



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

Amendments, Notifications & Court Rulings

- » Legal fiction created under Section 2(22)(e) enlarges definition of dividend only and not of shareholder
- » Clarification related to guidelines for establishing 'Place of effective management' (POEM) in India.
- » Framing of Rules in respect of Country-By-Country reporting and Furnishing of Master File.

INDIRECT TAX

Amendments, Notifications & Court Rulings

- » Central Tax- Notification No. 36/2017 dated September 29, 2017
- » Central Tax- Notification No. 37/2017 dated October 4, 2017 read with Circular No. 8/8/2017-GST dated October 4, 2017
- » Central Tax- Notification No. 46/2017 dated October 13, 2017
- » Central Tax (Rate) - Notification No. 38/2017 dated October 13, 2017 and Integrated Tax (Rate) - Notification No. 32/2017 dated October 13, 2017
- » Integrated Tax- Notification No. 10/2017 dated October 13, 2017

COMPANY LAW

Amendments, Notifications & Court Rulings

- » Notification of Companies (Registered Valuers and Valuation) Rules, 2017
- » General Circular on relaxation of additional fees and extension of last date of filing of AOC-4 XBRL E-Forms using Ind AS under the Companies Act, 2013

DIRECT TAX

1. Legal fiction created under Section 2(22)(e) enlarges definition of "dividend" only and not of "shareholder"

Recently the Supreme Court in the case of Madhur Housing and Development Company upheld the decision of the Delhi High Court in the case Ankitech Private Limited (APL). The Delhi Court had held that deemed dividend would not be

taxable in the hands of the loan recipient if such concern is not a shareholder of the lender company. In this case, advance was received by the assessee, APL, from a company in which substantial shareholder of APL was also substantial shareholder of lending company. The Assessing Officer treated the advance to be income of APL whereas APL was not a shareholder of lending company, but APL's shareholder was a substantial shareholder of lending company..

The intention behind the provisions of Section 2(22)(e) of the Act is to tax dividend in the hands of the shareholder. The deeming provision in case of loan or advance given by a closely held company to a concern in which the shareholder has substantial interest to be treated as dividend, is based on the presumption that the loan or advance would ultimately be made available to the shareholder of such company giving loan or advance. Loan or advance, is ordinarily not a dividend. However, if the conditions specified under Section 2(22)(e) of the Act are satisfied to a given transaction of loan or advance by a closely held company, such loan or advance would be deemed to be dividend. It has been held by the Delhi High Court and upheld by the Apex Court that even when a loan or advance is deemed to be dividend still the same is to be treated as income in the hands of the 'shareholder' and not in the hands of a concern, in which such shareholder has substantial interest, to which loan or advance is given. Legal fiction doesn't extend to shareholder.

Deemed dividend shall not be taxable in the hands of the loan recipient if such loan recipient is not a shareholder in the lender company.

Source: CIT vs. Madhur Housing and Development Company (Civil Appeal No. 3961 of 2013)

CIT vs. Ankitech Private Limited (ITA No. 462 of 2009)

2. Clarification related to guidelines for establishing 'Place of effective management' (PoEM) in India.

The concept of "Place of Effective Management" (PoEM) for determining the residential status of a company other than an Indian company became effective from 1st April 2017 i.e. AY 2017-18 onwards.

Guiding Principles for determination of PoEM of a company were issued on 24th January, 2017 vide Circular No 06 of 2017. Further, vide Circular No 08 of 2017 dated 23rd February, 2017, it has been clarified that the PoEM provisions shall not apply to a company having turnover or gross receipts of Rs. 50 crore or less in a financial year.

Representations have been received from the stakeholders wherein concerns have been raised that as per the extant guidelines, PoEM may be triggered in cases of certain multinational companies with regional headquarter structure merely on the ground that certain employees having multi-country responsibility or oversight over the operations in other countries of the region are working from India, and consequently, their income from operations outside India may be taxed in India.

Para 7 of the guidelines provides that in case of a company engaged in active business outside India, PoEM shall be presumed to be outside India if the majority meetings of the Board of Directors (BoD) of the company are held outside India.

However, Para 7.1 of the guidelines provides that if on the basis of facts and circumstances it is established that the BoD of the company are standing aside and not exercising their powers of management and such powers are being exercised by either the holding company or any other person(s) resident in India, then the PoEM shall be considered to be in India.

It has also been provided that for this purpose, in case the BoD/Regional Headquarters follows general and objective principles of global policy of the group laid down by the parent entity which may be in the field of Payroll functions, Accounting, Human Resource functions, IT infrastructure and network platforms, Supply chain functions, Routine banking operational procedures and not being specific to any entity or group of entities per se; then the BoD of companies would not constitute as standing aside and Regional Headquarter in India alone will not be a basis for establishment of PoEM for such subsidiaries/ group companies.

Further, General Anti-Avoidance Rules contained in Chapter X-A of the Income-tax Act, 1961 may get triggered in such cases where the above clarification is found to be used for abusive/ aggressive tax planning.

Source: Circular No. 25/2017 dated 23-10-2017

3. Framing of Rules in respect of Country-By-Country reporting and Furnishing of Master File.

Section 286 was inserted vide Finance Act, 2016 providing for furnishing of a Country-by-Country report in respect of an international group by its constituent or parent entity. Section 92D was also consequentially amended to provide for maintenance of necessary information and documents in this regard. CBDT has now notified new rules 10DA and 10DB in this regard.

Gist of Rule 10DA is as follows:-

- » Specifies the qualifying conditions for reporting entity as under:
 - Consolidated Group Revenue exceeds Rs. 500 Crores;
 - Aggregate value of international transactions exceeds Rs 50 Crores;
 - Purchase, sale, transfer, lease or use of intangible property exceeds Rs.10 Crores.
- » Specifies the list of Information and documents to be kept and maintained by constituent entity of International Group.
- » The information referred to sub rule (1) of Rule 10DA shall be reported in Form No 3CEAA and it shall be furnished to the Director General of Income-tax (Risk Assessment).
- » Where there are more than one constituent entities resident in India of an International group, then the report or information as the case may be, may be furnished by that constituent entity which has been designated by the International group to furnish the said report or information.
- » The constituent entity which has been designated by the International group, the same shall be intimated at least 30 days before the due date of filing the report to Director General of Income tax (Risk Assessment) in Form 3CEAB.

- » The information and documents shall be kept and maintained for period of eight years from end of the relevant assessment year.
Gist of Rule 10DB is as follows:-
- » For purpose of section 286(1), every constituent entity resident in India, shall, intimate the Director General of Income tax (Risk Assessment) in Form 3CEAC at least 2 months prior to the due date for furnishing report, if its parent entity is not resident in India.
- » Every parent entity or the alternate reporting entity, as the case may be, resident in India, shall furnish the report to the Director General of Income tax (Risk Assessment) in Form 3CEAD.

Source: Notification no. 92/2017, dated: 31-10-2017

INDIRECT TAX

1. Extension of time limit

Time limit for cancellation of registration by migrated dealers has been extended to October 31, 2017.

Source: – Vide Notification No. 36/2017 – Central Tax dated September 29, 2017

2. Extension of Letter of Undertaking facility to all registered persons

All registered persons who intend to supply goods or services for export without payment of integrated tax shall be eligible to furnish Letter of Undertaking instead of Bond except those who have been prosecuted for any offence under the Central Goods and Services Tax Act, 2017 or Integrated Goods and Services Tax Act, 2017 or any existing laws in force in a case where the amount of tax evaded exceeds two hundred and fifty lakh rupees.

Circular No. 8/8/2017-GST dated October 4, 2017 has been issued to clarify issues related to furnishing of Bond or Letter of Undertaking for exports.

Source: – Vide Notification No. 37/2017 – Central Tax dated October 4, 2017 read with Circular No. 8/8/2017-GST dated October 4, 2017

3. Turnover Limit for Composition levy revised

Aggregate turnover limit for composition levy has been enhanced from “seventy-five lakh rupees” to “one crore rupees”.

Also, the aggregate turnover limit for the states specified in the proviso to Notification No. 8/2017-Central tax dated June 27, 2018 has been enhanced from “fifty lakh rupees” to “seventy five lakh rupees”.

Source: – Vide Notification No. 46/2017 – Central Tax dated October 13, 2017

4. Exemption to registered persons from paying tax under reverse charge

Any registered person procuring taxable goods/services from unregistered suppliers, shall not be required to pay CGST under reverse charge mechanism u/s 9(4) of the Central Goods and Services Tax Act, 2017 till March 31, 2018 with effect from October 13, 2017.

Similar exemption from payment of integrated tax has been provided for inter-state supply of goods or services or both received by a registered person from any unregistered supplier.

Source: – Vide Notification No. 38/2017 – Central Tax (Rate) dated October 13, 2017 and Notification No. 32/2017-Integrated Tax (Rate) dated October 13, 2017

5. Exemption from obtaining registration in case of inter-state supply of taxable services

The persons making inter-state supplies of taxable services and having an aggregate turnover computed on all India basis not exceeding twenty lakh rupees in a financial year have been granted exempted from obtaining registration under the Central Goods and Services Tax Act, 2017.

For “Special category States”, exemption is available in case the aggregate turnover computed on all India basis does not exceed ten lakh rupees.

Source: Vide Notification No. 10/2017-Integrated Tax dated October 13, 2017

COMPANY LAW

1. Notification of Companies (Registered Valuers and Valuation) Rules, 2017

The MCA vide Notification dated October 18, 2017 has notified Companies (Registered Valuers and Valuation) Rules, 2017.

Section 247 of the Companies Act, 2013 (2013 Act) governs the provisions relating to the valuation by registered valuers under the 2013 Act. It requires that wherever valuation with respect to any property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities is required to be made under the provisions of the 2013 Act, it should be valued by a person having such qualifications and experience and registered as a valuer in such manner, on such terms and conditions as may be prescribed. Such a registered valuer should be appointed by the audit committee or by the Board of Directors (in the absence of audit committee) of that company. The detailed information is given in the below link.

Source: http://mca.gov.in/Ministry/pdf/RegisteredValues_19102017.pdf

2. General Circular on relaxation of additional fees and extension of last date of filing of AOC-4 XBRL E-Forms using Ind AS under the Companies Act, 2013

The MCA vide General Circular dated October 26, 2017 has relaxed the additional fees and extended the last date of filing of AOC-4 XBRL E-Forms using Ind AS under the Companies Act, 2013 and the last date for filing the form has been extended till March 31st, 2018. The detailed information is given in the below link.

Source: http://mca.gov.in/Ministry/pdf/GeneralCircular13_26102017.pdf

ASA & ASSOCIATES LLP

CHARTERED ACCOUNTANTS

www.asa.in

Head Office

Times Square, Fourth Floor, Block B Sushant Lok 1, Gurgaon 122 002 INDIA Tel : +91 124 4333 100
Fax: +91 124 4333 101

Offices: Ahmedabad, Bengaluru, Chennai, Gurgaon, Hyderabad, Kochi, Mumbai, New Delhi

This document is meant for circulation to internal staff and clients of ASA & Associates LLP. The technical contents herein are solely meant for information and not as professional advice. We do not take responsibility for accuracy or correctness or business decisions taken without seeking professional guidance