

technical update

June 2016 / Volume VI / CCI



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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DIRECT TAX

1. Amendment in Rule 8D

CBDT amends rule 8D sub-rule 2 of the Income-tax Rules, 1962 as follows:

(2)(ii) An amount equal to one-half percent of the annual average monthly averages of the opening and closing balances of the value of investment, income from which does not form part of total income.

The amount calculated as per sub-rule 2(i) and (ii) shall not exceed the total expenditure claimed by the assessee

2(iii) Omitted

Source: Notification 43 of 2016 dated June 02, 2016

2. Relaxation from deduction of tax at higher rate under section 206AA

A non-resident (“deductee”) not having a Permanent Account Number (‘PAN’) in India shall not attract the provision of section 206AA for the following payment in the nature of:

- a) Interest
- b) Royalty
- c) Fees for technical services
- d) Transfer of capital asset

If the deductee furnishes the following details and documents of the deductee namely

- a) Name, e-mail Id, contact number
- b) Address of the place of residence of deductee
- c) Tax Residency Certificate
- d) Tax Identification Number or any other unique number of which the deductee is identified by the Government of its country

Source: Notification 53 of 2016 dated June 24, 2016

3. Admissibility of claim of deduction of bad debts u/s 36(1)(vii) r.w.s. 36(2) of the Income-tax Act, 1961(‘Act’)

- a) CBDT received cases involving failure on part of the assessee to establish that the debt is irrecoverable.
- b) There was an amendment in section 36(1)(vii) and section 36(2) w.e.f. April 1, 1989 wherein the assessee was not required to establish that the debt, was infact, irrevocable.
- c) However, disputes have arisen that debt has not been established as irrecoverable.
- d) It has been held in the case of TRF Ltd. In CA Nos. 5292 to 5294 of 2003 vide judgement dated February 9, 2010 that after the amendment, the assessee need not establish that the debt is irrecoverable; it is enough that the bad debts are written off in the books of accounts.
- e) Thus, bad debts written off in books of accounts shall be admissible u/s 36(1)(vii) of the Act.

Source: Circular 12 of 2016 dated May 30, 2016

4. Clarification on threshold limit of Tax Audit u/s 44AB & 44AD

- a) CBDT clarifies the position on turnover threshold and applicability of audit in case of presumptive taxation regime u/s 44AD and regular tax audit u/s 44AB.
- b) Section 44AB mandates that every person carrying on business to get his accounts of any previous year audited if total sales/turnover/ gross receipts exceed Rs. 10 Million;

However, if taxpayer opts for presumptive taxation scheme u/s 44AD(1), audit is not required for turnover limit up to Rs. 20 Million.

- c) CBDT clarifies that the higher turnover threshold of Rs. 20 Million for non-audit of accounts is granted only to assessees, opting for presumptive taxation scheme u/s 44AD.

Source: Press-Release-on-Presumptive-Taxation dated June 21, 2016

Legends

Act – Income Tax Act, 1961

CBDT – Central Board of Direct Taxes

u/s – Under Section

w.e.f – with effect from

INDIRECT TAX

1. Service Tax - Amendment in Mega Exemption

The finance Act vide this notification has amended the taxability provisions by exempting the legal services provided by a Senior Advocate for the following two conditions:

- Any person other than a business entity; or
- A business entity with turnover less than one million turnover in previous financial year.

Source: Notification No.25/2012 - dated June 20, 2012 and Notification No. 32/2016 - dated June 6, 2016

2. Service Tax - Amendments in Service Tax Rules, 1994

Rule 2(1)(d)(ii) of the Service Tax rules has been now substituted as follows:

Recipient of the service will be liable to service tax, if legal services are provided by an individual advocate; or a firm of advocates (excluding representational services provided by Senior Advocate).

New provision has been inserted, to tax the recipient of the service where representation services are provided by Senior Advocate.

Source: Notification No. 33/2016 dated June 6, 2016

3. Service Tax - Amendments in provisions pertaining to Reverse Charge Mechanism

In view of the above amendments -

The legal services provided by an individual advocate; or a firm of advocates, (excluding representation services by the Senior Advocate) shall now fall under the Reverse Charge Mechanism.

Legal services provided to the business entity ,by way of representation by the senior advocate or through contract by another advocate or a firm of advocates & representation of the same by the Senior advocate are now fall under the purview if reverse charge mechanism – sub-clause (iva) in clause (A) of para I

Taxable services provided by a director of a company or a body corporate to the said company or the body corporate are now fall under the purview of reverse charge mechanism - sub-clause (iva) in clause (A) of paragraph I.

Source: Notification No.34/2016 dated June 6, 2016

4. Service Tax - Amendment regarding provisions of Section 161(5) – KKC

Exemption of KKC:

Invoices of taxable services, issued on or before May 31, 2016 - will be exempted from the whole of Krishi Kalyan Cess ('KKC') ONLY IF, the provision of service has been completed on or before the May 31, 2016.

Source: Notification No. 35/2016 dated June 23, 2016

5. Service Tax - Exemption

Exemption from whole of the service tax, for transportation of goods by vessel, subject to the certain condition.

Source: Notification No. 36/2016 dated June 23, 2016

6. Excise Duty - CBEC Circular

CBEC has clarified on some aspects relating to “Speedy disbursal of pending refund claims of exporters of services under rule 5 of the CENVAT Credit Rules, 2014”

Source: Circular No. 195/05/2016 – Service Tax, dated June 15, 2016

CORPORATE LAWS

1. Notification of Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2016

The Ministry of Corporate Affairs through notification dated June 29, 2016 has amended sub rule 3 in order to relax the companies from Filing Form MR 1 while they appoint CEO, CFO & CS. Further amendments to sub rule 5 has been made w.r.t the disclosure requirements in Board's Report.

Source: Notification dated June 30, 2016

2. Notification of Companies (Acceptance of Deposits) Amendment Rules, 2016

The Ministry of Corporate Affairs through notification dated June 29, 2016 has amended sub rule 1 of rule 2. Post this amendment, the following are not considered as Deposits:

- a) Issue of Compulsorily convertible debenture up to the term of 10 years.
- b) Any Non-Interest Bearing amount received and held in trust.
- c) Advance received for providing services in form of warranty or maintenance contract, however the services should be provided as per common business practice or within 5 years whichever is less.
- d) Amount received from sectoral regulatory as per instruction of Govt.
- e) Advance received by the publishers
- f) Subscription amount received by the Chit Funds.
- g) Amount received by Startup companies Rs. 2.5 Million or above by issuing convertible note into equity.

Source: Notification dated June 29, 2016

3. Notification of Companies (Removal of Difficulties) Third Order, 2016

The MCA has notified Removal of Difficulties Third order 2016 for the purpose of clarification w.r.t the applicability of Rotation of Auditors Appointment. In this regard, it was clarified that all the Companies specified under Section 139(2) shall comply with the provisions of rotation within the 1st AGM to be held immediately after the expiry of 3 years from the date of Commencement of the Companies Act, 2013 (i.e. August 29, 2013).

Source: Notification dated June 30, 2016

FEMA & OTHER LAWS

1. Liberalization of Foreign Direct Investment ('FDI') Policy Regime

Government of India has announced major liberalization in policies pertaining to foreign investment in India. The single focus of the proposed amendments is to make India a favorable investment destination, create more employment and usher ease of doing business in India.

The policy changes introduced includes increase in sectoral caps, expansion of activities allowed under automatic route i.e. no prior permission would be necessary and relaxation of conditions for foreign investment. This second major reform introduced under supervision of PM Narendra Modi are significant as they would sync well with the global investment climate.

However, these reforms are yet to be notified by the Department of Policy and Promotion ('DIPP') through an official press note and Reserve Bank of India ('RBI') through a master circular. The changes announced through an official Press Release are summarized as below:

S. NO.	SECTOR	FOREIGN INVESTMENT CAP	
		PRESENT	PROPOSED
1.	Defence	<p>Automatic route up to 49 per cent.</p> <p>Above 49 per cent under Govt. route on case to case basis, wherever it is likely to result in access to modern and 'state of-art' technology in the country.</p>	<p>Automatic route up to 49 per cent</p> <p>Above 49 per cent under Govt. route on case to case basis in cases resulting in access to modern technology in the country or for other reasons to be recorded. The condition of access to 'state-of-art' technology in the country has been done away with.</p> <p>FDI limit for Defence sector has been made applicable to Manufacturing of Small Arms and Ammunitions covered under Arms Act, 1959.</p>
2.	Broadcasting Services (i) Teleports (ii) Direct To Home (iii) Cable Networks (iv) Mobile TV (v) Headend-in-the sky Broadcasting Services	<p>Automatic route up to 49 per cent</p> <p>Govt. route beyond 49 per cent</p>	<p>100 per cent under Automatic route</p> <p>Infusion of fresh foreign investment, resulting in change in the ownership pattern or transfer of stake by existing investor to new foreign investor, will require FIPB approval.</p>
3.	Pharmaceutical	<p>Greenfield: 100 per cent under Automatic Route</p> <p>Brownfield: 100 per cent under Govt. route</p>	<p>Greenfield: 100 per cent under Automatic Route</p> <p>Brownfield: upto 74 per cent under Automatic Route</p> <p>Beyond 74 per cent under Govt. Route</p>

4.	Civil Aviation Sector	Greenfield: 100 per cent under Automatic Route Brownfield: 74 per cent under Automatic Route Beyond 74 per cent under Govt. Route	Greenfield: 100 per cent under Automatic Route Brownfield: 100 per cent under Automatic Route
	Air Transport Services Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline Regional Air Transport Service	49 per cent under Automatic Route (100 per cent for NRIs)	Upto 49 per cent under Automatic Route Beyond 49 per cent under Govt. Route For NRIs, 100 per cent FDI continue to be allowed under automatic route
5.	Private Security Agencies	49 per cent under Govt. route	Upto 49 per cent under Automatic Route Beyond 49 per cent but upto 74 per cent under Govt. Route
6.	Agriculture & Animal Husbandry	100 per cent under Automatic route subject to controlled conditions	100 per cent under Automatic Route Requirement of controlled conditions have been done away with.
7.	Single Brand Retail Trading	Upto 49 per cent under Automatic Route Govt. route beyond 49 per cent	Upto 49 per cent under Automatic Route Govt. route beyond 49 per cent It has been decided to relax local sourcing norms up to 3 years and a relaxed sourcing regime for another 5 years for entities undertaking Single Brand Retail Trading of products having 'state-of-art' and 'cutting edge' technology.

8.	Food Products manufactured / produced in India	No regulation	100 per cent under Govt. approval route for trading, including through e-commerce
9.	Establishment of Branch Office, Liaison Office or Project Office For establishment of branch office, liaison office or project office or any other place of business in India if the principal business of the applicant is Defence, Telecom, Private Security or Information and Broadcasting, approval of Reserve Bank of India or separate security clearance would not be required in cases where FIPB approval or license/permission by the concerned Ministry/Regulator has already been given.		

Source: D/o IPP File No.: No. 5/4/2016-FC-I dated June 24, 2016

2. External Commercial Borrowings–Expediting the Process under Approval Route

Reserve Bank of India has decided that approval for the proposal of External Commercial Borrowing ('ECB') under approval route would be given based on the recommendations of the Empowered Committee. The threshold limit for referring the proposal before committee would be re-fixed from time to time.

Source: RBI/2015-16/440 A.P. (DIR Series) Circular No. 80 dated June 30, 2016



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