

Technical Update

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The key amendments introduced in statutes, policies and procedures in respect of Direct Tax, Indirect Tax, Corporate Laws & Accounting Standards, Foreign Exchange Management Act / Export Import Policy & Securities and Exchange Board of India related matters are summarized hereunder.

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Amendments, Notifications & Court Rulings

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DIRECT TAX

1. Notification of transactions for which the condition of chargeability to STT for claiming exemption under section 10(38) of the Income Tax Act, 1961 ('the Act') shall not apply

Long term capital gain (LTCG) on sale of listed equity shares or units of equity oriented fund made on or after 1st October, 2004 is exempt from tax if such sale transaction is chargeable to Securities Transaction Tax (STT). A further condition has been inserted with effect from Assessment Year 2018-19 which stipulates that where such equity shares are purchased on or after 1st October, 2004, then LTCG on sale of such shares will not be exempt unless such purchase transaction (other than those notified) is not chargeable to STT.

The Government has since notified following transactions of acquisition of shares made on or after October 01, 2004, where LTCG will not be exempt:

- acquisition of listed shares in preferential issue of a company whose shares are not frequently traded on a recognised stock exchange (subject to certain exceptions);
- acquisition of existing listed equity share in a company not through a recognised stock exchange of India (subject to certain exceptions); and
- Acquisition of shares of a company during the period of its delisting.

Source: Notification No. 43/2017 dated June 05, 2017 & Press release New Delhi dated June 06, 2017

2. Central Board of Direct Taxes ('CBDT') amends Safe Harbour Rules

To reduce transfer pricing disputes and provide certainty to taxpayers, the Safe Harbour Rules ('SHR') were released in 2013 in respect of specific eligible transactions undertaken by specific businesses, including low-risk contract service providers. However, the margins then recommended under the SHR were significantly high and as such there were a few takers.

The CBDT has now amended the SHR, prescribing lower margins on the lines of recently concluded Advance Pricing Agreements ('APAs'). Under the amended rules, the operating margin expected from low-risk contract service providers, engaged into IT/ITES activities, has been rationalised to 17/18%, which is a significant reduction from the existing rate of 20/22%. Similarly, the margins under amended SHR in respect of contract R&D operations stands reduced to 24% from existing 30%. Margins applicable to Knowledge Process Outsourcing ('KPO') activities have also been revised from existing 25% to 18/24%. The amended SHR would be available to small and medium-sized taxpayers with transaction values up to INR 200 Cr. Besides rationalising rate-structure, the revised rules also cover a new category of eligible transaction namely, management fees, of up to INR 10 Cr.

The revised SHR are effective from April 1, 2017 and would be applicable for maximum 3 years up to AY 2019-20.

Source: Notification No. 46 dated June 07, 2017

3. Bonds issued by Power Finance Corporation Limited eligible for claiming Capital Gain exemption under section 54EC of the Act

LTCG on sale of an asset is exempt from tax; inter alia, if the capital gain is invested in long term specified asset within six months from the date of sale. Currently, any bond redeemable after three years issued by National Highways Authority of India or by the Rural Electrification Corporation Limited fall in the category of long term capital asset. Now, bonds issued by Power Finance Corporation Limited (PFC) on or after 15th June, 2017 which are redeemable after three years are added to the list of long term specified asset and accordingly, investment of LTCG in the said bonds of PFC will also qualify for exemption.

It may be noted that the maximum investment permissible in these bonds is Rs.50 lakhs per financial year.

Source: Notification No. 47/2017/ F. No. 370142/18/2017-TPL dated June 08, 2017

4. Trade Advances in nature of commercial transactions outside purview of Deemed Dividend

As per section 2(22)(e) of the Act, any payment by a company, other than a company in which public are substantially interested, by way of advance or loan to a shareholder, who is beneficial owner of the shares, is treated as deemed dividend and taxed in the hands of shareholder, if prescribed conditions are satisfied.

To give relief in genuine cases and in view of the various judicial pronouncements, CBDT clarifies that trade advances which are in nature of commercial transaction would not be covered under section 2(22)(e) of the Act and hence shall not be treated as deemed dividend.

Source: Circular No. 19/2017, dated June 12, 2017

INDIRECT TAX

1. Due date of filing of Service Tax Return

Return for the period April 1, 2017 to the June 30, 2017 shall be submitted by August 15, 2017 in Form 'ST-3' (ST-3C in case of OIDAR). Revised Return to be submitted within a period of forty-five days from the date of submission of the original service tax return.

Source: Vide Notification No. 18/2017-Service Tax dated June 22, 2017

2. Exemption from GST Registration

With effect from June 22, 2017, persons engaged only in making supplies of taxable goods or services or both, on which the tax is liable to be paid on reverse charge by the recipient of such goods or services or both shall be exempt from obtaining registration.

Source: – Vide Notification No. 05/2017 – Central Goods and Services Tax Act dated June 19, 2017

3. Authentication of documents

With effect from June 22, 2017, where the mode of authentication of any document furnished under Goods and Services Tax Act is either through Aadhaar based Electronic Verification Code (EVC) or Bank account based One Time Password (OTP), such verification shall be done within two days of furnishing the documents.

Source: – Vide Notification No. 06/2017 – Central Goods and Services Tax Act dated June 19, 2017

COMPANY LAW

1. Notification to amend the Notification dated June 05, 2015 (Exemption to Private Companies)

The MCA vide Notification dated June 13, 2017 has amended the Notification dated June 05, 2015. With this notification following changes would come into effect:

1. The startup private Companies are exempted from preparation of Cash Flow Statement
2. Exemption with respect to acceptance of Deposit has now been extended to Private Company which is a start-up Company for 5 years from the date of its incorporation.
3. Disclosure to be made by small private companies in Annual Return; wherein details of “aggregate amount of remuneration drawn by directors” have to be disclosed.
4. Small Company or OPC or Private Company having a turnover less than ₹. 50 crore OR which has aggregate borrowings from banks/financial institutions or body corporate at any point of time during the financial year is less than ₹. 25 crore have been exempted from disclosure in the Audit report regarding adequacy of Internal Financial Control.
5. It is sufficient for Startup Private Companies to convene One Board Meeting in each half of calendar year and the gap between the meetings should not be less than 90 days.

Note: Private companies which have not defaulted in filing of financial statements and annual return can only avail the exemptions provided under the notifications.

Source: <http://mca.gov.in/Ministry/pdf/ExemptionPrivateCompanies.pdf>

2. Notification to amend the Notification dated June 05, 2015 (Exemption to Section 8 Companies)

The MCA vide Notification dated June 13, 2017 has amended the Notification dated June 05, 2015.

With this notification following changes the restriction of Maximum number of 15 Directors shall not be applicable to Section 8 Companies.

Note: Companies which have not defaulted in filing of financial statements and annual return can only avail the exemptions provided under the notifications.

Source: http://mca.gov.in/Ministry/pdf/ExemptionSection8Companies_14062017.pdf

3. Notification to amend the Notification dated June 05, 2015 (Exemption to Government Companies)

The MCA vide Notification dated June 13, 2017 has amended the Notification dated June 05, 2015.

Note: Companies which have not defaulted in filing of financial statements and annual return can only avail the exemptions provided under the notifications.

Source: http://mca.gov.in/Ministry/pdf/ExemptionGovernmentCompanies_14062017.pdf

4. Notification of Companies (Audit and Auditors) Second Amendment Rules, 2017

The MCA vide Notification dated June 22, 2017 has amended the Companies (Audit and Auditors) Rules, 2014. With this notification following changes would come into effect:

Now Private Companies having paid up capital of ` . 50 crore or more will only be considered as class of Companies for the purpose of rotation of Auditors. Earlier the limit was ₹. 20 crore or more.

Source:http://mca.gov.in/Ministry/pdf/Companies_Auditand_Auditors_Second_AmendmentRules2017.pdf

FEMA & OTHER LAWS

1. Abolition of the Foreign Investment Promotion Board

Foreign Direct Investment in India is regulated by Foreign Exchange Management Act ('FEMA') together with sectorial policies. While most of the sectors have now been brought under automatic route of investment, whereby no prior approval was necessary from GoI, there are certain sectors and activities which are scrutinised by GoI through an inter-ministerial body viz Foreign Investment Promotion Board ('FIPB'). The role of FIPB was to refer such FDI proposals to concerned departments under relevant Ministries prior to being placed before FIPB for further consideration of comments received if any of members of the board. The delay in decision making was viewed against the ease of doing business reforms the GoI. The FIPB was finally scrapped on May 24, 2017.

Henceforth, proposals for FDI mandating prior approval from GoI will be approved by the respective line ministries/departments in consultation with the Department of Industrial Policy and Promotion ('DIPP'). Further, the proposals involving security concerns will additionally mandate the approval of the Ministry of Home Affairs. However, proposals where FDI inflow is beyond INR 50 billion would continue to be additionally cleared by the Cabinet Committee of Economic Affairs ('CECA'). The approvals from Administrative Ministry/Department have been streamlined as below:

S. No.	Sector/Activity	Approving Authority
1.	Mining	Ministry of Mines
2.	Defence	Department of Defence Production, Ministry of Defence
2A.	FDI in small arms	Ministry of Home Affairs
3.	Broadcasting	Ministry of Information and Broadcasting
4.	Print Media	Ministry of information and Broadcasting
5.	Civil Aviation	Ministry of Civil Aviation
6.	Satellites	Department of Space
7.	Telecom	Department of Telecommunications, Ministry of Communications
8.	Private Security Agencies	Ministry of Home Affairs

9.	Retail Trading (single or multi brand or food products)	Department of Industrial Policy & Promotion, Ministry of Commerce & Industry
10A.	Financial Services which are not regulated by a regulator or where there are multiple regulators or where there is a doubt about the regulator	Department of Economic Affairs, Ministry of Finance
10B.	Banking	Department of Financial Services, Ministry of Finance
11.	Pharmaceuticals	Department of Pharmaceuticals, Ministry of Chemicals and Fertilizers

Way Forward

DIPP would soon be announcing a Standard Operating Procedure ('SOP') for granting approvals for foreign investments providing for the following:

- (i) Status and next steps for proposals already pending proposals before FIPB.
- (ii) Proposals falling under the residual categories.
- (iii) Process in case of where a company operates in more than one activities requiring approval.
- (iv) Periodical review mechanism.
- (v) Time limits for granting approvals may be provided.

Source: <http://fipb.gov.in/Circular No.01/01/FC/2017-FIPB> dated June 05, 2017



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