Circulars/Notifications

Given below are the important Circulars and Notifications issued by the CBDT, CBEC, 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)

I. NOTIFICATIONS

1. Tolerance limit of 1% in case of wholesale trade and 3% in other cases notified for the purpose of computation of arm's length price under third proviso to section 92C(2)- Notification No. 57/2016, dated 14-07-2016

Section 92C(1) provides that the arm's length price in relation to an international transaction or specified domestic transaction shall be determined by any of the methods stated under clause (a) to clause (f) of the said sub-section, being the most appropriate method, having regard to the nature of transaction or class of transaction or class of associated persons or functions performed by such persons or such other relevant factors as the CBDT may prescribe.

Section 92C(2) provides that the most appropriate method referred to in section 92C(1) shall be applied for determination of arm's length price, in the prescribed manner.

The third proviso to section 92C(2) provides that where more than one price is determined by the most appropriate method, the arm's length price in relation to an international transaction or specified domestic transaction undertaken on or after 1st April, 2014, shall be computed in such manner as may be prescribed.

Accordingly, Rule 10CA prescribes the manner of computation of arm's length price in certain cases. Rule 10CA(4) provides that where the most appropriate method applied is a method, other than the profit split method or a method prescribed by the CBDT, and the dataset constructed in accordance with sub-rule (2) consists of six or more entries, an arm's length range beginning from the thirty-fifth percentile of the dataset and ending on the sixty-fifth percentile of the dataset shall be constructed and the arm's length price shall be computed in accordance with sub-rule (5) and sub-rule (6).

Further, Rule 10CA(7) provides that in a case where the provisions of sub-rule (4) are not applicable, the arm's length price shall be the arithmetical mean of all the values included in the dataset. However, if the variation between the arm's length price so determined and price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed such percentage not exceeding three percent of the latter, as may be notified by the Central Government in the Official Gazette in this behalf, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price .

Accordingly, the Central Government vide this Notification has notified that where the variation between the arm's length price determined under section 92C and the price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed *one percent* of the latter in respect of *wholesale trading* and *three percent* of the latter *in all other cases*, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price for Assessment Year 2016-2017.

For the purposes of this notification, "wholesale trading" means an international transaction or specified domestic transaction of trading in goods, which fulfils the following conditions, namely:-

(i) purchase cost of finished goods is eighty percent or more of the total cost pertaining to such trading activities; and

(ii) average monthly closing inventory of such goods is ten percent or less of sales pertaining to such trading activities.

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2. Backward districts of states of Telangana, West Bengal and Bihar notified for the purposes of section 32(1)(iia) and 32AD- Notification No. 61/2016, dated 20-07-2016

Under section 32, depreciation on assets used for the purposes of business and profession is allowable as deduction while computing income under the head "Profits and gains of business or profession". Section 32(1)(iia) provides for additional depreciation @ 20% for new machinery or plant (other than ships and aircraft), acquired and installed after 31.03.2005, by an assessee engaged in the business of manufacture or production of any article or thing or in the business of generation or generation and distribution of power. In order to promote economic activities in the backward areas of the states of Andhra Pradesh, Telangana, West Bengal and Bihar, the Finance Act, 2015 inserted a proviso to section 32(1)(iia) to provide an increased rate of additional depreciation @ 35% to an assessee who sets up an undertaking or enterprise for manufacture or production of any article or thing, on or after 01.04.2015 in any backward area notified by the Central Government in this behalf, in such states, and acquires and installs any new machinery or plant (other than ships and aircraft) for the purposes of the said undertaking or enterprise during the period from 01.04.2015 to 31.3.2020 in the said backward area.

Further, section 32AD was inserted vide the Finance Act, 2015 to provide incentive in the form of an additional investment allowance @ 15% of the cost of the new asset acquired and installed by an assessee who sets up an undertaking or enterprise for manufacture or production of any article or thing, on or after 01.04.2015 in any backward area notified by the Central Government in this behalf, in such states, and acquires and installs any new asset for the purposes of the said undertaking or enterprise during the period from 1.4.2015 to 31.3.2020 in the said backward area.

Accordingly, vide this Notification, the Central Government has specified a total of 9, 11 and 17 backward districts in the states of Telangana, West Bengal and Bihar, respectively, for the purposes of section 32(1)(iia) and section 32AD.

3. The Income Declaration Scheme 2016 - Relaxation of time schedule for making payments under the Scheme and consequential amendments in Form 2 & Form 3 - Notification No 59/2016 dated 20-07-2016 and Notification No.70/2016 dated 12-08-2016

The Income Declaration Scheme, 2016 incorporated as Chapter IX of the Finance Act, 2016 provides an opportunity to persons who have not paid full taxes in the past to come forward and declare the undisclosed income and pay tax, surcharge and penalty totaling in all 45% of such undisclosed income declared. The Scheme came into effect on 1st June, 2016. Declarations under the Scheme may be filed upto 30th September, 2016. The Income Declaration Scheme Rules, 2016 have been notified.

The Government has, vide Notification No.59/2016 dated 20.7.2016, revised the time schedule for making payments under the Scheme as under:

(i) a minimum amount of 25% of the tax, surcharge and penalty to be paid by 30.11.2016; (ii) a further amount of 25% of the tax, surcharge and penalty to be paid by 31.3.2017; and (iii) the balance amount to be paid on or before 30.9.2017.

Further, vide Notification No.70/2016 dated 12.8.2016, consequential amendments required in Form 2 (Acknowledgement of Declaration) and Form 3 (Intimation of Payment) has been carried out. Rule 4(5) of the Income Declaration Scheme Rules, 2016 has been amended to provide that the Principal Commissioner or the Commissioner shall grant a certificate in Form-4 to the declarant within fifteen days of the submission of proof of payment of full and final tax, surcharge along with penalty by the declarant in respect of the income so declared. Further, Form 2 has been amended to include the revised timelines of making payment of taxes, penalty and surcharge. Further, Form 3 has been substituted to include the following information:

(a) Separate information in respect of payment of taxes, penalty and surcharge for the 3 instalments
(b) Details of claim of credit for tax deducted at source/tax collected at source
(c) It has also been specifically provided that the Form 3 needs to be submitted on or before the dates notified for making payments under the Scheme viz. 30.11.2016, 31.03.2017 and 30.09.2017.

4. Form-1 (Form of Declaration) under the Income Declaration Scheme, 2016 modified to require

Every Auditor of a Company (Private or Public, Listed or Unlisted) is now required to issue a report on the adequacy & Effectiveness of Internal Financial Control over Financial Reporting under Section 143(3)(i) of Companies Act

No Exemption for small companies / private companies

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information in cases of revision of declaration - Notification No 60/2016, dated 20-07-2016

The CBDT vide Circular No 27/2016, dated 14.07.2016 has clarified that a revised declaration can be filed on or before the date of closure of the Scheme provided the undisclosed income in the revised declaration is not less than the undisclosed income declared in the declaration already filed. To enable such revision in Form of Declaration under the Scheme, this Notification has modified Form-1 to require information with respect to filing status i.e., whether the declaration is original or revised and if revised, to require receipt no. and date of original filing and the reasons for revision of declaration in brief, not exceeding 100 words.

5. Agreement between India and Saint Kitts & Nevis for exchange of information relating to taxes notified w.e.f. 02.02.2016 - Notification No 62/2016, dated 21-07-2016

Section 90 empowers the Central Government to enter into an agreement with the Government of any country outside India or specified territory outside India, *inter alia*, for exchange of information for the prevention of evasion or avoidance of income-tax chargeable under this Act. Vide this Notification, the Central Government has notified that all the provisions of the agreement entered into by the Government of the Republic of India and the Government of Saint Kitts and Nevis at New York on 11.11.2014 for the Exchange of Information relating to taxes shall be given effect to in the Union of India with effect from 02.02.2016. The agreement contains the following Articles:

(a) Article 1 - Object and Scope of the Agreement.
(b) Article 2 – Jurisdiction
(c) Article 3 – Taxes Covered
(d) Article 4 – Definitions
(e) Article 5 – Exchange of Information Upon Request
(f) Article 6 – Tax Examinations Abroad
(g) Article 7 – Possibility of Declining a Request for Information
(h) Article 8 – Confidentiality
(i) Article 9 – Costs
(j) Article 10 – Implementation Legislation
(k) Article 11 – Mutual Agreement Procedure
(l) Article 12 – Other International Agreements or Arrangements
(m) Article 13 – Entry into Force
(n) Article 14 - Termination

6. Scope of qualifications for e-Return Intermediary extended to include Company Secretaries, Cost Accountants and Tax return Preparer - Notification No 66/2016, dated 09-08-2016

Section 139(1B) provides for an alternative method to furnish return of income. Vide Notification No 210/2007, dated 27.07.2007 an Electronic Furnishing of Return of Income Scheme, 2007 was notified for the said purpose. The scheme *inter alia* provides that an eligible person (specified assessee) may, at his option, furnish his return of income which he is required to furnish under various provisions of the Act, to an e-Return Intermediary who shall digitise the data of such return and transmit the same electronically to a server designated for this purpose by the e-Return Administrator, on or before the due date. Para 5 of the said Notification provides for the qualifications of an e-Return Intermediary. Earlier, a firm of Chartered Accountants or Advocates and a Chartered Accountant or an Advocate who has been allotted a Permanent Account Number *inter alia* were qualified to be an e-Return intermediary. Vide this Notification, a firm of Company Secretaries or Cost Accountants or a Company Secretary or a Cost Accountant or a Tax Return Preparer, who has been allotted a Permanent Account Number, are also eligible to be e-Return intermediaries.

7. Protocol for amendment of the Convention for the avoidance of double taxation with respect to taxes on income and capital gains signed between India and Mauritius- Notification No 68/2016, dated 10-08-2016

The Protocol for amendment of the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains between India and Mauritius was signed on 10.05.2016 and entered into force on 19.07.2016. The Original agreement was signed on 24.08.1982. Vide this Notification, the amendments to the said Agreement has been notified. Some of the key features of the amended Protocol are as under:

i. Source-based taxation of capital gains on shares: With this Protocol, India gets taxation rights on capital gains arising from alienation of shares acquired on or after 1st April, 2017 in a company resident in India with effect from financial year 2017-18, while simultaneously protection to investments in shares acquired before

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Committee for Capacity Building of Members in Practice, CCBMP)

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For Chartered Accountant Firm:

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***Above Premium rates are subject to taxes.**

* Jurisdiction: For deed in India only

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1st April, 2017 has also been provided. Further, in respect of such capital gains arising during the transition period from 1st April, 2017 to 31st March, 2019, the tax rate will be limited to 50% of the domestic tax rate of India, subject to the fulfillment of the conditions in the Limitation of Benefits Article. Taxation in India at full domestic tax rate will take place from financial year 2019-20 onwards.

ii. Limitation of Benefits (LOB): The benefit of 50% reduction in tax rate during the transition period from 1st April, 2017 to 31st March, 2019 shall be subject to LOB Article, whereby a resident of Mauritius (including a shell/conduit company) will not be entitled to benefits of 50% reduction in tax rate, if it fails the main purpose test and bonafide business test. A resident is deemed to be a shell/conduit company, if its total expenditure on operations in Mauritius is less than ₹2,700,000 (Mauritian Rupees 1,500,000) in the immediately preceding 12 months.

iii. Source-based taxation of interest income of banks: Interest arising in India to Mauritian resident banks will be subject to withholding tax in India at the rate of 7.5% in respect of debt claims or loans made after 31st March, 2017. However, interest income of Mauritian resident banks in respect of debt-claims existing on or before 31st March, 2017 shall be exempt from tax in India.

iv. The Protocol also provides for updation of Exchange of Information Article as per international standard, provision for assistance in collection of taxes, source-based taxation of other income, amongst other changes.

Major impact: The Protocol will tackle the long pending issues of treaty abuse and round tripping of funds attributed to the India-Mauritius treaty, curb revenue loss, prevent double non-taxation, streamline the flow of investment and stimulate the flow of exchange of information between India and Mauritius. It will improve transparency in tax matters and will help curb tax evasion and tax avoidance. At the same time, existing investments, i.e. investments made before 1.4.2017 have been grand-fathered and will not be subject to capital gains taxation in India.

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

II. CIRCULARS

1. Clarification regarding attaining prescribed age of 60 years/80 years on 31st March itself, in case of Senior/Very Senior Citizens whose date of birth falls on 1st April, for purposes of Income-tax Act, 1961– Circular No. 28/2016, Dated 27-07-2016

Higher tax exemption limits have been prescribed under the past Finance Acts for resident senior citizen taxpayers who have attained the age of sixty years. Even in such cases, the exemption limit is still higher for very senior citizens who have attained the age of eighty years. A doubt has been raised about the attainment of the aforesaid qualifying ages for availing higher exemption in cases of the persons whose date of birth falls on 1st April of calendar year. In other words, the broader question under consideration is whether a person born on 1st April of a particular year can be said to have completed a particular age on 31st March, on the preceding day of his/her birthday, or on 1st April itself of that year.

Although specific provision does not exist in this regard under the Income-tax Act, 1961, the Hon'ble Supreme Court had an occasion to consider a similar issue in the case of *Prabhu Dayal Sesma vs. State of Rajasthan &, another 1986, AIR, 1948* wherein it has dealt with on the general rules to be followed for calculating the age of the person. In this judgment, Apex Court observed that while counting the age of the person, whole of the day should be reckoned and it starts from 12 o'clock in the midnight and he attains the specified age on the preceding, the anniversary of his birthday. The observation of Hon'ble Supreme Court in para 9 of the aforesaid judgment reads as under:

"9..... At first impression, it may seem that a person born on January 2, 1956 would attain 28 years of age only on January 2, 1984 and not on January 1, 1984. But this is not quite accurate. In calculating a person's age, the day of his birth must be counted as a whole day and he attains the specified age on the day preceding, the anniversary of his birthday. We have to apply well accepted rules for computation of time. One such rule is that fractions of a day will be omitted in computing a period of time is years or months in the sense that a fraction of a day will be treated as a full day. A legal day commences at 12 o'clock midnight and continues until the same hour the following night. There is a popular misconception that a person does (sic not) attain a particular age unless and until he has completed a given number

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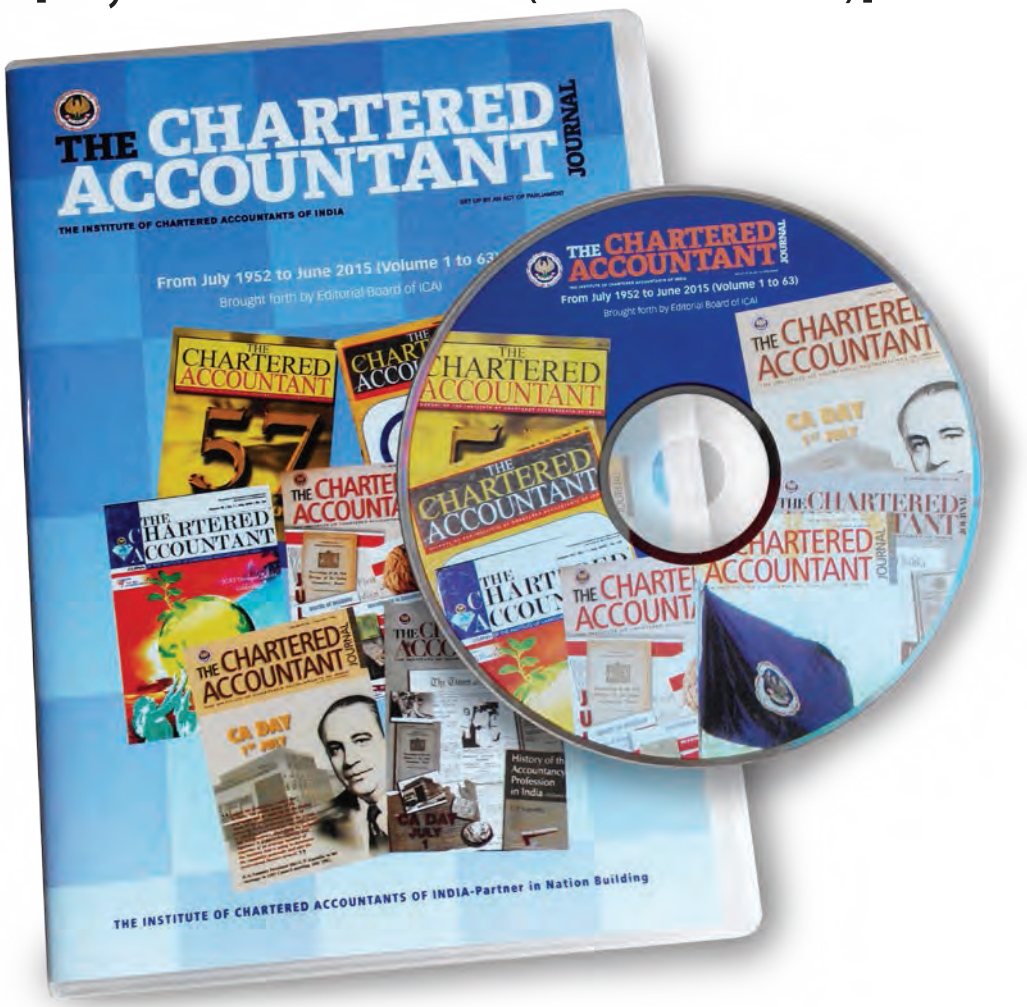

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of years. In the absence of any express provision, it is well settled that any specified age in law is to be computed as having been attained on the day preceding the anniversary of the birthday"

In view of the aforesaid judgment, the CBDT, in exercise of powers under section 119 of the Act, has clarified that a person born on 1st April would be considered to have attained a particular age on 31st March, the day preceding the anniversary of his birthday. In particular, the question of attainment of age of eligibility for being considered a senior/very senior citizen would therefore be decided on the basis of above criteria.

The above position has to be taken note of for ascertaining the age while computing tax liability of a taxpayer falling in 'Individual' category, being resident in India.

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

III. PRESS RELEASES/INSTRUCTIONS/OFFICE MEMORANDUM

1. Signing of Advance Pricing Agreements by CBDT - Press Release, dated 18-07-2016 & 4-08- 2016

The CBDT has entered into seven (7) Unilateral Advance Pricing Agreements (APAs) on 18th July, 2016, with Indian taxpayers. Some of these agreements also have a "Rollback" provision in them.

The CBDT has also entered into a Bilateral Advance Pricing Agreement (APA) on 2nd August, 2016 with the Indian subsidiary of a Japanese trading company. This is the first Bilateral Advance Pricing agreement with a Japanese company having a "Rollback" provision in it. Overall, it is fourth bilateral APA signed by CBDT. Signing of this bilateral APA is an important step towards ascertaining certainty in transfer pricing matters of multinational company cases and dispute resolution.

The APA Scheme was introduced in the Income-tax Act, 1961 in 2012 and the "Rollback" provisions were introduced in 2014. The scheme endeavors to provide certainty to taxpayers in the domain of transfer pricing by specifying the methods of pricing and setting the prices of international transactions in advance. Since its inception, the APA scheme has attracted tremendous interest and that has resulted in more than 700 applications (both unilateral and bilateral) having been filed in just four years.

The 7 Unilateral APAs pertain to various sectors of the economy like Banking, Information Technology and Automotives. The international transactions covered in these agreements include Software Development Services, IT enabled Services (BPOs), Engineering Design Services and Administrative & Business Support Services.

With these APAs, the total number of APAs entered into by the CBDT has reached 78. This includes 4 bilateral APAs and 74 Unilateral APAs. In the current financial year, a total of 13 Unilateral APAs have been entered into so far.

The progress of the APA Scheme strengthens the Government's mission of fostering a non-adversarial tax regime. The CBDT expects more APAs to be concluded and signed in the near future.

2. Income Tax Department signs contract for implementation of Project Insight – Press Release, dated 19-07-2016

In the last decade, the Income Tax Department embarked on an ambitious computerisation plan which developed voluminous databases of IT returns, IT forms, TDS/TCS statements, Annual Information Return (AIR) etc. The large volumes of data necessitated development of a comprehensive platform for effective utilisation of information. The Department initiated Project Insight to strengthen the non–intrusive information driven approach for improving tax compliance and effective utilisation of information in tax administration.

The Income Tax Department has on 19.7.2016 signed a contract for implementation of Project Insight. The Project will be rolled out in three phases and the first phase is expected to go live in May 2017.

This integrated platform would play a key role in widening of tax-base and data mining to track tax evaders. The new technical infrastructure will also be leveraged for implementation of Foreign Account Tax Compliance Act Inter Governmental Agreement (FATCA IGA) and Common Reporting Standard (CRS). Implementation of reporting compliance management system will ensure that the third party reporting by reporting entities is timely and accurate. A streamlined data exchange mechanism will also be set up with other Government Departments and exchange partners.

A new Compliance Management Centralised Processing Centre (CMCPC) will also be setup as part of the Project for handling preliminary verification, campaign management, generation of bulk letters/notices and follow-up. The new CPC will not only promote voluntary compliance but also enable taxpayers to resolve simple compliance related issues in an online manner without visiting the Income tax office.

The project ensures the continuation of the Department's goal towards business transformation through technology.

3. Income Tax Department to issue 7 lakh letters seeking Information in respect of High Value Transactions – Press Release, dated 21-07-2016

Under the Annual Information Returns (AIR), various types of high-value transactions were being reported to the Income Tax Department. These include reporting of cash deposits of ₹10,00,000 or more in a saving bank account, sale/purchase of immovable property valued at ₹30,00,000 or more, etc. Many of these transactions do not have PAN linked to it. The Department has details of about 90 lakh such transactions for the period 2009-10 to 2016-17. The Income Tax Department has with the help of in-house computer techniques, grouped such non-PAN transactions and identified 7 lakh high-risk clusters having around 14 lakh non-PAN transactions which are being scrutinised by the Income Tax Department closely.

The Department will be issuing letters to the parties of these transactions requesting them to provide their PAN number against these transactions. For the convenience of the parties to whom these letters are addressed, a new functionality on e-filing portal has been developed wherein they can own up transactions and provide structured response electronically. The parties can log-in to their e-filing website and by quoting a Unique Transaction Sequence Number provided in the letter sent to them, can link their transaction with their PAN easily. They will also be able to give a response to this letter electronically by choosing the option of either owning up the transaction or denying the transaction as their own. The responses

received from such parties online will be examined by the Department. The Department will initiate further necessary action in those cases where no replies are received.

The members of public who receive such letters are requested to kindly cooperate in the matter. They may use the Departmental helpline to ask questions, as far as possible, instead of making direct contact with any officials of the Income Tax Department. Members of public are advised not to entertain any claims from unscrupulous elements who may offer their help in complying with such communication by falsely representing themselves to be the agents of Income Tax department in the matter.

4. Ease of Doing Business – Paperless PAN & TAN application process – Press Release, dated 22-07-2016

For fast tracking the allotment of PAN and TAN to company applicants, Digital Signature Certificate(DSC) based application procedure has been introduced on the portals of PAN service providers M/s NSDL eGov and M/s UTIITSL. Under the new process PAN and TAN will be allotted within one day after completion of valid on-line application.

Similarly, a new Aadhaar e-Signature based application process for Individual PAN applicants has been made available on the portals of PAN service providers M/s NSDL eGov.

The URL links for the above applications are available in 'important links' on the homepage of the departmental website 'incometaxindia.gov.in'.

Introduction of Aadhaar based e-Signature through M/s NSDL eGov in PAN application not only ensures paperless hassle free PAN application process but also seeding of Aadhaar in PAN which will curb the problem of duplicate PAN to a great extent.

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

SERVICE TAX

1. Provisional attachment of property under Section 73C of the Finance Act, 1994

In case of *Kunj Power Projects vs. UOI* the assessee's bank accounts were ordered to be attached without giving any opportunity of being heard to them. The Allahabad High Court after a detailed analysis of the legal provisions, observed *inter-alia* that the order directing attachment of the property without waiting for a reply to the show cause notice, and without giving any opportunity and without giving any notice, was in gross violation of Rule 3 of the Rules of 2008 (Provisional Attachment of Property Rules, 2008) read with paragraph 2 (iii) of the *Circular 103/06/2008 dated 1st July, 2008(Instructions regarding provisional attachment of property under section 73C)*. It was mandatory for the authority to issue a notice giving 15 days' time to reply before attaching a property. The High Court further observed that since proceedings under Section 73 of the Act had been initiated and a show cause notice had already been issued to the petitioner, action for attachment could only have been initiated by the Commissioner and should not have been initiated by the Deputy Commissioner.

In this regard, Central Government vide Circular No. 196/06/2016-SERVICE TAX, Dated: July 27, 2016 has reiterated the safeguard & instructions provided in *Circular 103/06/2008 dated 1st July, 2008 (Instructions regarding provisional attachment of property under section 73C)* and requested the Chief Commissioners to also emphasise that non-compliance with legal provisions or administrative instructions will leave officers with no defence in legal proceedings arising out of such non-compliance.

[Circular No. 196/06/2016-SERVICE TAX, Dated: July 27, 2016]

CENTRAL EXCISE

2. New Provision of Revised Returns under Central Excise to be effective from 17th August 2016

The Central Government in Budget 2016, inserted a new sub-rule 12(8) & Rule 17(7) in the Central Excise Rules, 2002 which were to be effective from a date to be notified by the Government. They read as follows:

"8)(a) An assessee, who has filed a return in the form referred to in sub-rule (1) within the date specified under that sub-rule or the second proviso thereto, may submit a revised return by the end of the calendar month in which the original return is filed.

(b) An assessee who has filed Annual Return referred to in clause (a) of sub-rule (2) by the due date mentioned in clause (a) of that sub-rule, may submit a revised return within a period of one month from the date of submission of the said Annual Return.

Rule 17(7):

(7) An assessee, who has filed a return in the form referred to in sub-rule (3) within the date specified under that sub-rule, may submit a revised return by the end of the calendar month in which the original return is filed.

Central Government vide Notification No. 42/2016- Central Excise (N.T.), Dated: August 11, 2016 has notified 17th August 2016 as the effective date for these sub-rules.

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

3. Simultaneous authentication of invoice by digital as well as manual signatures

The Central Government vide Circular No. 1038/26/2016-CX, Dated: July 19, 2016 has clarified that a manufacturer or a service provider who opts to issue invoices authenticated by digital signature may also print a copy of such invoice and sign them manually for the customers who are unable to accept or receive the digitally signed invoices due to lack of Information Technology infrastructure. Thus, such invoices, authenticated by digital signature as well as manual signature, will be valid document to avail CENVAT credit and will be considered to be in conformity with rule 11 of Central Excise Rules, 2002 or Rule 4A, 4B and 4C of the Service Tax Rules, 1994.

[Circular No. 1038/26/2016-CX, Dated: July 19, 2016]

4. Excise Duty on Jewellery: Accepted Recommendations of Sub-Committee of the High Level Committee.

Central Government vide *Circular No. 1021/9/2016-CX dated 21.03.2016* constituted a Sub-Committee of the High Level Committee (HLC) to interact with Trade & Industry and look into the issues related to compliance procedures for the excise duty on articles of jewellery which submitted its report on 23.06.2016. Accordingly, *Notification No.'s 26/2016-Central Excise to 29/2016-Central Excise; No.'s 33/2016-Central Excise (N.T.) to 40/2016-Central Excise (N.T.); and Circular No. 1040/28/2016-CX to No. 1045/33/2016-CX*

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have been issued to give effect to such accepted recommendations.

Following have been provided vide aforesaid notifications & circulars:

a) excise duty of 1% without input and capital goods tax credit or 12.5 % with credit to apply to articles of jewellery, parts of articles of jewellery, made of platinum, gold and silver;
b) to levy duty on handicrafts falling under heading 7113 of the Central Excise Tariff Act, 1985.
c) excise duty on jewellery payable at first sale invoice value
d) in case the invoice does not show excise duty separately, the value for VAT will be treated as cum duty value [value + excise duty];
e) when a retail customer brings jewellery [other than in form of gold or any precious metal] to a jeweller which is converted into new jewellery or precious stones are mounted on the jewellery by the jeweller or a job worker of such jeweller, excise duty will be payable only on value addition, including cost of additional materials and labour charges charged, subject to the maintenance of certain records;
f) no excise duty will be payable on the sale of traded goods;
g) records maintained for State VAT and other private records, showing details of inputs, stocks, manufactured goods, sold/exported goods, etc. to be accepted for excise purposes. Stock details to be maintained on weight and carat basis;
h) an optional scheme may be prescribed for jewellers who are not able to maintain separate physical stocks and/or records of manufactured and traded goods. For availing the optional scheme, a principal manufacturer of jewellery shall maintain separate stocks on weight and/or carat basis separately for Silver studded jewellery, Gold or platinum jewellery studded with diamonds and other gold or platinum jewellery.
i) Repairs and alterations, which do not change the identity, character and use of the goods and do not result in a new item is not "manufacturing" and will not attract excise duty
j) movement of jewellery, which does not involve sale, for example, movement of jewellery, to be shown as samples, branch transfers not involving sale, for display in exhibition, for hallmarking, and for approval before sale, may not be liable to excise duty. No transit checks by excise officers;
k) Articles of Jewellery (Collection of Duty) Rules, 2016 prescribed which, *inter-alia* provide for date of duty, assessment, manner of payment including an optional scheme for payment of Excise duty, stock position, job-work, dead stock, removal of semi-manufactured jewellery etc.
l) the quarterly return (ER.8) will also apply to the manufacturers or principal manufacturers of parts of articles of jewellery, falling under heading 7113.
m) the date of submission of quarterly returns for quarter ending on 31st March, 2016, and quarter ending on 30th June, 2016, will be the 10th August, 2016
n) a principal manufacturer of articles of jewellery or parts of articles of jewellery or both will be treated as manufacturer for the purposes of the CENVAT Credit Rules, 2004.
o) a person engaged in the manufacture of articles of jewellery or parts of articles of jewellery or both, falling under chapter heading 7113 may get himself registered by 31st day of July, 2016;
p) Exemption from taking Central Excise Registration upto ₹10 crores.
q) no requirement to submit any ground plan of the premises for taking Excise registration
r) no registration by a manufacturer or principal manufacturer or a jeweller, who exports 100% of articles of jewellery manufactured by him or got manufactured by him on job work basis subject to specified conditions.
s) Exemption from filing of annual return.
t) no excise audit will be carried out, for the first two years, for units whose duty payment (cash plus credit) is less than ₹1 crore, [that is turnover of manufactured goods less than ₹100 crore.] Guidelines for Excise Audit prescribed.
u) no visit, search and seizure at job workers premises
v) no visit to premises of the principal manufacturer [jeweller], except on the basis of specific intelligence and with the approval of Commissioner or equivalent rank officer.
w) summons to be issued only with the approval of Commissioner;

In addition to the above recommendation, the Government has also decided the following to increase for manufacturers of articles of jewellery or parts of articles of jewellery or both:

i) the SSI Eligibility limit from ₹12 Crore to ₹15 Crore;
ii) the SSI Exemption limit from ₹6 Crore to ₹10 Crore in a financial year and ₹85 lakh for the Month of March, 2016;
iii) Computation of Eligibility and Exemption limits for SSI exemption is to be done individually for each manufacturer or principal manufacturer.
iv) value of articles of jewellery exported [except those exported to Bhutan] and value of traded articles of jewellery [on which appropriate excise duty, including nil duty, has already been paid] will not be counted for computing SSI limit.

For more details please visit www.cbec.gov.in.

[Notification No.'s 26/2016-Central Excise to 29/2016-Central Excise; No.'s 33/2016-Central Excise (N.T.) to 40/2016-Central Excise (N.T.); and Circular No. 1040/28/2016-CX to No. 1045/33/2016-CX all dated July 26, 2016]

CUSTOMS

5. Merger of two facilitation programmes viz. Accredited Client Programme (ACP) and Authorised Economic Operator (AEO) programme – Revised AEO prog.

Central Government vide *Circular No. 33/2016-CUSTOMS, Dated: July 22, 2016* has decided to merge the two facilitation schemes namely ACP and AEO into a combined three-tier AEO programme. This would enhance the scope of these programmes and will provide further benefits to the entities who have demonstrated strong internal control system and willingness to comply with the laws administered by the Central Board of Excise and Customs. The prominent features of the new programme are as follows:

i. Inclusion of Direct Port Delivery of imports to ensure just-in-time inventory management by manufacturers–clearance from wharf to warehouse;
ii. Inclusion of Direct Port Entry for factory stuffed containers meant for export by AEOs;

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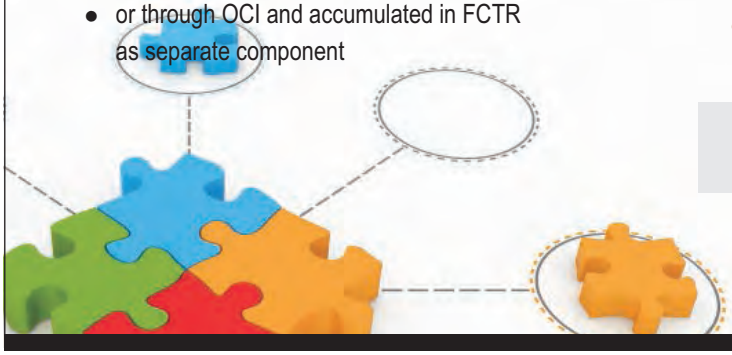

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iii. Special focus on small and medium scale entities–any entity handling 25 import or export documents annually can become part of this programme;
iv. Provision of Deferred Payment of duties–delinking duty payment and Customs clearance;
v. Mutual Recognition Agreements with other Customs Administrations;
vi. Faster disbursal of drawback amount;
vii. Fast tracking of refunds and adjudications;
viii. Extension of facilitation to exports in addition to imports;
ix. Self-certified copies of FTA/PTA origin related or any other certificates required for clearance would be accepted;
x. Request based on-site inspection/examination;
xi. Paperless declarations with no supporting documents;
xii. Recognition by Partner Government Agencies and other Stakeholders as part of this programme.

All the entities already certified under AEO Programme will now be accorded the status of AEO-T2 or AEO-LO, as the case may be, and will be entitled to benefits subject to their adherence to prescribed standards and guidelines.

Further, the entities already accorded the ACP status will be granted one time opportunity for transition to the AEO status and they are required to submit their applications within 90 days. Till a decision on their application is taken, they would be granted provisional status of AEO-T1.

[Circular No. 33/2016-CUSTOMS, Dated: July 22, 2016]

6. Removal of mandatory warehousing requirements for EOUs, STPIs, EHTPs etc.

Notification 52/2003-Customs dated 31.03.2003 exempts specified goods when imported for use in EOUs, STPIs, EHTPs etc. from payment of Customs duties, subject to various conditions stated therein. The notification provides for warehousing of imported goods, to be used for manufacture of goods or other operations as well as their ex-bonding under certain circumstances. The Units, therefore, obtain a license as a warehouse under Section 58 of the Customs Act, 1962 and permission under Section 65 of the Act, as a manufacture-in-bond facility.

As the goods procured by EOUs, STPIs, EHTPs etc. are exempt from duties of customs the application of warehousing provisions to these units adds to their compliance requirements without adding to either improved monitoring by the dept. or providing any additional facilitation to them.

In this regard, recognising the potential role of these units in the Make in India initiative and as a measure of improving the ease of doing business, Central Government vide *Circular No. 35/2016-CUSTOMS, Dated: July 29, 2016* has decided to withdraw the requirement of complying with the warehousing provisions by these units. As a result, with effect from 13th August, 2016, these units will stand delicensed as warehouses under Customs Act, 1962 and will continue to adhere to the provisions of Notification 52/2003-Customs dated 31.3.2003, FTP, HBP and other applicable notifications. *Notification No. 44/2016-Customs, Dated: July 29, 2016* has been issued to this effect.

Further w.e.f 13th August 2016, the EOUs, STPIs, EHTPs etc. will not be required to maintain the warehoused goods register (warehousing bond register) but would be required to maintain records of receipts, storage, processing and removal of goods, imported by the units in digital form as per the prescribed guidelines.

Requirement of sending re-warehousing certificates has also been dispensed w.e.f 13th August 2016 and a new procedure is prescribed for the same. Similarly, the procedure of bond to bond movement for inter-unit transfer of inputs, capital goods and manufactured goods has been done away with and a new procedure has been prescribed for such inter-unit transfers.

[Circular No. 35/2016-CUSTOMS, Dated: July 29, 2016]

7. Procedure for exports through Foreign Post Offices using e-commerce platform under MEIS Scheme of FTP 2015-20 prescribed

Exports of goods through foreign post office using e-commerce are permitted through the Foreign Post Offices at Delhi, Mumbai & Chennai. These exports of eligible categories of goods are entitled for rewards under MEIS. If the value of exports using e-commerce platform is more than ₹25,000 per consignment, then MEIS reward would be restricted to an FOB value of ₹25,000 (₹Twenty five thousand only).

In this regard, Central Government vide *Circular No. 36/2016-Customs, Dated: July 29, 2016* has prescribed the procedure for export of goods sold

through e-commerce from FPOs at Chennai, Delhi and Mumbai.

Any exporter holding a valid Import-Export Code will be permitted to export goods sold through e-commerce through the specified FPOs and will also be required to file a Postal Bill of Export (PBE) in duplicate in the prescribed format along with declaration for claiming of benefit under MEIS. A PBE will also contain prescribed specific details of the e-commerce transaction. A maximum of 10 shipments can be affected using a single Postal Bill of Export. An exporter will also be required to attach the invoice(s) with the PBE. Filing of the label or declaration as prescribed by the Postal Department also requires to be complied with.

The process of presentation and processing of PBE, speedy clearances etc. also need to be adhered too as prescribed. All other extant norms for processing of shipping bills, such as for amendments etc. will also apply to the postal bill of exports.

[Circular No. 36/2016-Customs, Dated: July 29, 2016]

VAT

8. Andhra Pradesh

Contractors engaged in construction projects for Government insisted on making intra-State purchases

The State of Andhra Pradesh is witnessing brisk construction activity which involves purchase of large quantities of construction material such as Iron and Steel, Cement, Timber, Electrical goods, Sanitary ware, Hard ware, etc. A comparison of the net rates under the Local VAT law and the CST law are provided below:

Works Contractor purchases Goods from the dealers	**Intra-State purchases**	**Inter-State purchases**
Tax Liability on Total Purchases	VAT @ 14.5%.	2% CST against 'C' Form
Composition Scheme opted	5% on Total Turnover	5% on Total Turnover
Tax burden on the works contractor	**19.5%**	**7%**

The huge disparity between the local VAT rate and the CST rate will lead to Trade diversion and also loss of revenue to the State. To address this issue, the Government after carefully examining the matter, directed all the Government Departments and Government Bodies to insist (by way of incorporating suitable provisions in the contract agreements) that the Contractors/Concessionaires engaged in the construction of infrastructure projects, including those in PPP mode, purchase goods from the dealers within the State to the extent such goods are available in the required quantity and desired quality, and where the price (excluding tax) is competitive.

[ORDER No. G.O.MS.No. 347 Dated: 27th July, 2016]

9. Bihar

E-Commerce companies registered in Patliputra Circle to upload Form D-IXA

Information for the generation of electronic transaction identification number shall be uploaded in Form D-IXA (format appended to the Notification) in respect of any consignment of goods exceeding ₹10,000 being imported into the State of Bihar from any place outside the State of Bihar by an e-Commerce company registered in Patliputra circle of Patna, where such importation is on behalf of a person other than a registered dealer.

[Notification No. Bikri Kar/Vividh43/20113055 Dated 10th August, 2016]

10. Daman & Diu –

IDBI Bank becomes designated authorised bank under Daman & Diu VAT law

IDBI Bank, Daman branch designated as authorised bank for payments of taxes, penalty, interest and any other dues payable at Daman and Diu Value Added Tax regulation Daman, 2005, in relation to any person having place of business in the District of Daman and Diu.

[Notification No DMN/VAT2015/201617/89/ DCVAT /2016 Dated 21st July, 2016]

11. Delhi:

Speedy disposal of refund claim

The Hon'ble High Court, in the writ petition W.P.(C) 5250/2016 of M/s New Age Generators, observed that processed refunds in the case of an assessee are being issued only once in a week due to certain security checks in the system of the Department, and that such restriction is not in accordance with the provisions of Section 38(3) of DVAT Act.

In the light of the aforesaid observations, the Commissioner (VAT) has directed that all refunds of a registered assessee which are processed and found to be in order should be released in a time bound manner. Further, it is provided that in case of multiple refunds of the same assessee that are needed to be issued within a week, the prior approval of the concerned zonal officer should be taken by the Ward-in-charge. Furthermore, it is directed that the required changes in software, the workflow and security checks are to be made expeditiously.

[Order No. F.3(378)/Policy/VAT/2016/489494 dated 21st July, 2016]

12. Himachal Pradesh

Sim cards exempted under the Himachal Pradesh Value Added Tax Act, 2005

Sim cards have been exempted from Himachal Pradesh Value Added Tax with effect from 11th August, 2016. Accordingly, Schedule-'B' of the Himachal Pradesh VAT Act, 2005 has been amended to include the entry vide entry number 50A as "Sim cards".

[Notification No. EXN-F(10)-20/2014, dated: 11th August, 2016]

13. Kerala –

Check list provided for processing refund applications under Kerala Value Added Tax Act, 2003

A preliminary scrutiny is highly necessary before granting refund. With a view to facilitate a smooth preliminary scrutiny of the refund applications before such refund is granted, the Proforma for checklist has been provided. It is required that the assessing authorities prepare such checklist as part of the refund processing. It is further assured that the refund application shall be processed within the time limit specified in the Right to Services Act, 2012.

Instructions to the authorities:

- In case the refund is less than ₹5 lakhs, the assessing authority of ordinary circle offices would be required to submit the refund file for approval to the Inspecting Assistant Commissioner concerned.

- In case the refund is ₹5 lakhs or more, the District Deputy Commissioner shall approve the refund order.
- Irrespective of the amount of refund, all refund files of Special Circle shall be approved by the District Deputy Commissioner.
- Copies of all refund orders in excess of ₹1 lakh shall be marked and submitted to Deputy Commissioner (Internal Audit), Commissionerate of Commercial Taxes, Thiruvananthapuram along with all the details mentioned in the check list.

[Circular No.09/ 2016 No.C11880/2016/CT Dated.25th July, 2016]

14. Maharashtra

Third set of FAQ on the Settlement of Arrears in Disputes Act, 2016

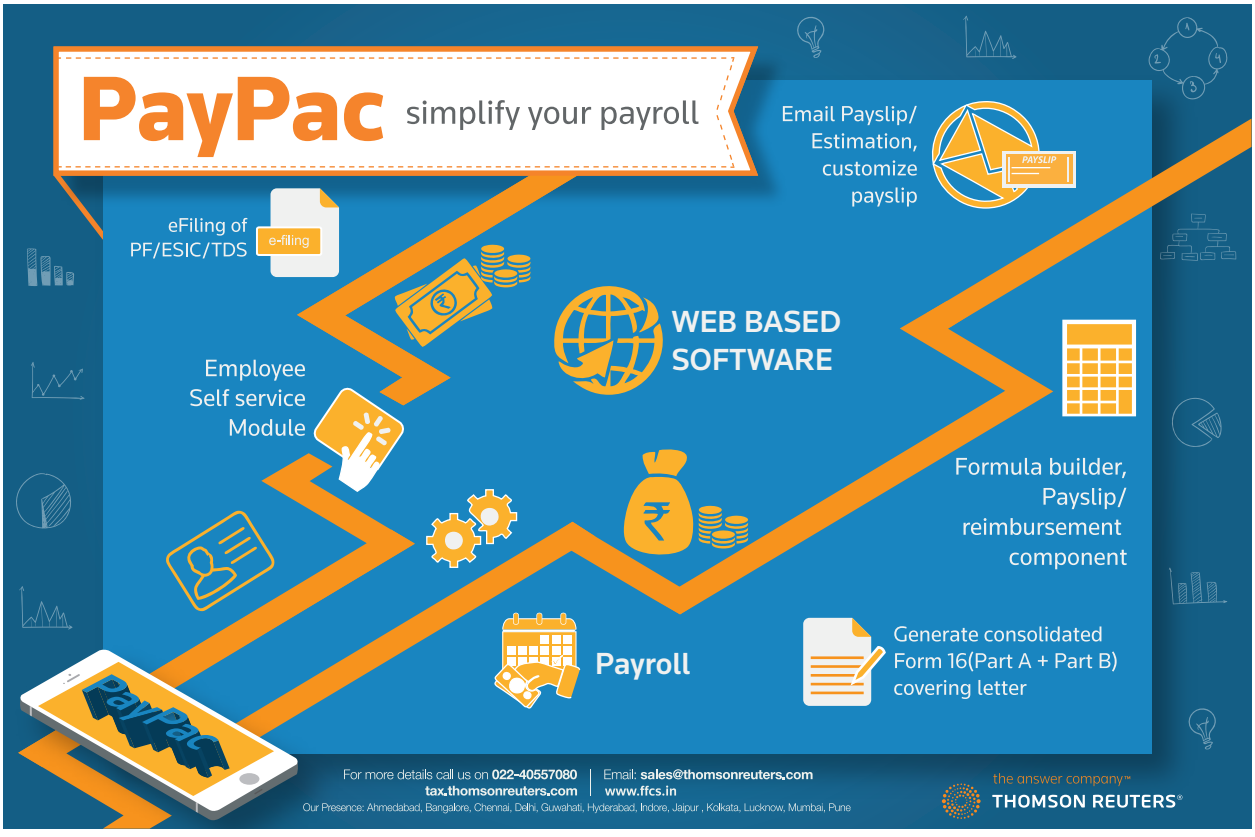
To address doubts and concerns raised by the stakeholders in relation to the Settlement of Arrears in Disputes Act, 2016 (meant to unlock the arrears pending in appeal), two sets of FAQs vide Trade Circular No. 10T of 2016 dated 3rd May 2016 and Trade Circular No. 10(A) T of 2016 dated 3rd May 2016 were issued. However, on subsequent receipt of queries from the Trade and Associations about various provisions of the Act, the Maharashtra State Government has issued a third set of FAQs wherein the earlier two sets of FAQ's have also been clubbed.

[Trade Circular No. 20T of 2016 Dated 19th July, 2016]

15. Odisha

Assessing Officers to provide tax evasion report only after verification of books of account

Based on the direction given by the Hon'ble Orissa High Court in writ petitions W.P.(C)No. 3152 and 3153 of 2013 and W.P.(C)No. 15773 of 2015 in case of M/s Kasi Sales & Services Pvt. Ltd. and also in case Lakhiram Jain and Sons Vrs. Sales Tax Officer, Raygada [(209) 21 VST 280 (Ori)], the Commissioner of Commercial Taxes has instructed all assessing Officers to provide a copy of adverse materials or tax evasion report when the assessee so demands, after the books of account



have been verified. However, where assessee did not produce the books of account before the inspecting officer, the report can be given only after they are produced. Further, the adverse materials or the tax evasion report are to be duly confronted to the assessee during assessment, and it should be recorded in form of a statement and simultaneously reflected in the order sheet.

[Circular No. 12169/CT No. IV(I)/192/2015 Dated 5th August, 2016]

16. Odisha

New Registration Process for Issue of Certificate of Registration

The Odisha Value Added Rules has been amended to simplify e-registration process for dealers. As per the new process, applicant will complete the enrolment process to obtain a link (sent to his email-id), to fill up the application forms for registration under VAT, CST, Entry Tax and Profession Tax. These can be uploaded along with requisite documents as per Rule 15 (9) and a processing fee of ₹500/-, the proof of which also needs to uploaded.

Such application would first be scrutinised by the Help Desk Officer and thereafter, the Registering Authority of the Circle would scrutinise the details and either approve the application or send back the application along with a response sheet. If approved, the system would generate a TIN and RC and intimate the same to the applicant by SMS and email. However, if it is sent back to the applicant, the system will send an SMS to view the application and the Response sheet. The applicant can use the comments in the response sheet and rectify the application, and upload the same for approval.

After approval, Registering Authority will generate the password, take a print of the R.C. (s) and send the signed copies thereof along with the password by Registered Speed Post through the BNPL Scheme.

Further, the Sales Tax Officers will henceforth act as Registering Authorities instead of DCCTs/ ACCTs. It is required of the officers to complete the registration process within one working day as per Rule 18(1) (i), and within maximum 3 working days in unavoidable circumstances. It is further specified that these timeline apply even if the corresponding Rules in CST, Entry tax and Profession Tax governing the process of registration have not been amended.

[Circular No. 11899/CT No. III-II//3/2015-Policy Dated 1st August, 2016]

17. Rajasthan

Unified Common Refund Application Form for VAT, CST, entry tax & luxury tax.

E-services by way of Unified Common Refund Application Form has been made available on the Departmental Web Portal to ease the refund process for dealers registered under following 4 Acts and they would not be not required to make multiple login:

(a) The Rajasthan Value Added Tax Act, 2003;
(b) The Central Sales Tax Act, 1956;
(c) The Rajasthan Tax on Entry of Goods into Local Areas Act, 1999; and
(d) The Rajasthan Tax on Luxuries (in Hotels and Lodging Houses) Act, 1990

Further, the procedure for e-refund application has also been provided in the Circular.

[Circular No. 07/2016-17 F.16 (95)/Tax/CCT/14-15/1169 dated 8th August, 2016]

18. Rajasthan

Expeditious assessment of refund in relation to returns for the year 2014-15

Any refund of the excess deposited tax/ Input Tax Credit, as claimed by any dealer for the year 2014-15, that becomes due (in terms of Section 17(2) of the Rajasthan Value Added Tax Act, 2003) on 1st April, 2016 will be liable for interest in terms of Section 53(4). Accordingly, the dealer would be entitled to receive simple interest at the notified rate in this behalf, with effect from 1st April of the year immediately following the year to which it relates, up to the date of payment.

Therefore, all the assessing authorities have been directed to dispose of on priority, the assessment cases where refund has been claimed by the dealer in his return(s) for the year 2014-15.

[Circular No. 04/2016-17 F.16 (327)/VAT/Tax/CCT/2011/1161-64 dated 8th August, 2016]

19. Telangana –

VAT on cell phones/mobile phones at the rate of 5%

Cell phones/mobile phones have been made taxable under the Telangana Value Added Tax Act, 2005, at the lower rate of 5%, with effect from 30th July, 2016. Accordingly, Schedule IV of the Act has been amended to include the entry vide entry number 131 as "Cell phones/mobile phones", and shall be subject to the provisions of Section 13 of the aforesaid Act.

[Notification No. G.O. Ms. No. 186 Dated 28th July, 2016]

20. West Bengal

Mandatory Submission of Return using Digital Signature

The following persons shall have to furnish return using digital signature mandatorily from quarter ending 30th June, 2016:

- All registered dealers filing return in Form 14/14D/15/15R,
- All registered dealers having turnover of sales or contractual transfer price or both, in the immediate previous year, i.e., 201516, in excess of ₹50 lakhs or
- All registered dealers having registration under the Companies Act, 1956, or the Companies Act, 2013,

Therefore, the aforementioned dealers who are not already in possession of Digital Signature Certificate (DSC) are requested to procure the same. Such DSC is required to be registered with the Directorate using the website www.wbcomtax.gov.in. Other dealers may also submit return electronically using DSC, or alternatively send the single page signed acknowledgement in Form 14e/15e/15Re, as the case may be, to Central Receiving Section within 15 days from the expiry of the due date of furnishing the return electronically.

Thus, the need for filing of hard copy of the entire return is done away with and this is expected to save printing of approx. 5 crore pages annually.

[Circular No. 05/2016 dated 25th July, 2016]

Legal Update

21. West Bengal

Due date of return for quarter ended extended

Due date of submission of return under Section 32 of the West Bengal Value Added Tax Act, 2003, read with Rule 34A and Rule 34AA and Rule 34AB of the West Bengal Value Added Tax Rules, 2005 has been extended as under:

Period for which return is required to be furnished	Form of return	Last date of payment of net tax, interest, if any, payable according to that return	Extended date of	
			transmission of data electronically of that return	furnishing paper form of that return
Quarter ending 30.06.2016	Form 14/14D	31.07.2016	24.08.2016	08.09.2016
	Form 15			

[ORDER Memo No. 660/CT/PRO/3C/PRO/2015 dated 25th July, 2016]

CORPORATE LAWS

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

MCA (www.mca.gov.in)

MCA Notification No. G.S.R 742 (E) dated 27th July 2016 - Companies (Accounts) Amendment Rules, 2016

MCA has amended the Companies (Accounts) Rules 2014 with the aforesaid notification. Various amendments have been incorporated in the principal rules. However, the most important amendment is in regard to consolidation of accounts. MCA has advised that preparation of consolidated financial statements by a company is not necessary if it is a wholly-owned subsidiary, or is a partially-owned subsidiary of another company and all its other members, including those not otherwise entitled to vote, having been intimated in writing and for which the proof of delivery of such intimation is available with the company, do not object to the company not presenting consolidated financial statement or it is a company whose securities are not listed or are not in the process of listing on any stock exchange, whether in India or outside India and its ultimate or any intermediate holding company files consolidated financial statements with the Registrar which are in compliance with the applicable Accounting Standards. For complete text of the notification, please refer the link: http://www.mca.gov.in/Ministry/pdf/CompaniesAccountsAmendmentRules_28072016.pdf

SEBI (www.sebi.gov.in)

SEBI Circular No. SEBI/ LAD-NRO/GN/2016-17/008 dated 8th July 2016 – SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2016

SEBI has amended the listing regulations to prescribe additional disclosures in the financial statements of listed companies. It prescribes that top five hundred listed entities based on market capitalisation (calculated as on March 31 of every financial year) shall formulate a dividend distribution policy which shall be disclosed in their annual reports and on their websites. Various parameters of dividend distribution policy have also been stipulated. Further, listed entities other than top five hundred listed entities based on market capitalisation may disclose their dividend distribution policies on a voluntary basis in their annual reports and on their websites. For complete text of the circular, please refer the link: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1468383846971.pdf

RBI (www.rbi.org.in)

RBI Circular No. FIDD.CO.FSD.BC.No 9/05.02.001/2016-17 dated 4th August 2016 - Union Budget – 2016-17 Interest Subvention Scheme

RBI has notified the Interest Subvention scheme for Scheduled Commercial Banks on 4th August 2016 in pursuance of the provisions of the Union Budget 2016. This scheme deals with subvention of 2% per annum for short term crop loans upto ₹3 lakh and certain other provisions for prompt repayment by the farmers. IT also provides for annual certification from the Statutory Auditors about the claims for subvention from RBI. For complete text of the circular, please refer the link: https://rbi.org.in/Scripts/NotificationUser.aspx?Id=10540&Mode=0 ■