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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.

CONTENTS AT A GLANCE

DIRECT TAX

1. Notification in respect of section 9A of the Income Tax Act, 1961 ('the Act')

Section 9A of the Act provides for a special regime in respect of offshore funds. It provides that in the case of an eligible investment fund, the fund management activity carried out through an eligible fund manager acting on behalf of such fund shall not constitute 'business connection' in India of the said fund. Sub-section (3) of section 9A provides conditions for eligibility of the fund. These conditions, inter-alia, are related to residence of fund, corpus size, investor base, investment diversification and payment of remuneration to fund manager at arm's length.

Proviso to subsection (3) specifies that clauses (e), (f), (g) which stipulates the minimum membership criteria (clause e), limits on individual member's interest (clause f) and aggregate interest of members in the fund (clause g), shall not apply to investment fund set up by government, or the central bank of foreign state or sovereign fund or other fund as may be specified by notification. In this connection, central government hereby notifies that the conditions specified in clauses (e), (f) and (g) of said sub-section shall not apply in case of an investment fund set up by a Category-I or Category-II foreign portfolio investor registered under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014, made under the Securities and Exchange Board of India Act, 1992 (15 of 1992).
Source: Notification No 77/2017 F. No. 142/15/2015-TPL dated August 03, 2017

2. Bonds issued by Indian Railway Finance Corporation Limited redeemable after 3 years notified as 'Long term specified asset' for the purpose of section 54EC.

Long term capital gain on sale of an asset is exempt from tax, inter alia, if the capital gain is invested in long term specified asset within six months from the date of sale. Currently, any bond redeemable after three years issued by National Highways Authority of India or by the Rural Electrification Corporation Limited or by Power Finance Corporation Limited (on or after 15th June 2017) fall in the category of long term specified asset. Bonds issued by Indian Railway Finance Corporation Limited (IRFC) on or after 8th August, 2017 which are redeemable after three years are also added to the list of long term specified asset and accordingly, investment of long term capital gain in the said bonds of IRFC will also qualify for exemption.

It may be noted that the maximum investment permissible in these bonds is Rs.50 lakhs per financial year.
Source: Notification No. 79/2017/ F. No. 370142/18/2017-TPL dated August 08, 2017

3. Extension of due date for Income Tax Return filing, Tax-Audit Reports and Aadhar-PAN linking.

In view of the various representations received from several stakeholders and to facilitate smooth compliance, Central Board of Direct Taxes ('CBDT') vide order u/s 119 of the Act dated August 31, 2017 has extended the due dates as follows.

i. Extension of due date for return filing and tax audit report

For a company or a person (whose accounts are required to be audited under Income Tax or any other Act) or a working partner of a Firm whose accounts are required to be audited under the Income Tax Act, the due date for filing the return of income as well as various reports of audit prescribed under the Act has been extended from September 30, 2017 to October 31, 2017.

ii. Extension of due date for linking Aadhar-PAN

As per section 139AA all tax payers having Aadhar number or Enrollment number are required to link it with PAN on and from July 01, 2017 on or before August 31, 2017. The date is extended to December 31, 2017 from August 31, 2017.
Source: Vide separate order u/s 119 of the Act dated August 31, 2017.

INDIRECT TAX

1. GST rate applicable on certain services streamlined

» Passenger transportation, where consideration includes fuel cost
» Goods transport agency

Input tax credit	Rate (%)
Not availed	5
Availed	12

Source: Vide Notification No. 20/2017 – Integrated Tax (Rate) dated August 22, 2017

» Works Contract

Construction of	Service recipient	Rate (%)
Sewerage treatment or water treatment plant or pipeline	Local authority or government authority or government	12
Effluent treatment plant	Any person	12

Source: Vide Notification No. 20/2017 – Integrated Tax (Rate) dated August 22, 2017

2. Supply through electronic commerce operator

Operator to pay tax where unregistered person provides housekeeping services through it
Source: Vide Notification No. 23/2017 – Central Tax (Rate) dated August 22, 2017

COMPANY LAW

1. Notification on withdrawal of Secretarial Standard-1 (Board Meeting) and Secretarial Standard-2 (General Meeting) and Notification of revised Secretarial Standard-1 (Board Meeting) and Secretarial Standard-2 (General Meeting)

The Institute of Company Secretaries of India (ICSI) vide its notification dated August 16, 2017 withdrawn the SS-1: Secretarial Standard on Board Meeting and SS-2: Secretarial Standard on General Meetings since there is no such statutory requirement for publication of the aforesaid Secretarial Standards in the Gazette of India. The SS-1 and SS-2 will be effective till September 30, 2017.

Further the ICSI with the approval of Central Government has released the revised SS-1 and SS-2 and which shall come into force from October 01, 2017.
Source:http://mca.gov.in/Ministry/pdf/Companies In corporation Second Amendment Rules2017.pdf.

FEMA & OTHER LAWS

1. Consolidated Foreign Direct Investment Policy, 2017

The Department of Industrial Policy & Promotion ('DIPP') has released its latest edition of Consolidated Foreign Direct Investment ('FDI') Policy effective from August 28, 2017. The consolidated policy includes liberalised reforms notified by the government over the past one year in sectors including food, retail, construction and development, civil aviation, defence, news broadcasting and private security agencies.

Key Changes

i) Start-ups

The FDI Policy has now included separate provisions for Start-up.

The Government of India announced 'Startup India' initiative for creating a conducive environment for start-ups in India during February 2016. A Start-up is eligible for tax benefits after obtaining certification from the Inter-Ministerial Board, setup for such purpose.

A Startup means an entity working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation and incorporated or registered in India:

- Not prior to seven years (ten years for biotechnology sector)
- With annual turnover not exceeding INR 250 million in any preceding financial year
- Not be formed by splitting up, or reconstruction of a business already in existence

Start-ups allowed to raise up to 100 per cent funds from:

- An eligible person resident outside India can purchase convertible notes issued by an Indian start-up company for an amount of INR 2.5 million or more in a single tranche against amount received by inward remittance through banking channels or by debit to the NRE / FCNR (B) / Escrow account.
- A person resident outside India may acquire or transfer, by way of sale, convertible notes, from or to, a person resident in or outside India, in accordance with the pricing and reporting and sectoral guidelines as prescribed by Reserve Bank of India ('RBI').

Convertible note' means an instrument issued by a start-up company evidencing receipt of money initially as debt, which is repayable at the option of the holder, or which is convertible into such number of equity shares of such startup company, within a period not exceeding five years from the date of issue of the convertible note, upon occurrence of specified events as per the other terms and conditions agreed to and indicated in the instrument.

ii) Sourcing norms for products that have state-of-the art and cutting-edge technology:

FDI proposals involving foreign investments beyond 51 per cent in Single Brand Retail Trading ('SBRT') entities required sourcing of 30% of the value of goods purchased from India preferably from MSMEs, village and cottage industries, artisans and craftsmen, in all sectors. This procurement requirement would have to be met, in the first instance, as an average of five years' total value of the goods purchased, beginning 1st April of the year of the commencement of the business i.e. opening of the first store.
The sourcing norms will not be applicable up to three years from commencement of the business i.e. opening of the first store for entities undertaking SBRT of products having 'state-of-art' and 'cutting-edge' technology and where local sourcing is not possible. A governmental body will examine the claim of applicants on the issue of the products being in the nature of 'state-of-art' and 'cutting-edge' technology where local sourcing is not possible and give recommendations for such relaxation.

There is no definition for "state-of-the-art" and "cutting edge technology" and therefore the regulation needs more clarity on the issue.
Source: http://dipp.nic.in/whats-new/consolidated-fdi-policy-circular-2017 dated August 28, 2017.

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