



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. Applicability of TDS provisions of Section 194-I of the Act on lump sum lease premium paid for acquisition of long-term lease

CBDT has accepted the view taken by the Hon'ble Delhi High Court in the case of The Indian Newspaper Society (ITA No. 918 & 920/2015) and the Hon'ble Chennai High Court in the case of Foxconn India Developer Limited (Tax Case Appeal No. 801/2013) and TrilInfopark Limited (Tax Case Appeal No. 882/2015) and clarified that lump sum lease premium or one-time upfront lease charges, which are not adjustable against periodic rent, paid or payable for acquisition of long-term leasehold rights over land or any other property are not payments in the nature of rent within the meaning of Sec 194-I of the Act.

Therefore, such payments are not liable for TDS under section 194-I of the Act.
Source: Circular No. 35/2016 Dated October 13, 2016

2. Eligibility of Chapter VI-A deduction on profits enhanced due to certain disallowances

CBDT has clarified that disallowance made u/s. 32, 40(a)(ia), 40A(3), 43B, etc. of the Act and other specific disallowances, related to business activity against which Chapter VI-A deduction has been claimed, result in enhancement of the profits of the eligible business, and that deduction under Chapter VI-A is admissible on the profit so enhanced by the disallowance.

Some illustrative cases upholding this view are as under:

- (i) Expenditure incurred by the assessee for the purpose of developing a housing project was not allowed on account of non-deduction of TDS u/s 40(a)(ia) of the Act, shall enhance the profits to the extent of the amount disallowed. This enhanced profit would qualify for deduction u/s 80-IB of the Act. The view was taken in the following cases:
 - Income-tax Officer – Ward 5(1) vs. Keval Construction, Tax Appeal No 443 of 2012, December 10, 2012, Gujarat High Court
 - Commissioner of Income-tax-IV, Nagpur vs. Sunil Vishwambharnath Tiwari, IT Appeal No. 2 of 2011, September 11, 2015, Bombay High Court.

Expenditure disallowed u/s 40A(3) shall be added back to the profits of the assessee which would be entitled for deduction u/s 80-IB of the Act. This view was taken by the Allahabad High Court in Principal CIT, Kanpur vs. Surya Merchants Ltd., I.T. Appeal No. 248 of 2015, May 03, 2016, Allahabad High Court.

Source: Circular No. 37/2016 Dated November 2, 2016

Legends

Act – Income Tax Act, 1961

CBDT – Central Board of Direct Taxes

u/s – Under Section

INDIRECT TAX

1. Custom - Amendment to Notification No. 57/2000-Cus Export Against Supply by Nominated Agencies

The following has been substituted in the opening para in the 57/2000 notification:

In the case of import of gold / silver / platinum under the scheme for 'Export Against Supply by Nominated Agencies', the importer executes a bond in such form and for such sum as may be specified by the Assistant Commissioner of Customs or Deputy Commissioner of Customs, undertaking to export, either by itself or through other exporters, gold / silver / platinum jewellery or articles, as the case may be, including studded articles having gold / silver / platinum content equivalent to the imported gold / silver / platinum within a period of ninety days from the date of issue of gold / silver / platinum to the exporters, and binding himself to pay on demand duty on quantity of gold / silver / platinum representing the difference between the quantity issued and that contained in the exported jewellery or articles.

Source: Notification No.56/2016-Customs

2. Amendment to Notification No.94/96-Customs, dated December 16, 1996

The following clause will be substituted:

- (a) in the case of Bhutan, the machinery and equipment [other than those exported under the Duty Exemption Scheme (DEEC) or Export Promotion Capital Goods Scheme (EPCG) or Duty Entitlement Passbook Scheme (DEPB)] are re-imported within seven years after their exportation or within such extended period, not exceeding three years, as may be allowed by the Principal Commissioner of Customs or Commissioner of Customs as the case may be, on sufficient cause being shown for the delay, allow;
- (aa) in all other cases, the goods [other than the goods exported under the Duty Exemption Scheme (DEEC) or the Export Promotion Capital Goods Scheme (EPCG) or Duty Entitlement Passbook Scheme (DEPB)] are re-imported within three years after their exportation or within such extended period, not exceeding two years, as the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, on sufficient cause being shown for the delay, allow.

Source: Notification No. 57/2016-Customs dated October 3, 2016

3. **Custom - Amendments to Notification no. 157/90 - Customs regarding temporary admission under the ATA Carnet**

This notification seeks to amend the earlier notification wherein In the event of failure to export the goods within the period specified in condition (4) of paragraph 1, the Federation and the importer shall, jointly and severally be liable to pay the duties of customs leviable on the goods as on the date of import, along with applicable interest: Provided that the liability of the Federation shall not exceed the amount of the duties of customs by more than ten per cent: Provided further that the Federation shall not be liable to pay the customs duty in cases where the said goods are sold in exhibitions or fairs or otherwise disposed of in India in accordance with any law for the time being in force applicable to such goods and on payment of the duties of customs which are payable as on the date of import in respect of such goods, along with applicable interest.

Source: Notification No. 58/2016-Customs dated October 5, 2016

4. **Custom - Notification No. 131/2016-Customs (N.T.) dated October 10, 2016**

Through this notification the Central Government hereby determines the rates of drawback as specified in the Customs Tariff First Schedule on various items and description of goods.

5. **Custom - Notification No. 132/2016-Customs (N.T.) dated October 10, 2016**

With this notification the Customs, Central Excise Duties and Service Tax Drawback (Amendment) Rules, 2016 has come into force on November 15, 2016

6. **Custom - Circular No. 49/2016 – (Customs) dated October 27, 2016**

The circular provides Transferability of goods imported/procured by debiting duty in Served from India Scheme ('SFIS') scrips. Thus it is provided that goods imported/procured under SFIS can be alienated on completion of 3 years from the date of import/procurement.

7. **Custom - Circular No. 50/2016 – (Customs) dated October 31, 2016**

The Central Government through this circular has revised All Industry Rates (AIRs) of Drawback vide Notification No. 131/2016-Customs (N.T.) dated October 31, 2016 which comes into force on November 15, 2016.

8. **Maharashtra VAT & Central Sales Tax- Trade Circular 32T of 2016 dated October 27, 2016**

This circular provides the procedure for the e-payment of taxes and filing of returns under SAP - TRM under the new automation process.

9. **Maharashtra VAT & Central Sales Tax-Trade Circular 33T of 2016 dated October 27, 2016**

This deals with filing of e>Returns by Dealers registered under The Maharashtra Tax on the Entry of Goods into Local Areas Act, 2002 and the procedure that needs to be followed.

CORPORATE LAWS

1. The Companies (Registration Offices and Fees) Second Amendment Rules, 2016

The MCA vide Notification dated November 07, 2016 has amended The Companies (Registration Offices and Fees) Second Amendment Rules, 2016. With this amendment, the following changes would come into effect from the date of publication in the Official Gazette:

Earlier, in Rule 8 (12) (a) (iv) of the Companies (Registration Office and Fees) Rules, 2014, it was stated that Form AOC-4 shall be certified by Chartered Accountant in whole-time practice. But now with the aforesaid notification, the Rules have included the Company Secretary in whole-time practice or cost accountant in whole-time practice to certify the Form AOC-4.

The Rules have been further modified to include the fees applicable for surrender of DIN under Rule 11 (f) of the Companies (Appointment and Qualification of Directors) Rules, 2014.

Source: Notification by Ministry of Corporate Affairs dated November 7, 2016

FEMA AND OTHER LAWS

1. Review of sectoral caps and simplification of FDI Policy

The Central Government had reviewed the extant Foreign Direct Investment ('FDI') Policy on various sectors and has made following amendments in the Consolidated FDI Policy Circular 2015:

- a) Sectoral Cap i.e., the maximum amount which can be invested by foreign investors in an entity will include all types of foreign investments, direct and indirect
- b) "Total foreign investment" in an Indian company will be the sum total of direct and indirect foreign investments.
- c) Portfolio investment up to aggregate foreign investment level of 49 per cent or sectoral/statutory cap, whichever is lower, will not be subject to either Government approval or compliance with the sectoral conditions subject to such investment does not result in change in ownership leading to control of Indian entities by non-resident entities.
- d) The onus of compliance with the sectoral/statutory caps on foreign investment and attendant conditions, if any, shall be on the company receiving foreign investment.
- e) A company shall be considered as owned by resident Indian citizens if more than 50 per cent of the capital in it is beneficially owned by resident Indian citizens and/or Indian companies, which are ultimately owned and controlled by resident Indian citizens.

A Limited Liability Partnership ('LLP') will be considered as owned by resident Indian citizens if more than 50 per cent of the investment in such an LLP is contributed by resident Indian citizens and/or entities which are ultimately owned and controlled by resident Indian citizens' and such resident Indian citizens and entities have majority of the profit share.

- f) 'Control' shall include the right to appoint a majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreement or voting agreement.

For the purpose of LLP, 'control' shall mean right to appoint majority of the designated partners, where such designated partners, with specific exclusions to others, have control over all the policies of the LLP.

- g) Foreign investment in LLP is permitted under the automatic route if the LLP is engaged in sector where 100 percent FDI is allowed and there are no attendant FDI linked performance conditionalities to the sector.
- h) A Non-resident Indian ('NRI') has been permitted to purchase or sell shares, convertible preference shares, convertible debentures and warrants of an Indian company or units of an investment vehicle, on repatriation basis and non-repatriation basis. Investment by an NRI, including a company, a trust and a partnership firm incorporated outside India and owned and controlled by NRI, on non-repatriation basis will be deemed to be domestic investment at par with the investment made by residents.
- i) Foreign investment up to 100 percent under the automatic route has been permitted in the plantation sector which includes tea plantations, coffee plantations, rubber plantations, cardamom plantations, palm oil tree plantations and olive oil tree plantations.
- j) Foreign investment by way of swap of shares has been permitted subject to the resident company is engaged in an automatic route sector. Further, valuation of the shares involved in the swap arrangement shall have to be done as per RBI guidelines.
- k) "Real estate business" shall mean dealing in land and immovable property with a view to earning profit therefrom and does not include development of townships, construction of residential / commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure, townships.
- Further, earning of rent income on lease of the property, not amounting to transfer, will not amount to "real estate business".
- l) Manufacturing has been given a precise definition and foreign investment up to 100% under the automatic route is permitted in manufacturing subject to the conditions of the FDI policy. A manufacturer is permitted to sell its products manufactured in India through wholesale and/or retail, including through e-commerce without Government approval.
- m) An entity engaged in single brand retail trading operating through brick and mortar stores, is permitted to undertake retail trading through e-commerce.

Source: Notification No. RBI/2016-17/88 A.P. (DIR Series) Circular No. 6 dated October 20, 2016

2. Allowance of foreign investment up to 100 per cent under the automatic route in 'Other Financial Services'

RBI has allowed foreign investment up to 100 per cent under the automatic route in 'Other Financial Services'. Other Financial Services will include activities which are regulated by any financial sector regulator viz. Reserve Bank of India, Securities and Exchange Board of India, Insurance Regulatory and Development Authority, Pension Fund Regulatory and Development Authority, National Housing Bank or any other financial sector regulator as may be notified by the Government of India in this regard.

Such foreign investment shall be subject to conditionalities, including minimum capitalisation norms, as specified by the concerned Regulator/ Government Agency.

Source: Notification No. RBI/2016-17/90 A.P. (DIR Series) Circular No. 8 dated October 20, 2016

3. External Commercial Borrowings ('ECB') – Extension and conversion

- a) Extension of matured but unpaid ECB : The designated AD Category I bank may allow extension of matured but unpaid ECB subject to the consent of lender, without involvement of additional cost and fulfilment of reporting requirements.
- b) Conversion of ECB into equity: The AD Category – I bank may approve cases of conversion of matured but unpaid ECB into equity subject to the consent of lender, without involvement of additional cost and fulfilment of reporting requirements while ensuring that conversion is within the other terms & conditions.

Further, such conversion into equity shall also be subject to consent of other lenders, if any, to the same borrower or at least information regarding conversions shall be exchanged with other lenders of the borrower.

Source: Notification No. RBI/2016-17/92 A.P. (DIR Series) Circular No. 10 dated October 20, 2016

4. External Commercial Borrowings by Startups

The RBI has issued an ECB framework wherein AD Category-I banks are permitted to allow Startup enterprises to access loans under ECB framework as per the terms and conditions contained in the circular.

The parameters for considering an entity as a Startup are defined in have since been published in the Official Gazette published by the Government of India dated February 18, 2016.

Source: Notification No. RBI/2016-17/103 A.P. (DIR Series) Circular No. 13 dated October 27, 2016



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