

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 here under.

DIRECT TAX

Amendments, Notifications & Court Rulings

- » Deferment of two reporting requirements in Tax Audit Report
- » CBDT clarifies that immunity from penalty and prosecution obtained under the new penalty regime not to be adversely viewed to decide the same issue under the old penalty regime
- » Central Government notifies certain Boards for exemption of income u/s 10(46) of Income Tax Act
- » Supreme Court negates claim for 100% deduction for fresh five years of new units located in Himachal Pradesh undertaking “substantial expansion”

INDIRECT TAX

Amendments, Notifications & Court Rulings

- » Central Tax - Notification 32/2018-Central Tax dated August 10, 2018
- » Central Tax - Notification No. 36/2018 dated August 24, 2018
- » Central tax (Rate) - Notification No.22/2018 dated August 6, 2018
- » Customs - Notification No.59/2018 dated August 21, 2018
- » Advance Ruling No. KAR ADRG 15/2018 dated July 27, 2018

COMPANY LAW

Amendments, Notifications & Court Rulings

- » Notification of Companies (Accounts) Amendment Rules, 2018
- » Notification of Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2018
- » Notification of Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2018

MCA, RBI & DGFT Notifications

- » Directors KYC – FORM DIR-3 KYC
- » Review of Internal Ombudsman Mechanism with Banks
- » Amendment in the Para 2.47 and Para 3.05 of Chapter-3 of FTP 2015-2020
- » Amendment of Import Policy of biofuels

DIRECT TAX

1. Deferment of two reporting requirements in Tax Audit Report

The Central Board of Direct Taxes (CBDT) via Notification No. 33/2018 dated July 20, 2018 amended particulars required to be furnished in Tax Audit report u/s 44AB (in Form 3CD) by inserting new clauses / amending existing clauses with effect from August 20, 2018.

However representations were received by the Board, regarding deferment of reporting requirements of following clauses:

- Clause 30C pertaining to General Anti- Avoidance Rules (GAAR)
- Clause 44 pertaining to Goods & Service Tax compliances

The matter has been examined & decided by the Board that the above requirements shall be kept in abeyance till 31st March, 2019. Therefore Tax Audit reports to be furnished on or after 20th August, 2018 but before 1st April, 2019 will not require reporting details relating to above clause.

Source: CBDT circular No. 6/2018- dated August 17, 2018

2. CBDT clarifies that immunity from penalty and prosecution obtained under the new penalty regime not to be adversely viewed to decide the same issue under the old penalty regime

CBDT vide Circular No. 5/2018 dated August 16, 2018, has clarified that if an application under immunity provision under the new penalty regime is made by a taxpayer for seeking immunity from penalty and prosecution, it shall not preclude the taxpayer from contesting the same issue in any earlier tax year falling under the old penalty regime. Further, the tax authority shall not take an adverse view in the penalty proceedings under the old penalty regime in earlier tax years merely on the ground that the taxpayer has acquiesced the issue in the later tax year by preferring immunity under the new penalty regime.

Source: CBDT circular No. 5/2018- dated August 16, 2018

3. Central Government notifies certain Boards for exemption of income u/s 10(46) of Income Tax Act

In exercise of the powers conferred by clause (46) of section 10 of the Income Tax Act, 1961 Central Government has notified Insolvency & Bankruptcy Board of India, New Delhi established by the Central Government and Madhya Pradesh Real Estate Regulatory Authority constituted by Government of Madhya Pradesh via CBDT notifications 38 and 39/2018 for exemption of specified income.

Specified income arising to notified bodies is as follows:

- In case of Insolvency & Bankruptcy Board of India
 - i. Grants-in-aid received from Central Government
 - ii. Fees received under the Insolvency and Bankruptcy Code, 2016
 - iii. Fines collected under the Insolvency and Bankruptcy Code, 2016
 - iv. Interest income accrued on (i), (ii) & (iii) above

- In case of Madhya Pradesh Real Estate Regulatory Authority
 - i. Registration fees received under the Real Estate (Regulation and Development) Act, 2016
 - ii. Application fees received under the Real Estate (Regulation and Development) Act, 2016
 - iii. Penalties for violation of provisions contained in the Real Estate (Regulation and Development) Act, 2016
 - iv. Late fee and compounding charges received under the Real Estate (Regulation and Development) Act, 2016
 - v. Grants-in-aid received from government
 - vi. Interest accrued on above amounts

However, the above income shall be exempt in the hands of specified boards subject to following conditions:

- i. shall not engage in any commercial activity;
- ii. activities and the nature of the specified income shall remain unchanged throughout the financial years and
- iii. shall file return of income in accordance with the provision of clause (g) of sub-section (4C) section 139

Source: CBDT Notification NO.38/2018 and Notification NO.39/2018 dated August 10, 2018

4. Supreme Court negates claim for 100% deduction for fresh five years of new units located in Himachal Pradesh undertaking “substantial expansion”

For units based in specified areas of the Northern states of Himachal Pradesh and Uttaranchal (‘specified areas’), S.80-IC allows a two-tier income-linked tax holiday at a prescribed percentage for 10 years viz., a full tax holiday (100%) for the first five years followed by a partial (25%/30%) tax holiday for the next five years. In contrast, the tax holiday measure for units located in Sikkim and the Northeastern states is the full 100% for 10 years.

Tax holiday is given either to: (a.) A new unit which begins to manufacture or produce qualifying articles or things; or (b.) An existing unit which implements “substantial expansion” between January 7, 2003 and March 31, 2012 in specified areas.

In the case of CIT vs. M/S. Classic Binding Industries [Civil Appeal No. 7208 of 2018 & Ors.], the Taxpayer started its business activity during the tax year 2005-06 by establishing a new unit in a specified area in Himachal Pradesh and claimed 100% deduction for the first five years from the initial assessment year (i.e., tax year 2005-06 to tax year 2009-10), which was allowed by the Tax Authority.

Subsequently, in tax year 2010-11 (sixth year), the Taxpayer undertook substantial expansion of the undertaking which was completed in the year 2011-12 (seventh year) and claimed 100% deduction for the entirety of the profits of the unit from tax year 2011-12 onwards by contending that it became entitled to a fresh five-year tax holiday period by virtue of completion of substantial expansion (but, limited to overall period of 10 years from the year of commencement of manufacture).

The SC ruled against the Taxpayer and denied enhanced claim of deduction of 100% for the seventh to the tenth year, by adopting the following reasoning:

When the aforesaid scheme and the spirit behind S.80-IC are kept in mind, such a situation cannot be countenanced where a taxpayer is able to secure deduction @ 100% for the entire period of 10 years. If this is allowed, it will violate S.80-IC to the extent it restricts deduction to 100% for the first five years and 25% for the next five years (or thirty per cent where the assessee is a company) within the overall limitation period of 10 years.

A pragmatic and reasonable interpretation of S.80-IC would be that once the “initial assessment year” commences and the taxpayer starts enjoying deduction by virtue of either commencing manufacture/production or completing substantial expansion within the specified period, there cannot be another “Initial assessment year” for the purposes of S.80-IC within the aforesaid period of 10 years, on the basis that it carried out substantial expansion in its unit.

Source: Supreme Court judgment in case of CIT vs. M/S. Classic Binding Industries [Civil Appeal No. 7208 of 2018 & Ors.] dated August 20, 2018

INDIRECT TAX

1. Seeks to prescribe the due dates for monthly filing of FORM GSTR-1 for those taxpayers whose aggregate turnover exceeds 1.5 crores.

It has been extended the time limit for furnishing of return in FORM GSTR-1 for the months from July 2018 to March 2019 till the 11th day of the succeeding month.

Source: – Vide Notification No 32/2018- Central Tax dated August 10, 2018

2. Seeks to extend the due dates for filing FORM GSTR-3B for the months of July, 2018 and August, 2018

Furnishing of return in FORM GSTR-3B for the period July’18 and August’18 has been extended to October 05, 2018 & October 10, 2018 for those registered persons in the State of Kerala, whose principal place of business is in Kodagu district in the State of Karnataka and in Mahe in the Union territory of Puducherry.

Source: – Vide Notification No 36/2018-Central Tax dated August 24, 2018

3. Exemption for payment of tax under section 9(4) of the CGST Act, 2017

Exemption has been provided from payment of tax for the inward supplies procured by a registered person from an un-registered dealer till September 30, 2019.

Source: – Vide Notification No 22/2018-Central tax (rate) dated August 6, 2018.

4. Seeks to exempt BCD & IGST on goods imported for donation for relief & rehabilitation of the people of Kerala.

Central Government has exempted all the goods falling under the 1st Schedule to the Customs Tariff Act, 1975 (51 of 1975), imported into India for donation to the people affected by the recent floods in the State of Kerala, subjected to certain conditions up to December 30, 2018.

Source: - Vide Notification No.59/2018-Customs dated August 21, 2018.

5. Clarification has been given for the activities performed by employees of corporate office for the units located in other states.

It has been clarified that employees at HO or Corporate office performing any functions for any other office / Branch in another State shall be considered a taxable supply between “distinct establishments” under the entry number of 2 Schedule I of the CGST Act, 2017.

Source: - Vide AR No. KAR ADRG 15/2018 dated July 27, 2018

COMPANY LAW

1. Notification of Companies (Accounts) Amendment Rules, 2018

The MCA, vide notification dated July 31, 2018, has amended the Companies (Accounts) Rules, 2014. The following changes come into effect from such notification date:

- i. Disclosure in Board report with respect to maintenance of cost records is mandatory
- ii. A Statement is required to be given in Board report regarding constitution of Internal Complaints Committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013
- iii. Abridged form of Board report for One Person Company and Small Company has been prescribed.

Source: http://www.mca.gov.in/Ministry/pdf/companisAccountsRules_31072018.pdf

2. Notification of Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2018

The MCA, vide notification dated August 07, 2018, has amended the Companies (Prospectus and Allotment of Securities) Rules, 2014. The following changes with respect to issue of shares on Private Placement basis come into effect from such notification date:

- i. Issuer is not permitted to utilize any monies raised through private placement till the allotment is completed and the return of allotment in Form PAS-3 is filed with the Registrar of Companies within 15 days of allotment of shares.
- ii. Requirement of filing Private Placement Offer Letter in Form GNL-2 with Registrar of Companies has been done away with.

- iii. Exemption provided from passing Shareholders resolution for issue of Non-Convertible Debentures.
- iv. Simultaneous issue of different securities has been permitted.
- v. Renunciation of right is no longer permitted.
- vi. There is no minimum allotment size. Earlier to this, the minimum allotment size was Rs. 20,000/-.
- vii. Penal provision for default is more stringent.

Source: http://www.mca.gov.in/Ministry/pdf/RuleProspectusSecurities07_08082018.pdf

3. Notification of Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2018

The MCA, vide notification dated August 21, 2018, has amended the Companies (Appointment and Qualification of Directors) Rules, 2014. With this Notification MCA has extended the due date of submission of DIR-3 KYC form till September 15, 2018.

Source: http://www.mca.gov.in/Ministry/pdf/AppointmentQualificationRule21_22082018.pdf

MCA, RBI & DGFT Notifications

1. Directors KYC – FORM DIR-3 KYC

Ministry issued these rules may be called the Companies (Registration of offices and Fees) Fourth Amendment Rules, 2018.

In the Companies (Registration Offices and Fees) Rules, 2014 the e-filing fees for e-form DIR-3 KYC for the current financial (2018-2019) shall not be chargeable till the 15th September, 2018 and fee of Rs.5000 shall be payable on or after the 16th September, 2018".

Source: http://www.mca.gov.in/Ministry/pdf/CoRegistrationRule21_22083018.pdf
dated August 21, 2018

2. Review of Internal Ombudsman Mechanism with Banks

In the Third Bi-monthly Monetary Policy Statement, 2018-19 for the month of August, the Monetary Policy Committee (MPC) decided to strengthening the internal grievance redressal mechanism at banks, select banks were advised in May 2015 to appoint Internal Ombudsman (IO) as the apex authority for redressal of customer complaints. Based on a review, it has been decided to enhance the independence of the IO while simultaneously strengthening the monitoring system over functioning of the IO mechanism. Revised instructions in this regard will be issued by the end of September 2018.

Source: https://www.rbi.org.in/Scripts/BS_ViewBulletin.aspx?Id=17701 dated Aug 10, 2018

3. Amendment in the Para 2.47 and Para 3.05 of Chapter-3 of FTP 2015-2020 Amendment of Import Policy of biofuels

In exercise of powers conferred by Section 3 of FT (D&R) Act, 1992, read with paragraph 1.02 and 2.01 of the Foreign Trade Policy, 2015-2020, as amended from time to time, the Central Government hereby amends the import policy of biofuels under Chapter 22, 27 and 38 of ITC (HS), 2017, Schedule-1 (Import Policy).

Source: <https://dgft.gov.in/sites/default/files/Notification%20No-27%28E%29.pdf> dated August 21, 2018

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