

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 hereunder.

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DIRECT TAX

1. Clarifications in respect of section 269ST of the Act – mode of undertaking transactions

With a view to promote and encourage digital economy, a new section 269ST in the Act was inserted by Finance Act, 2017, restricting persons to enter into cash transactions of more than Rs.2 Lakhs (with certain exceptions) and encouraging digital mode of payment with provision for stringent penalty for violation. Consequent to representations from non-banking financial companies (NBFCs) and housing finance companies (HFCs), CBDT has clarified that in respect of receipt in the nature of repayment of loan by NBFCs or HFCs, the receipt of one installment of loan repayment in respect of a loan shall constitute a 'single transaction' as specified in clause (b) of section 269ST of the Act and all the installments paid for a loan shall not be aggregated for the purpose of determining applicability of the provisions of section 269ST.

Source: Circular No. 22/2017, dated July 03, 2017.

2. Launch of Aaykar Setu – e-initiative by CBDT

CBDT in line with its initiative of providing better tax payer services and digitalization of the processes has launched another e-initiative in the form of "AAYKAR SETU" (a software application developed for smartphones and tablets) to directly communicate with the taxpayers, on a range of multiple informative and useful tax services aimed at providing tax information at their fingertips. The app is currently available on the Android platform, but the CBDT plans to make it available as a desktop service as well.

The module compiles various tax tools, live chat facility, dynamic updates, and important links to various processes within the ITD in a single module. The tax payers will also be able to receive regular updates regarding important tax dates, forms and notifications on mobile numbers registered with the ITD. In this regard, all taxpayers who wish to receive such SMS alerts are advised to register their mobile numbers in the Aaykar Setu module.

Source: Press release by CBDT dated July 10, 2017.

3. ITD pushes additional cases of High Cash Deposits in second phase of operation clean money

After the first phase, wherein Rs.17.92 lakhs persons had been identified for e-verification of large cash deposits. ITD started another phase based on the information received in the statement of financial transactions. Accordingly, Rs.5.56 lakhs persons were identified in this phase for operation clean money.

The information in respect of the cases and accounts identified has been made available in the e-filing window of the PAN holder at the portal <https://incometaxindiaefiling.gov.in>. The PAN holder can view the information using the link "Cash Transactions 2016" under "Compliance" section of the portal. The taxpayer will be able to submit online explanation without any need to visit Income Tax office. All identified persons are being informed through Email and SMS for submitting response online

Source: Press release by CBDT, dated July 14, 2017.

4. Optional reporting facility in ITR of foreign bank account by the non-residents in refund cases

In the income tax return form it is mandatory to provide one bank account even for non-residents. Presently, ITD is issuing refunds by way of direct credit into the bank account or through issue of Demand Draft in favour of assessee (after mentioning bank account number on the draft). However, there is no facility to report foreign bank account for the purpose of refund.

CBDT after considering various representations from the non-residents has provided facility to mention details of one foreign bank account in the return form for the non-resident tax payers claiming refund and does not have any bank account in India.

Following is the screenshot from the income tax return form to insert foreign bank account.

(ii)	Non-residents, who are claiming income-tax refund and not having bank account in India may, at their option, furnish the details of one foreign bank account				
	SL No	IBAN/SWIFT Code	Name of Bank	Country of Location	Account Number
	1				

Source: Clarification by Ministry of Finance dated July 24, 2017.

5. Clarification on non-deduction of tax on the amount of GST

CBDT vide circular no. 1 of 2014 dated January 13, 2014 clarifies that tax under chapter XVII-B is not required to be deducted in case of payment to residents on the amount of service tax component, if the same is indicated separately.

In continuation with the rationale of the above circular and with the introduction of the GST from July 01, 2017, CBDT vide circular no. 23 of 2017 dated July 19, 2017 clarifies that wherever, in the agreement / contract between the payer and the payee, if the 'GST on services' component is separately indicated, in that case, tax shall be deducted at source under chapter XVII-B of the Act on the amount paid / payable without including such 'GST on services' component. GST for these purposes shall include 'Integrated Goods and Services Tax', 'Central Goods and Services Tax', 'State Goods and Services Tax' and 'Union Territory Goods and Services Tax'.

Source: Circular No. 23/2017, dated July 19, 2017.

6. Minimum deposit amount for grant of stay at first appeal stage increased to 20% from existing 15%

As per the guidelines issued by CBDT vide Office Memorandum ('OM') dated February 29, 2016, in a case where the outstanding demand is disputed before Commissioner of Income Tax (Appeals), the Assessing Officer ('AO') shall grant stay of demand till disposal of first appeal on payment of 15% of the disputed demand.

Based on feedback received from the field authorities and in view of the Board's efforts to contain over pitched assessments through several measures resulting in fairer and more reasonable assessment orders, the standard rate of 15% of the disputed demand has been found to be on the lower side. Accordingly, it has been decided that the standard rate prescribed in the OM dated February 29, 2016 be

revised to 20% of the disputed demand, where the demand is contested before Commissioner of Income Tax (Appeals). Thus all references to 15% of the disputed demand in the aforesaid OM dated February 29, 2016 hereby stand modified to 20% of the disputed demand. Other guidelines contained in the OM dated February 29, 2016 shall remain unchanged.

Source: F.NO.404/72/93-ITCC, dated July 31, 2017.

INDIRECT TAX

1. Exporters can furnish Letter of Undertaking ('LUT')

Following registered exporters can furnish LUT instead of Bond for export of goods or services:

- (i) Status holder exporters recognized as an Export House by the Director General of Foreign Trade ('DGFT') or
- (ii) Received foreign inward remittances, minimum value of which is 10% of export turnover, but not be less than INR 10 Million, in preceding financial year

Exporter should not have been prosecuted for offence under Central Goods and Services Tax Act, 2017

The LUT shall be furnished in duplicate. The exporter to pay tax along with interest, in case the goods are not exported or service remittance not received within the specified period.

Source: Vide Notification No. 16/2017-Central Tax dated July 7, 2017

2. Harmonised System of Nomenclature ('HSN') to be mentioned on tax invoice

Registered person having specified annual turnover in the preceding financial year ('FY') to mention HSN Codes in the tax invoice

Turnover in preceding FY (INR)	No. of digits of HSN Code
Up to 15 Million	None
Between 15 Million and 50 Million	2
More than 50 Million	4

Source: – Vide Notification No. 12/2017 – Central Tax dated June 28, 2017

3. GST leviable on excisable goods

Excisable goods, except petroleum crude, high speed diesel, petrol, natural gas, aviation turbine fuel, tobacco and tobacco products, will be exempt from excise duty, subject to conditions:

- a) Goods manufactured on or before the June 30, 2017, not cleared from factory before July 1, 2017; and
- b) Applicable GST shall be payable on such goods, if cleared on or after July 1, 2017.

Source: – Vide Notification No. 12/2017 – Central Excise Act dated June 30, 2017

4. Goods imported by SEZ developer exempt from GST

Exemption from Integrated Goods and Services Tax ('IGST') for goods imported by an unit or developer in the Special Economic Zone ('SEZ') for authorized operations.

Source: – Vide Notification No. 64/2017 – Customs Act dated July 5, 2017

COMPANY LAW

1. Notification of National Company Law Tribunal (Amendment) Rules, 2017

The MCA vide Notification dated July 05, 2017 has amended the National Company Law Tribunal Rules, 2016. With this Notification following changes would come into effect:

The Companies which are struck off by Registrar of Companies can now make an application to the Tribunal for Restoration of the Company in a manner as specified in the detailed Notification.

Source: [http://mca.gov.in/Ministry/pdf/National Company Law Tribunal Amdt Rules_06072017.pdf](http://mca.gov.in/Ministry/pdf/National%20Company%20Law%20Tribunal%20Amdt%20Rules_06072017.pdf).

2. Notification of Amendment to Schedule IV of the Companies Act, 2013

The MCA vide Notification dated July 05, 2017 has amended the Schedule IV of the Companies Act, 2013.

Source: http://mca.gov.in/Ministry/pdf/AmendmentIV_06072017.pdf.

3. Notification of the Companies (Meetings of Board and its Powers) Amendment rules, 2017

The MCA vide Notification dated July 05, 2017 has amended the Companies (Meetings of Board and its Powers) Rules, 2014. With this Notification following changes would come into effect:

Any director who intends to participate in the meeting through electronic mode may intimate about such participation at the beginning of the calendar year and such declaration shall be valid for one year. However the same will not debar him from participation in the meeting in person after intimating in advance of his intention to participate in person.

Source: [http://mca.gov.in/Ministry/pdf/Companies Meeting Board Powers Second Rules_14072017.pdf](http://mca.gov.in/Ministry/pdf/Companies%20Meeting%20Board%20Powers%20Second%20Rules_14072017.pdf).

4. General Circular on Clarification regarding exemption given to certain private Companies regarding disclosure in Auditors report with respect to adequacy of Internal Financial Control

The MCA vide General Circular dated July 25, 2017 has clarified the applicability of Notification dated June 13, 2017. With this Notification following changes would come into effect:

It is hereby clarified that the exemption shall be applicable for those audit reports in respect of financial statements pertaining to financial years commencing on or after April 01, 2016, which are made on or after the date of the said notification.

Source: http://mca.gov.in/Ministry/pdf/GeneralCircular8_25072017.pdf.

5. Notification of Companies (Incorporation) Second Amendment Rules, 2017

The MCA vide Notification dated July 27, 2017 has amended the Companies (Incorporation) Rules, 2014. With this Notification following changes would come into effect:

The Ministry has simplified the procedure to be followed for Shifting of registered office of the Company within the same state and from one state to another state.

Source: [http://mca.gov.in/Ministry/pdf/Companies Incorporation Second Amendment Rules2017.pdf](http://mca.gov.in/Ministry/pdf/Companies%20Incorporation%20Second%20Amendment%20Rules2017.pdf).

FEMA & OTHER LAWS

1. DIPP Issues Standard Operating Procedure For Processing FDI Proposals

Background

Post abolition of Foreign Investment Promotion Board (FIPB) by Government of India vide cabinet meeting held on May 24, 2017, Department of Industrial Policy & Promotion (DIPP) has released a Standard Operating Procedure (SOP) dealing with procedure, time limits and monitoring mechanism for proposals to be presented before concerned administrative ministry/ department (Competent Authority) involving FDI under approval route.

Application process & time limits

SOP envisages the following procedure for processing FDI applications:

- i. FDI proposals under the approval route would be filed on Foreign Investment Facilitation Portal (FIFP). The same shall be forwarded to the Competent Authority within 2 days of receipt.
- ii. The Competent Authority shall scrutinise the proposal and documents within 1 week and requisition relevant additional information/documents, if required.
- iii. Additional security clearance from Ministry of Home Affairs (MHA) is required for below sectors:
 - a. Broadcasting, Telecommunication, Satellites - establishment and operation, Private Security Agencies, Defence, Civil Aviation and Mining & mineral separation of titanium bearing minerals and ores, its value addition and integrated activities.
 - b. Investments from Pakistan and Bangladesh.
- iv. SOP provides for a time frame of 8 – 10 weeks (depending on requirement of security clearance from MHA) for approving FDI proposals. However, this time frame may fluctuate depending upon comments by respective authorities.

- v. On completion of the proposal in all respects, the Competent Authority shall process the FDI proposal for final decision and intimate the same to the applicant electronically.
- vi. DIPP has been granted an additional time of 2 weeks to consider the proposals which are proposed to be rejected or where additional conditions are proposed to be imposed by the Competent Authority.
- vii. Proposals involving total foreign equity inflow of more than INR 50,000 million are required to be placed for consideration of Cabinet Committee on Economic Affairs as per timelines mentioned in SOP.

Source: <http://fipb.gov.in/> Public Notice No. 1/8/2016-FC-1 dated June 29, 2017.

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