-2016. In order to ensure the quality of assessments being framed, Pr. CCsIT/CCsIT/Pr.DGsIT/DGsIT have been directed to evolve suitable monitoring mechanism.

### 3. Report of the Committee on Direct Tax Matters on the issue of applicability of MAT on FIIs/FPIs- Press Release, dated 01.9.2015

A Committee on Direct Tax Matters chaired by Justice A. P. Shah was constituted with the initial mandate to examine the matter relating to levy of MAT on FIIs/FPIs for the period prior to 1-4-2015. The Committee has submitted its final report on applicability of MAT on FIIs/FPIs for the period prior to 1-4-2015 to the Government on 25-8-2015.

The Committee has recommended that section 115JB of the Income-tax Act may be amended to clarify the inapplicability of MAT provisions to FIIs/FPIs. Alternatively, the Committee has suggested that a Circular may be issued clarifying the inapplicability of MAT provisions to FIIs/FPIs.

The Government has accepted the recommendation of the Committee to clarify the inapplicability of MAT to FIIs/FPIs and has decided that an appropriate amendment to the Income-tax Act will be carried out. Through the amendment, the Government proposes to clarify that MAT provisions will not be applicable to FIIs/FPIs not having a place of business/ permanent establishment in India, for the period prior to 1-4-2015.

Accordingly, the CBDT has, *vide* Instruction No. 9/2015 dated 2.9.2015 advised the field authorities to take into consideration the above position and keep in abeyance, for the time being, the pending assessment proceedings in cases of FIIs/FPIs involving the above issue. It has been further advised that recovery of outstanding demands, if any, in such cases may not be pursued.

The Report of the Committee is available on the website of the Finance Ministry and the Income-tax Department at www.finmin.nic.in and www.incometaxindia.gov.in.

### 4. Guidelines for compounding of offences under Income-tax Act, 1961/Wealth tax Act, 1957 in cases of persons holding undisclosed foreign bank accounts/ assets–Letter [F.No. 285/90/2013/IT(Inv.V)/212], dated 04.9.2015

The CBDT has, in consultation with the Special Investigation Team (SIT), issued the following guidelines for compounding of offences under Income-tax Act, 1961/Wealth tax Act, 1957 dated 23.12.2014 on which doubts have been raised whether offences relating to undisclosed foreign bank accounts/assets be compounded as per these guidelines:

i. Such cases can be compounded only after filing the Prosecution complaint(s) and shall not be compounded at the stage of show-cause notice and/or without filing the complaint in the court.

ii. The cases in which the assessee has not admitted the foreign bank account(s)/ assets and/or has not co-operated with the Department in the assessment, penalty & recovery proceedings shall not be compounded.

iii. The cases in which the assessee has admitted accounts/assets either fully (all accounts with which he is associated) or partially (only a few accounts out of all accounts with which he is associated), paid taxes and penalty and co-operated with the Department may be considered for compounding as per the guidelines dated 23-12-2014, only after filing the complaints.

It has also been clarified that there is no provision for compounding of offences under the newly enacted Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015. Consequently, the said guidelines will not apply to cases coming under the purview of this Act.

### 5. Constitution of Committee to study the feasibility of the recommendations regarding group assessment and system of peer review before assessment–Office Memorandum [F.No. 225/246/2014/ITA.II], dated 10.9.2015

The CBDT has constituted a Committee for examining feasibility of recommendations of Tax Administration Reform Commission (TARC) in respect of group assessment in other cases and peer review before assessment.

The Committee is required to submit its report to Member (IT), CBDT by 15th October, 2015.

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

### I. NOTIFICATION

### ACIT/JCIT to exercise the powers and perform the functions of the Assessing Officers under the new Black Money Law-Notification No. 73/ 2015 dated 24.08.2015

Section 120(4)(b) of the Income-tax Act, 1961 provides that without prejudice to the provisions of sub-sections (1) and (2), the CBDT may, by general or special order, and subject to such conditions, restrictions or limitations as may be specified therein,-

a. authorise any Principal Director General or Director General or Principal Director or Director to perform such functions of any other income-tax authority as may be assigned to him by the Board;

b. empower the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner to issue orders in writing that the powers and functions conferred on, or as the case may be, assigned to, the Assessing Officer by or under this Act in respect of any specified area or persons or classes of persons or incomes or classes of income or cases or classes of cases, shall be exercised or performed by an Additional Commissioner or an Additional Director or a Joint Commissioner or a Joint Director, and, where any order is made under this clause, references in any other provision of this Act, or in any rule made thereunder to the Assessing Officer shall be deemed to be references to such Additional Commissioner or Additional Director or Joint Commissioner or Joint Director by whom the powers and functions are to be exercised or performed under such order, and any provision of this Act requiring approval or sanction of the Joint Commissioner shall not apply.

Therefore, in accordance with the powers conferred by section 120(4)(b) of the Income-tax Act, 1961 read with Section 6 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, the CBDT has, through this notification, empowered the

Additional Commissioners of Income-tax or the Joint Commissioners of Income-tax, as the case may be, to exercise the powers and perform the functions of the Assessing Officers under the said Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, in respect of territorial areas or persons or classes of persons or incomes or classes of incomes or cases or classes of cases, in respect of which such Additional Commissioners of Income-tax or Joint Commissioners of Income-tax have been authorised by the Principal Chief Commissioner of Income-tax or the Chief Commissioner of Income-tax or the Director General of income-tax or the Principal Commissioner of Income-tax or the Commissioner of Income-tax in pursuance of the directions of the CBDT under sub-Sections (1) and (2) of Section 120 of the said Income-tax Act, 1961.

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

## II. CIRCULAR

### Clarifications on Tax Compliance for Undisclosed Foreign Income and Assets–Circular No. 15 dated 03.09.2015.

The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 has introduced a tax compliance provision under Chapter VI of the Act. The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015 have been notified. In this regard, Circular No. 13 of 2015 dated 6th July, 2015 issued by the Board provided clarifications to 32 queries. Subsequently, further queries have been received from the public regarding the tax compliance provisions under Chapter VI of the Act. The CBDT has considered the same and has clarified the points raised by the issue of this circular which is in the form of questions and answers.

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

# Legal Update

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

## A. SERVICE TAX

### 1. Clarification regarding the provisions of Section 73, 76 and 78 of the Finance Act, 1994

**a) Issuance of a Show Cause Notice (SCN)**

Section 78 of Finance Act 1994 provides that person who has been served notice under the proviso to sub-section (1) of section 73 for non-payment of service tax due to fraud etc., then such person shall be liable to pay a penalty equal to 100% of the amount of such service tax along with the interest and service tax.

However where service tax and interest is paid within a period of 30 days of the date of service of notice the penalty payable shall be 15% of such service tax.

In this regard, CBEC *vide Instruction F. No. 137/46/2015-Service Tax dated August 18, 2015* has clarified the following:

- In a case involving fraud etc. if an assessee pays the tax/duty, interest and penalty equal to 15% of the tax/duty and makes a request in writing that a written SCN may not be issued to them, then in such cases the SCN can be oral and the representation against it can also be oral.
- An assessee can request for an informed waiver of a written SCN if short/non-payment of tax/duty are intimated to the assessee orally with its quantification and the assessee indicates in writing that he has been informed about such grounds and he accepts the grounds and the quantification.
- In case the assessee makes a written request for waiver of a written SCN, the thirty day period can be computed from the date of receipt of such a letter by the department.

**b) Conclusion of Proceedings**

Section 76 of Finance Act 1994 provides that person who has been served notice under the proviso to sub-Section (1) of Section 73 for non-payment of service tax due to reason other than fraud *etc.*, then such person shall be liable to pay a penalty not exceeding 10% of the amount of such service tax along with the interest and service tax.

However where service tax and interest is paid within a period of 30 days of the date of service of notice no penalty shall be payable and proceedings in respect of such service tax and interest shall be deemed to be concluded.

In this regard, CBEC *vide Instruction F. No. 137/46/2015-Service Tax dated August 18, 2015* has clarified **the following:**

- In cases not involving fraud, suppression of facts, *etc.*, if the assessee pays the tax along with interest either within 30 days of the date of service of SCN or before the issuance of SCN, then in such cases proceedings shall be deemed to be concluded.
- Conclusion of proceedings may be approved by an officer equal in rank to the officer who is competent to adjudicate such cases. The cases can be closed by officers of DGCEI/Executive Commissionerate/ Audit Commissionerate, as the case may be.
- If multiple issues involving different monetary values arise from the same proceedings, then the sum total involved in all the issues arising from the same proceedings should be considered for conclusion of proceedings.
- The conclusion of proceedings should invariably be intimated to the assessee in writing and there should not be a need to issue an adjudication order or to undertake review of such conclusion of proceedings once intimated.

*[Instruction F.No.137/46/2015-Service Tax dated: August 18, 2015]*

## B. CENTRAL EXCISE

### 2. Creation of Directorate General of Tax Payers Services in CBEC

CBEC *vide Order NO.02/Ad.IV/2015 Dated: August 27, 2015* has provided that the Office of Chief Commissioner Tax Arrears Recovery (CC TAR) along with its Zonal Units will be renamed as Directorate General of Tax Payer Services (DTPS) which would be a dedicated institution for the taxpayer services along with current functions and

responsibilities of the CC TAR. It is important to note that:

- The DTPS will function under overall supervision of Member (Service Tax) CBEC.
- The Directorate of Publicity & Public Relations will get attached to the DTPS.
- The Chief Commissioner and Commissioner Tax Arrears Recovery shall be re-designated as Chief Commissioner and Commissioner Tax Payer Services respectively.
- The Directorate of Tax Payer Services will work as per prescribed terms of reference.

*[Order NO.02/Ad.IV/2015 Dated: August 27, 2015]*

## C. CUSTOMS

### 3. Amendment in Customs Baggage Declaration Regulations

CBEC *vide Notification No. 76/2015-Customs (N.T.), Dated: August 18, 2015* has amended the Custom Baggage Declaration Rules to provide the following:

a) Any person coming to India has to declare the following in Indian Customs Declaration Form:
   - Indian Currency exceeding ₹25, 000. Earlier the limit was ₹10, 000
   - Flat Panel (LCD/LED/Plasma) Television

b) Passengers of Indian origin and foreigners of over 10 years of age residing in India other than from Nepal, Bhutan, Myanmar & China are allowed Duty Free Allowance upto ₹45, 000 as against ₹35, 000 earlier.

c) All passengers are allowed Duty Free Allowance of Cigarettes: 100 numbers or Cigars upto 25 or Tobacco 125 grams as against earlier limit of 200 numbers or Cigars upto 50 or Tobacco 250 grams.

*[Notification No. 76/2015-Customs (N.T.) Dated: August 18, 2015]*

### 4. Validity of AEO Certificates extended to 5 years

Presently, Authorized Economic Operator (AEO) Certificates issued under the Authorized Economic Operator (AEO) Programme have a validity of 3 years. Post the lapse of validity the fresh application for AEO and causing fresh verification as per laid down standards conditions takes place which poses

as a hardship for AEO status holders who undergo periodical post certification review indicating their continued adherence to the laid down guidelines.

Thus, in order to reduce transaction cost and for ease of doing business, CBEC *vide Circular No. 21/2015, Dated: August 19, 2015* has provided that validity of AEO certificate will be for a period of five year or for further period as extended by DGICCE. This, however, would be subject to yearly review by AEO Programme Manager as it will obviate the necessity of filing fresh applications and causing fresh verifications after 3 years in respect of the AEO status holders.

*[Circular No. 21/2015, Dated: August 19, 2015]*

### 5. Furnishing reply to the Queries raised by the Department

In order to facilitate genuine trade, to reduce dwell time and to streamline the procedures at every stage of assessment till out of charge of goods is given by Proper Officer of Customs, CBEC *vide Circular No. 22/2015-Customs, Dated: September 3, 2015* has provided that genuine clarifications sought by officers from importers/exporters would be raised in one go and not in a piece meal manner. Field formation would make a list of the queries frequently raised in course of assessment and disseminate them through Public Notice or sensitise trade about the same so that importers could take preventive action to avoid such queries or be better prepared to reply to such queries.

Further, the time taken after answering the queries would be curtailed and documents that are delayed would be accorded priority after receipt of satisfactory reply from importers.

*[Circular No. 22/2015-Customs, Dated: September 3, 2015]*

### 6. Kathuwas and Mandhan Village declared as Inland Container Depots

CBEC *vide Notification No. 85/2015-Customs (N.T.), Dated: September 04, 2015* has declared the following as Inland Container Depots in State of Rajasthan for the purpose mentioned against it:

| S. No. | Place | Purpose |
|---|---|---|
| 1. | Kathuwas and Mandhan Village, District Alwar | Unloading of imported goods and loading of export goods |

*[Notification No. 85/2015-Customs (N.T.), Dated: September 04, 2015]*

## D. VALUE ADDED TAX

**BIHAR VAT:**

### 7. Taxable Limit has been increased from ₹5 Lacs to ₹10 Lacs for specified dealer.

Bihar Government *vide* Notification S.O. 211 Dated 8th September, 2015 has increased the taxable limit from ₹5 Lacs from ₹10 Lacs for all the dealers, other than dealers involved in Sale of imported goods (i.e. goods which are imported from Outside Bihar).

*[Bihar VAT (Amendment & Validation) Act 2015 and Notification S.O. 211 Dated 8th September, 2015]*

### 8. Settlement of Taxation Disputes Act 2015 has been passed for Settlement of Disputes of Taxes.

- Settlement of Taxation Disputes Act 2015 has been passed to settle the disputes till Financial Year 2010-2011 in the following Act:
  - Bihar VAT Act 2005
  - Central Sales Tax Act 1956
  - Bihar Taxation on Luxuries in Hotels Act 1988
  - Bihar Entertainment Act 1948
  - Bihar Electricity Duty Act 1948
  - Bihar Tax on Advertisement Act 2007
- The Act will be operative till 27.11.2015 i.e. 3 months from the date of its notification (28.08.2015) or as extended.
- Disputed amount for the said act means any Tax, Interest or penalty which is not admitted as payable by the assessee.
- Settlement Amount is as follows:

| *Payment Made in the following period from the date of Notification* | *Non-Submission of Form till FY 2004-2005* | *Arrear Tax in Dispute till FY 2004-2005* | *Arrear Tax in Dispute from FY 2005-2006 till 2010-2011* | *Penalty or Interest* |
|---|---|---|---|---|
| Within 1 Month | 10% of Disputed Amount | 23% to 38% of Arrear Tax in Dispute | 28% to 43% of Arrear Tax in Dispute | 10% of Disputed Amount |
| After 1 Month but within 2 months | 10% of Disputed Amount | 24% to 39% of Arrear Tax in Dispute | 29% to 44% of Arrear Tax in Dispute | 10% of Disputed Amount |
| After 2 Months till Expiry | 10% of Disputed Amount | 25% to 40% of Arrear Tax in Dispute | 30% to 45% of Arrear Tax in Dispute | 10% of Disputed Amount |

- Application for dispute settlement may be submitted from 28.08.2015 till 14.11.2015 or as extended in Form SET-I duly signed and verified by assessee with the following:

- Court Fee of ₹100/-
- Notice of Demand
- Affidavit by assesse declaring facts True and Correct
- Copies of Return
- Proof of Tax Payment
- Copy of Application of Appeal/Revision/ Writ Petition/ Special Leave Petition.

- The Authority will verify the computation of disputed amount and make an order in Form SET-V settling the dispute.

*[Bihar Settlement of Taxation Disputes Act 2015, Dated 28/08/2015]*

**CHHATTISGARH VAT:**

**9. Mode of Appeal and Revision is changed from Manual to Electronic.**

Chhattisgarh Government *vide Notification No. F-10-33/2015/CT/V (59) dated 22nd August,2015*, has amended mode of appeal in Form 53 (i.e. in case where appeal is to be made against order of assessment or penalty) and mode of application for revision against order (i.e. against which revision application is to be filled) in Form 54 from manual to electronic.

Further such revision application is to be made within 6 months from the date of communication of order, as against the earlier clause which provided 6 months from the date of order.

*[Notification No. F-10-33/2015/CT/V(59) dated 22nd August, 2015]*

**DELHI VAT:**

**10. Form T-2 is replaced with Delhi Sugam 2 (i.e. DS2).**

Delhi Government *vide Notification No. F.7(433)/ Policy/VAT/2012/ PF/703-712 dated 10th September, 2015*, has introduced online Form Delhi Sugam 2 in place of Form T-2 for providing information about the goods purchased/stock transfer/consignment from outside Delhi by registered dealers in Delhi with effect from 15.09.2015.

*[Notification No. F.7(433)/Policy/VAT/2012/ PF/703-712 dated 10th September, 2015]*

### 11. Andhra Bank and State Bank of Travancore are notified as Appropriate Government Treasury.

Delhi Government *vide Notification No. F.7(400)/ Policy/VAT/2011/ PF/565-79, dated 17th August, 2015*, has notified Andhra Bank and State Bank of Travancore which are located in Delhi as Appropriate Government Treasury for collection of Tax, Interest, Penalty or any other dues in E-payment mode only.

*[Notification No. F.7(400)/Policy/VAT/2011/ PF/565-79, dated 17th August, 2015]*

### 12. Matched Transaction of Buyer and Seller in Annexure 2A and 2B is not subject to change in Revised Return.

Dealers are required to file Sale and Purchase details in the Annexure 2A and 2B of the Return whereas the system matches the Input Tax Credit Claimed with the other dealer records.

Delhi Government *vide Circular No. 21 of 2015-16 No. F.3(566)/Policy/VAT/2015/640-46, dated 1st September, 2015*, has declared that such matched transactions would not be allow to change after filling of return. It means such transactions would be unaffected during revision of return also.

In a case where buyer and seller both committed a mistake and transaction matches; then the buyer need to approach the Assessing Authority of his ward with a statement from the selling dealer admitting the mistake. The Assessing Authority will check, verify and allow both the dealers to revise such entries within a particular time period.

*[Circular No. 21 of 2015-16 No. F.3(566)/Policy/ VAT/2015/640-46, dated 1st September, 2015]*

### 13. Security deposit payable @ 0.1% of the prescribed turnover for specified dealers.

Delhi Government *vide Circular No. 23 of 205-16 F.3(556)/Policy/VAT/2015/689-695 dated 10th September, 2015*, has provided that security deposit @ 0.1% of turnover is payable by the following dealers:

1. Who were registered after 31.03.2012 and
2. Whose taxable turnover (excluding Sale of Exempted Goods, Export, Sale to SEZ, Stock Transfer etc.) during last 3 years exceeds 10 Crore and
3. Who are paying tax under Composition Scheme and
4. Who have paid less than 0.1% of the Taxable turnover in any of past 3 years

*[Circular No. 23 of 2015-16 F.3(556)/Policy/ VAT/2015/689-695 dated 10th September, 2015]*

## GOA VAT:

### 14. Assessment can be made beyond the time limit of 3 years in case of Refund due to the assesse on his application

Goa VAT (Eighth Amendment) Act 2015, has inserted a proviso to Section 29(3) to provide that if a dealer is claiming refund in his return and he is not assessed within the time limit of assessment i.e. 3 years, then the Commissioner on an application made by dealer for refund may proceed/order to proceed for assessment of such dealer after giving an opportunity of being heard to dealer.

Further, Dealer is not allowed to file an appeal against the said assessment order.

*[Goa VAT (Eighth Amendment) Act 2015]*

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

### A. Reporting under FDI Scheme on the e-Biz platform

***A.P. (DIR Series) Circular No. 9 dated August 21, 2015***

With a view to promoting the ease of reporting of transactions under FDI, RBI, under the aegis of the e - Biz project of the Government of India (GOI) has enabled online filing of the Foreign Currency Transfer of Shares (FCTRS) returns for reporting transfer of shares, convertible debentures, partly paid shares and warrants from a person resident in India to a person resident outside India or *vice versa*.

The design of the reporting platform enables the customer to login into the eBiz portal, download the reporting form (FCTRS), complete and then upload the same onto the portal using their digitally signed certificates. The FCTRS services of RBI will be made operational on the e-Biz platform from August 24, 2015.

However, for present, the online reporting on the e - Biz platform is an additional facility to the Indian residents to undertake their FCTRS reporting and the manual system of reporting as prescribed in terms of A.P. (DIR Series) Circular No.6 dated July 18, 2014 would continue till further notice.

### B. Trade Credit Policy–Rupee (INR) denominated trade credit

***A.P. (DIR Series) Circular No. 13 dated September 10, 2015***

With a view to provide greater flexibility for structuring of trade credit arrangements, it has been decided that resident importer can raise trade credit in Rupees (INR) within following framework after entering into loan agreement with the overseas lender:

i. Trade credit can be raised for import of all items (except gold) permissible under extant foreign Trade Policy.
ii. Trade credit period for non-capital goods can be upto one year from the date of shipment or upto operating cycle whichever is lower.
iii. Trade credit period for import of capital goods can be upto five years from the date of shipment
iv. No roll-over/extension can be permitted by the AD Category-I bank beyond the permissible period
v. AD Category-I banks can permit trade credit upto USD 20 mn equivalent per import transaction
vi. AD Category-I banks are permitted to give guarantee, Letter of Undertaking or Letter of Comfort in respect of trade credit for a maximum period of three years from the date of shipment
vii. The all-in-cost of such Rupee (INR) denominated trade credit should be commensurate with prevailing market conditions
viii. All other guidelines for trade credit will be applicable for such Rupee (INR) denominated trade credits

Overseas lenders of Rupee (INR) denominated trade credits will be eligible to hedge their exposure in Rupees through permitted derivative products in the on-shore market with an AD Category - I bank in India. Necessary guidelines for hedging will be issued separately.

### C. Review of existing Foreign Direct Investment Policy on Partly Paid Shares and Warrants

***DIPP Press Note No. 9 (2015 Series) dated September 15, 2015***

The Government has reviewed the provisions of the extant FDI Policy on Partly Paid Shares and Warrants and it has been decided to allow partly paid shares and warrants as eligible capital

instruments for the purposes of FDI Policy. Accordingly the following amendments are made in the 'Consolidated FDI Policy Circular of 2015' effective from May 12, 2015:

i. Para 2.1.5 is amended to read as below:
"'Capital' means equity shares; fully, compulsorily and mandatorily convertible preference shares; fully, compulsorily and mandatorily convertible debentures and warrants.
Note: The equity shares issued in accordance with the provisions of the Companies Act, as applicable, shall include equity shares that have been partly paid. Preference shares and convertible debentures shall be required to be fully paid and should be mandatorily and fully convertible. Further, 'warrant' includes share warrant issued by an Indian Company in accordance with the provisions of the Companies Act, as applicable"
ii. Insertion of new para after Para 3.3.3 of Consolidated FDI Policy Circular of 2015:
3.3.3 bis: Acquisition of Warrants and Partly Paid Shares–An Indian company may issue warrants and partly paid shares to a person resident outside India subject to terms and conditions as stipulated by the Reserve Bank of India in this behalf, from time to time.

# Legal Update

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

**MCA(www.mca.gov.in)**

**MCA notification dated 15st Sept 2015 –Amendment in the Companies (Acceptance of Deposits) Rules, 2014 regarding acceptance of deposits by a Private Limited Company.**

MCA has amended certain rules as regards to the acceptance of deposits by a private limited company. As per the amendment issued by Central Government, a private limited company can accept deposits from a person who is a director of the company or a relative of the director of the private limited company. For a complete text of the circular, please refer the link http://www.mca.gov.in/Ministry/pdf/Amendement_Rules_15092015.pdf

**MCA notification dated 4th Sept 2015- Amendment in the Companies (Accounts) Rules, 2014 regarding the introduction of definition of Indian Accounting standards and forms and items contained in financial statements.**

MCA has introduced certain amendments in the Companies (Accounts) Rules, 2014 which includes the definition of Indian Accounting Standards and the manner of preparation of financial statements. The notification also states that every company shall file with the Registrar, Form AOC-4 along with its financial statements and consolidated financial statements, if any, with FORM AOC-4 CFS. For a complete text of the circular, please refer the link: http://www.mca.gov.in/Ministry/pdf/Rules_09072015.pdf

**MCA notification dated 28th August 2015- Amendment in the Companies (Management and Administration) Rules, 2014 with regards to the total voting power of members required for giving a special notice.**

MCA has amended certain rules regarding the total voting power of members required for giving a special notice to the company. The notification states that the Special notice shall be given by such number of members holding not less than 1% of total voting power or holding shares on which an aggregate sum of **not less than five lakh rupees** has been paid up on the date of the notice. There are also certain amendments in Form MGT-7. For a complete text of the circular, please refer

the link: http://www.mca.gov.in/Ministry/pdf/Amendement_Rules_31082015.pdf

**MCA notification dated 4th Sept 2015- Alteration in the presentation of Part I of the Balance sheet under Schedule III of the Companies Act, 2013**

MCA has made certain modifications in the presentation of Trade Payables in the Balance sheet. As per the amendment, a bifurcation between the Trade dues payable to micro enterprises and small enterprises and other trade dues is to be shown separately in the Balance sheet. There are also certain disclosures related to Micro, Small and Medium Enterprises which are required to be made in the notes regarding the principle amount and the interest due thereon. For a complete text of the circular, please refer the link: http://www.mca.gov.in/Ministry/pdf/Notification_07092015.pdf

**MCA notification dated 4th Sept 2015- Amendment regarding non application of certain conditions regarding preparation of Statement of Profit and Loss to government companies producing Defence Equipment**

MCA has stated that certain paras of Section 129(6) of the Companies Act, 2013 relating to preparation of Statement of Profit and Loss in Schedule III of the Companies Act, 2013 shall not be applicable to government companies producing Defence Equipment. There are various conditions stipulated for availing the above exemption. For a complete text of the circular, please refer the link: http://www.mca.gov.in/Ministry/pdf/Notification_07092015_1.pdf. ■