



The key amendments introduced in statutes, policies and procedures in respect of Direct Tax, Indirect Tax, Company Law, Ministry of Corporate Affairs, Reserve Bank of India & Directorate General of Foreign Trade related matters are summarized hereunder.

DIRECT TAX

Amendments, Notifications & Court Rulings

- » DIPP relaxes conditions for exempting “start-ups” from “angel tax” for past and proposed issue of shares
- » CBDT withdraws its recent clarification Circular on non-applicability of gift taxation provisions on primary issue of shares of specified company

INDIRECT TAX

Amendments, Notifications & Court Rulings

- » Circular No. 79/53/2018 –GST dated December 31, 2018
- » Circular No. 77/51/2018 –GST dated December 31, 2018
- » Removal of Difficulties Order No. 02/2018-Central Tax dated December 31, 2018
- » Notification No. 78/2018-Central Tax dated December 31, 2018
- » Notification No. 29/2018-Central Tax (Rate) dated December 31, 2018

COMPANY LAW

Amendments, Notifications & Court Rulings

- » Notification on the Companies (Amendment) Ordinance, 2019
- » Notification on Companies (Furnishing of Information about payment to micro small enterprise suppliers) Order, 2019
- » Notification on Companies (Acceptance of Deposits) Amendment Rules, 2019
- » Notification on Companies (Prospectus and Allotment of Securities) Amendment Rules, 2019

MCA, RBI & DGFT Notifications

- » Companies (Acceptance of Deposits), Amendment Rules, 2019
- » Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order, 2019
- » The Companies (Amendment) Ordinance, 2019
- » External Commercial Borrowings (ECB) Policy – New ECB Framework
- » Amendment in the para 4.41 and 4.16 (ii) of Chapter 4 of FTP 2015-2020

DIRECT TAX

1. DIPP relaxes conditions for exempting “start-ups” from “angel tax” for past and proposed issue of shares

Department of Industrial Policy and Promotion (DIPP) of Ministry of Commerce and Industry of Government of India through Notification No. G.S.R. 34(E) on January 16, 2019 (2019 Notification) provides relaxation to the recognized “start-ups” in the conditions and procedures for availing relief from “angel tax”.

Section 56(2)(viib) of the Income Tax Act, 1961 provides that when a closely held company issues shares (including preference shares) to a resident at a premium and receives consideration which is in excess of fair market value (FMV) of shares, the amount received in excess of the FMV is assessed as “Income from other sources” in the year of issue of shares by the company and subject to tax (angel tax).

By way of exception, this provision does not apply to (a) shares issued by a venture capital undertaking to Venture Capital Fund or Venture Capital Company and (b) shares issued to class or classes of persons notified by the Central Government (CG).

Accordingly, the CG vide Notification No. 45/2016 dated June 14, 2016 notified that this provision shall not apply when shares are issued to a resident by a “start-up” company which is a closely held company and fulfils conditions specified in Notification issued by DIPP on February 17, 2016.

DIPP issued Notification No. G.S.R. 364(E) dated April 11, 2018 (2018 Notification) which set out (a) revised eligibility conditions and procedure for recognition as “start-up” for regulatory purposes and (b) revised conditions and procedure for availing tax benefits.

The DIPP has further issued the 2019 Notification amending the prior 2018 Notification with regard to conditions and procedure to obtain exemption from angel tax as follows:

- Approving authority and timeline – As per existing procedure, Inter-Ministerial Board grants or declines approval for “angel tax” exemption and there is no specific timeline prescribed. As per the 2019 Notification, the Central Board of Direct Taxes (CBDT) shall grant or decline approval within a timeline of 45 days of receipt of documents from DIPP.
- Merchant Banker’s valuation report dispensed – No requirement to obtain merchant banker’s valuation report specifying FMV of shares although valuation will need to be justified on other basis.
- Conditions for qualifying resident investor modified – Currently, the conditions for qualifying conditions for qualifying resident investor modified from (a) average returned income of INR 2.5 million or more in preceding three financial years (FY) or net worth of INR 20 million as on last day of preceding FY to (b) returned income of INR 5 million or more in preceding FY and net worth being higher of INR 20 million or amount

of investment as on last day of preceding FY. Thus, the resident investor will have to fulfil both income and net worth parameters on cumulative basis. These conditions are stricter than existing requirements.

- Resident investor to directly furnish documents to DIPP – Resident investor to submit copies of income-tax return and net worth certificate directly to DIPP instead of routing through “start-ups”.
- Past issue of shares covered unless demand already raised – Currently, the approval can be taken only for proposed issue of shares to a resident. The 2019 Notification makes it possible to seek approval for past issues also but application cannot be made if assessment order has been passed by the Tax Authority for the relevant FY. Thus, the approval can be sought for past issues only where assessments are still pending.

The 2019 Notification merely modifies the conditions and procedure in the 2018 Notification for availing approval for “angel tax” exemption. It does not modify conditions for other direct tax benefits granted to “start-ups” like profit-linked deduction.

Source: Notification No. G.S.R. 34(E) [F.NO. 5(4)/2018-SI], dated January 16, 2019

2. CBDT withdraws its recent clarification Circular on non-applicability of gift taxation provisions on primary issue of shares of specified company

Income tax Act, 1961 under section 56(2)(viiia) provided for gift taxation in the hands of a firm and closely held company (specified company) on receipt of shares of another specified company without consideration or at a price less than its fair market value (FMV) by INR 50,000 or more subject to certain exceptions for specified business reorganizations.

This provision operated during June 1, 2010 to March 31, 2017 before it was consolidated with another gift taxation provision, 56(2)(x) w.e.f. April 1, 2017 which is wider in its scope and applies to all categories of taxpayers uniformly including in relation to receipt of shares of specified company.

Central Board of Direct Taxes (CBDT) Circular No. 10/2018 dated December 31, 2018 (2018 Circular):

The CBDT, vide the 2018 Circular, clarified that the erstwhile Gift tax provision under section 56(2)(viiia) will not apply to a case of receipt of shares by the specified company or firm as a result of primary issuance of shares including by way bonus issue, rights issue and preference shares or transactions of similar nature.

CBDT withdraws 2018 Circular vide Circular No. 2/2019 dated January 4, 2019:

Post issuance of the 2018 Circular, stakeholders approached the CBDT to seek clarification as to whether the guidelines provided therein pertaining to erstwhile Gift tax provision shall also apply in the context of the present Gift tax provision. The CBDT noted that the interpretation of the term “receive” used under the erstwhile Gift tax provision is pending for adjudication before the higher judicial forums and thereby withdrew the 2018 Circular with retrospective effect and clarified that a comprehensive circular governing the provisions of Gift tax shall be issued in due course.

CBDT provides further clarification vide Circular No. 3/2019 dated January 23, 2019:

The CBDT, vide Circular No. 3/2019 has further clarified that view, as was taken in 2018 Circular that section 56(2)(viiia) of the Act would not apply to fresh issuance of shares, would not be a correct approach, as it could be subject to abuse and would be contrary to the express provisions and the legislative intent of section 56(2)(viiia) or similar provisions contained in section 56(2) of the Act.

Therefore, any view expressed by the Board in 2018 Circular shall be considered to have never been expressed and accordingly, the said circular shall not be taken into account by any Income-tax authority in any proceedings under the Act.

Source: Circular No. 03/2019 [F.NO. 173/616/2018-ITA-I] dated January 23, 2019

INDIRECT TAX

1. Seeks to give clarification on certain refund related issues

CBIC clarifies certain refund related issues such as,

- Physical submission of refund claims with jurisdictional proper officer
- Calculation of refund amount for claims of refund of accumulated Input Tax Credit (ITC) on account of inverted duty structure
- Refund of accumulated ITC of input services and capital goods arising on account of inverted duty structure
- Disbursal of refund after sanction
- Refund applications that have been generated on the portal but not physically received in the jurisdictional tax offices
- Issues related to refund of accumulated Input Tax Credit of Compensation Cess
- Non-consideration of ITC of GST paid on invoices of earlier tax period availed in subsequent tax period
- Misinterpretation of the meaning of the term “inputs”

Source: Vide Circular No. 79/53/2018 –GST dated December 31, 2018

2. Seeks to give clarity on denial of composition option by tax authorities and effective date thereof

CBIC clarified that in a case where the taxpayer has sought withdrawal from the composition scheme, the effective date shall be the date indicated by him in his intimation/application filed in FORM GST CMP-04 but such date may not be prior to the commencement of the financial year in which such intimation/application for withdrawal is being filed. If at any stage it is found that he has contravened any of the provisions of the CGST Act or the CGST Rules, action may be initiated for recovery of tax, interest and penalty. In case of denial of option by the tax authorities, the effective date of such denial shall be from a date, including any retrospective date as may be determined by tax authorities, but shall not be prior to the date of contravention of the provisions of the CGST Act or the CGST Rules.

Source: Circular No. 77/51/2018 –GST dated December 31, 2018

3. Seeks to extend the due date for availing ITC and for rectifying error or omission in respect of the details furnished in GSTR-1 pertaining to FY 2017-18

CBIC extends the due date for availing ITC on the invoices or debit notes relating to such invoices issued during the FY 2017-18 and for rectifying error or omission in respect of the details furnished in GSTR-1 pertaining to FY 2017-18 by inserting the following provisos in sub-section (4) of section 16 of the CGST Act, 2017 and in sub-section (3) of section 37 of the CGST Act, 2017-

Proviso-1: “Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.”

Proviso-2: “Provided further that the rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after furnishing of the return under section 39 for the month of September, 2018 till the due date for furnishing the details under subsection (1) for the month of March, 2019 or for the quarter January, 2019 to March, 2019.”

Source: Vide Removal of Difficulty Order No. 02/2018-Central Tax dated December 31, 2018

4. Seeks to extend the due date for furnishing FORM ITC-04 for the period from July, 2017 to December, 2018

CBIC extends the time limit for furnishing the declaration in FORM GST ITC-04 in respect of goods dispatched to a job worker or received from a job worker, during the period from July, 2017 to December, 2018 till March 31, 2019.

Source: Notification No. 78/2018-Central Tax dated December 31, 2018

5. Seeks to amend notification No. 13/2017- Central Tax (Rate) so as to specify services to be taxed under Reverse Charge Mechanism (RCM)

Three services have been specified to be taxed under Reverse Charge Mechanism:

- Services provided by business facilitator (BF) to a banking company, located in the taxable territory
- Services provided by an agent of business correspondent (BC) to business correspondent (BC), located in the taxable territory
- Security services (services provided by way of supply of security personnel) provided by any person other than a body corporate to a registered person, located in the taxable territory

Source: Notification No. 29/2018-Central Tax (Rate) dated December 31, 2018

COMPANY LAW

1. Companies (Amendment) Ordinance, 2019 – Publication of notification dated January 14, 2019

With the notification of the Companies (Amendment) Ordinance, 2019, the Companies (Amendment) Ordinance, 2018 will cease to operate on the January 21, 2019 and Companies (Amendment) Ordinance, 2019 deemed to have come into force on the November 02, 2018.

Following key changes will come into effect from this notification:

- Declaration of commencement of business for newly incorporated Companies to be filed with Registrar of Companies (RoC) within 180 days from the date of incorporation.
- If the Registrar has reasonable cause to believe that the Company is not carrying on any business or operations, he may cause a physical verification of the registered office, if default is found, he may initiate action for removal of the name of the Company from the Register of Companies.
- Application under section 14 for conversion of Public Company into Private Company to be filed with Regional Director instead of National Company Law Tribunal (NCLT).
- In case of any charges created on or after the commencement of this notification, intimate to RoC within a period of 60 days of creation instead of 300 days earlier.
- Filing of resolutions (Board Meeting or General Meeting) – If a Company fails to file resolutions within 30 days of meeting, such Company shall be liable to a penalty of Rs. 1,00,000/- with a further penalty of Rs. 500/- each day after the first during which such failure continues.

Source: http://www.mca.gov.in/Ministry/pdf/NotificationCAO2019_15012019.pdf

2. Companies (Furnishing of Information about payment to micro small enterprise suppliers) Order, 2019 - Publication of notification dated January 22, 2019

The MCA vide notification number S.O. 5622(E), dated November 02, 2018 has directed that all companies (1) who are securing supplies of goods and services/ availing services from MSME suppliers under the MSME Act, 2006 and (2) whose payments to such MSME suppliers exceed the period beyond 45 days from the date acceptance/deemed acceptance of such supplies, are required to submit a half yearly return with MCA. The return shall specify as follows:

- The amount of payments due;
- Reasons for delay

Further, the said return would need to be filed as follows:

- For the period from April – September: By October 31th of every year;
- For the period from October – March: By April 30th of every year;

- Existing companies are also required to comply with this requirement within 30 days from the date of publication of the notification (i.e. by 20 February 2019 presently).

Source: http://www.mca.gov.in/Ministry/pdf/MSMES_pecified_Companies_22012019.pdf

3. Companies (Acceptance of Deposits) Amendment Rules, 2019 - Publication of notification dated January 22, 2019

The MCA in consultation with the Reserve Bank of India (RBI), hereby makes the following rules further to amend the Companies (Acceptance of Deposits) Rules, 2014.

Following key changes will come into effect from this notification:

Total amounts of outstanding money or loan received by a company but not considered as deposits in terms of rule 2(1)(c) of the Companies (Acceptance of Deposits) Rules, 2014 as specified in rule 16(A)(3).

Rule 16(A)(3) specifies: Every company other than Government company shall file a onetime return of outstanding receipt of money or loan by a company but not considered as deposits, in terms of clause (c) of sub-rule 1 of rule 2 from the April 01, 2014 to the date of publication of this notification in the Official Gazette, as specified in Form DPT-3 within ninety days from the date of said publication of this notification.

Source: http://www.mca.gov.in/Ministry/pdf/AcceptanceDeposits_Amendment_Rule_22012019.pdf

4. Companies (Prospectus and Allotment of Securities) Amendment Rules, 2019 - Publication of notification dated January 22, 2019

The MCA wide notification dated September 10, 2018, inserted clause 9A to the Companies (Prospectus and Allotment of Securities) Rules, 2014 and directed:

Every unlisted public company shall –

- Issue the securities only in dematerialized form; and
- Facilitate dematerialization of all its existing securities in accordance with provisions of the Depositories Act, 1996 and regulations made thereunder.

Every holder of securities of an unlisted public company

- who intends to transfer such securities on or after October 02, 2018, shall get such securities dematerialized before the transfer; or
- who subscribes to any securities of an unlisted public company (whether by way of private placement or bonus shares or rights offer) on or after October 22, 2018 shall ensure that all his existing securities are held in dematerialized form before such subscription.

The MCA hereby makes the following rules further to amend the Companies (Prospectus and Allotment of Securities) Rules, 2014, wide notification dated January 22, 2019, Companies (Prospectus and Allotment of Securities) Amendment Rules, 2019:

This rule (9A) shall not apply to an unlisted public company which is:

- a Nidhi
- a Government company or
- a wholly owned subsidiary

Source: <http://ebook.mca.gov.in/notificationdetail.aspx?acturl=6CoJDC4uKVUR7C9Fl4rZdatyDbeJTqg3QbCE6BDEeZD9HmrlqDD3S4Ex+buWEy+t>

MCA & RBI Rules and Notifications

1. Companies (Acceptance of Deposits), Amendment Rules, 2019

Every company other than Government company shall file a onetime return of outstanding receipt of money or loan by a company but not considered as deposits, in terms of clause (c) of sub-rule 1 of rule 2 from the 01st April, 2014 to the date of publication of this notification in the Official Gazette, as specified in Form DPT-3 within ninety days from the date of said publication of this notification along with fee as provided in the Companies (Registration Offices and Fees) Rules, 2014.

Source: http://www.mca.gov.in/Ministry/pdf/AcceptanceDepositsAmendmentRule_22012019.pdf dated January 22, 2019

2. Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order, 2019

The Central Government vide notification number S.O. 5622(E), dated the 2nd November, 2018 has directed that all companies, who get supplies of goods or services from micro and small enterprises and whose payments to micro and small enterprise suppliers exceed forty five days from the date of acceptance or the date of deemed acceptance of the goods or services as per the provisions of section 9 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006) (hereafter referred to as “Specified Companies”), shall submit a half yearly return to the Ministry of Corporate Affairs stating the following:

- the amount of payment due; and
- the reasons of the delay;

And whereas, in exercise of power under section 405 of the Companies Act, 2013, (18 of 2013) the Central Government, considers it necessary to require “Specified Companies” to furnish above information under said section of the Act.

Now, therefore, in exercise of the powers conferred by section 405 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes Order.

Source: http://www.mca.gov.in/Ministry/pdf/MSMESpecifiedCompanies_22012019.pdf dated January 22, 2019

3. The Companies (Amendment) Ordinance, 2019

In exercise of the powers conferred by clause(1) of article 123 of the Constitution, the President is pleased to promulgate the Ordinance.

Source: http://www.mca.gov.in/Ministry/pdf/NotificationCAO2019_15012019.pdf dated January 12, 2019

4. External Commercial Borrowings (ECB) Policy – New ECB Framework

It has been decided, in consultation with the Government of India, to rationalise the extant framework for ECB and Rupee Denominated Bonds in light of the experience gained to improve the ease of doing business.

Source: <https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NT1096DD257F73C9F4BD280F9C2A2CAD084F1.PDF> dated January 16, 2019

5. Amendment in the para 4.41 and 4.16 (ii) of Chapter 4 of FTP 2015-2020

In exercise of powers conferred by Section 5 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 makes the amendments in the Foreign Trade Policy 2015-2020.

Source: http://dgft.gov.in/sites/default/files/Notification%20No.%2053%20English%2010-01-2019_0.pdf dated January 10, 2019

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