



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.

DIRECT TAX

Amendments, Notifications & Court Rulings

- » CBDT issues Final Notification for granting benefit of 10% LTCG for non-STT based shares acquisitions
- » Domestic law restrictions on allowability of expenses not applicable to Permanent Establishment absent specific provision in treaty

INDIRECT TAX

Amendments, Notifications & Court Rulings

- » Central Tax -Notification No.59/2018 dated October 26, 2018
- » Central Tax -Notification No.58/2018 dated October 26, 2018
- » Advance Ruling No. 13/AAR/2018 dated September 27, 2018
- » Advance Ruling No. KER/10/2018 dated September 26, 2018
- » Circular No.70/44/2018-GST dated October 26, 2018

COMPANY LAW

Amendments, Notifications & Court Rulings

- » Notification of Amendment to Schedule III of the Companies Act, 2013

MCA & RBI Notifications

- » Relaxation of additional fees and extension of last date of in filing of forms MGT-7 (Annual Return) and Aoc-4 (Financial statement) under the Companies Act, 2013 - State of Kerala
- » Master Direction - Fit and Proper Criteria for Sponsors - Asset Reconstruction Companies (Reserve Bank) Directions, 2018

DIRECT TAX

1. CBDT issues Final Notification for granting benefit of 10% LTCG for non-STT based shares acquisitions

The Finance Act, 2018 has replaced section 10(38) of the Income Tax Act, 1961 (the Act) which granted total exemption on long term capital gains (LTCG)

arising on transfer of equity shares, units of equity oriented mutual fund and units of business trust with a new section 112A. The new provision provides for taxation at the rate of 10% (as increased by applicable surcharge and cess) of such capital gains exceeding INR one lakh subject to certain conditions. Under the new provision, LTCG is computed after granting the benefit of cost step-up with respect to fair value as on January 31, 2018.

One of the conditions to avail the benefit of new provision is that Securities Transaction Tax (STT) is to be paid on acquisition as well as on transfer of equity shares. Further, the new provision empowers the Central Government to specify transactions of acquisition of equity shares in respect of which condition of payment of STT is relieved. Consequently, LTCG on such shares shall be taxable at the rate of 10% despite non-payment of STT on acquisition.

For notifying such transactions, the CBDT vide press release dated April 24, 2018 had issued a Draft Notification inviting comments/suggestions from stakeholders.

The CBDT has now issued the Final Notification under the new provision vide Notification No. 60/2018 dated October 1, 2018. This is akin to exemption available under exemption provision to non-STT based acquisitions as notified under Notification No. 43/2017 dated 5 June 2017.

The final notification has addressed few issues that arose out of draft notification. The final notification has extended the exemption to acquisition by following modes of transfer:

- Transfer of capital asset by a person to a firm or other Association of Persons (AOP) or Body of Individuals (BOI) in which he is or becomes a partner or member, by way of capital contribution or otherwise
- Transfer of capital asset by way of distribution of capital assets on the dissolution of a firm or other AOP or BOI or otherwise.

Source: CBDT Notification No. 60/2018/E. No.370142/9/2017-TPL dated October 1, 2018

2. Domestic law restrictions on allowability of expenses not applicable to Permanent Establishment absent specific provision in treaty

In a recent decision in the case of DDIT vs. Unocol Bharat Ltd., the Delhi bench of the Income-tax Appellate Tribunal (Tribunal) observed that the phraseology used in Article 7(3) of the India-Mauritius Double Taxation Avoidance Agreement (tax treaty) provides for deduction of expenses incurred for the purpose of business of the permanent establishment (PE) without any restrictions on applying the limitation of domestic tax law. In the absence of such restrictions, the limitation under the Income-tax Act, 1961 (the Act) could not be imported under the said Article of the tax treaty.

The taxpayer a Mauritius tax resident was engaged in business development and promotion in the energy sector in India for its parent company and constituted a

PE in terms of Article 5 of the India-Mauritius tax treaty. Accordingly, its income was offered to tax on net basis.

The taxpayer had incurred certain expenses relating to operating contract, employee salaries and travel and entertainment. The Assessing Officer observed that, the taxpayer did not withhold any taxes under section 195 of the Act and accordingly disallowed the aforesaid expenditure.

The Tribunal observed that Para 3 of Article 7 of India-Mauritius tax treaty provides for the determination of profits of a PE by allowing the deduction of expenses incurred for the business of the PE, including executive and general administrative expenses so incurred in which the PE was situated.

The phraseology used in Article 7 (3) is different from other treaties, for instance, Article 7(3) of the India-US tax treaty provides that the deduction of expenses incurred for the purpose of business of the PE would be in accordance with provisions subject to the limitation of the tax laws of that State. A similar phraseology has been used in the India-UAE tax treaty after the protocol.

Once no such restriction has been provided in a tax treaty for applying the limitation of the domestic tax laws, such limitation under the Indian Income-tax Act cannot be imported in such an Article.

If the expenditure was incurred, it had to be allowed while computing the profit and loss of the PE in full and without any restriction of deductibility, as per the provision of the Act.

Source: DDIT vs. Unocol Bharat Ltd [ITA No.:- 1388/Del/2012] dated October 5, 2018

INDIRECT TAX

1. Seeks to extend the time limit for furnishing the declaration in FORM GST ITC-04

The due date for filing FORM GST ITC-04 in respect of goods dispatched to or received from a job worker or sent from one job worker to another during the period July, 2017 to September, 2018 has been extended to December 31, 2018.

Source: Vide Notification No 59/2018- Central Tax dated October 26, 2018

2. Government notifies due date pertaining to final return for persons with cancelled registration

It has been notified that December 31, 2018 as the due date for furnishing final return in FORM GSTR-10 for such class of persons whose registration been cancelled under CGST Act, 2017 on or before September 30, 2018.

Source: Vide Notification No 58/2018-Central Tax dated October 26, 2018

3. Clarification regarding the eligibility of ITC charged by property consultant in respect of brokerage services

It is held that input tax credit of the CGST & SGST charged by the property consultant is eligible to avail for real estate brokerage services for renting of property, subject to conditions as per Section 16, 17 and 18 of the CGST & SGST Act.

Source: Vide Advance Ruling No13/AAR/2018 dated September 27, 2018

4. Clarification regarding ITC eligibility on purchase of motor car for demo purpose

It is clarified that input tax paid by a vehicle dealer on purchase of motor car used for demonstration purpose of the customer can be availed as input tax credit on capital goods and set off against output tax payable under GST.

Source: Vide Advance Ruling No. KER/10/2018 dated September 26, 2018

5. Clarification has been given with respect to certain issues related to refund.

It has been clarified that taxpayers would be required to submit the rectified refund application under the earlier Application Reference Number only, since the common portal does not allow a tax payer to file fresh application for refund once a deficiency memo has been issued against an earlier refund application for the same period.

Source: Vide Circular No 70/44/2018-GST dated October 26, 2018

COMPANY LAW

1. Notification of Amendment to Schedule III of the Companies Act, 2013

The MCA, vide notification dated October 11, 2018, has amended the Schedule III of the Companies Act, 2013. This change impacts the face of the Balance Sheet, Statement of changes in Equity and Notes to the Financial Statements. Many changes are clarificatory in nature whereas others require additional disclosures.

Source: http://www.mca.gov.in/Ministry/pdf/NotificationScheduleIII_12102018.pdf

MCA & RBI Notifications

1. Relaxation of additional fees and extension of last date of in filing of forms MGT-7 (Annual Return) and Aoc-4 (Financial statement) under the Companies Act, 2013- State of Kerala

Keeping in view the requests received from various stakeholders stating that due to heavy rains and floods in the State of Kerala, the normal life/work was affected, it has been decided to relax the additional fees payable to companies having registered office in the State of Kerala on e-forms AOC-4, AOC (CFS) AOC-4 XBRL and e-Form MGT-7 upto 31.12.2019, wherever additional fee is applicable.

Source: http://www.mca.gov.in/Ministry/pdf/GeneralCircularKerala_05102018.pdf dated October 05, 2018

2. Master Direction - Fit and Proper Criteria for Sponsors - Asset Reconstruction Companies (Reserve Bank) Directions, 2018

In exercise of the powers conferred by clause (f) of sub-Section 3 of Section (3) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (the Act) and of all the powers enabling it in this behalf, Reserve Bank of India (the Bank) hereby issues the Directions on Fit and Proper Criteria for Sponsors of Asset Reconstruction Companies (ARCs) registered under the Act.

Source: <https://rbidocs.rbi.org.in/rdocs/notification/PDFs/66MD251018F4877BBAD69542BC8E7CE352C780B709.PDF> dated October 25, 2018

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