



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. CBDT issues instruction for non-recovery of tax demands from “start-up” companies issuing shares at premium value

The Indian Tax Law (‘ITL’) provides for taxation of premium received on issue of shares to Indian residents in excess of Fair Market Value (‘FMV’) by a closely held company, as income u/s 56(viib) of the Income Tax Act, 1961 in the hands of such closely held company.

The Government, however, had vide a Notification¹, clarified that such excess premium will not be liable to tax where shares are issued to resident by a qualifying start-up company (2016 Notification). In spite of the notification, the Indian Tax Authority continued raise tax demand by subjecting to tax such excess received on issue of shares by start-up companies, which otherwise raised genuine investment. Hence, CBDT has instructed the Tax Authority that if additions have been made after modifying/rejecting the valuation reports submitted by start-up companies, no coercive measures to recover the tax demand be taken. Further, for all such cases which are pending before the First Appellate Authority, necessary administrative steps should be taken for expeditious disposal of appeals, preferably by March 31, 2018.

Source: CBDT Instruction no F.No. 173/14/2018-ITA.I, dated February 6, 2018.

2. Amendment in Agreement between India and China for avoidance of double taxation and prevention of fiscal evasion

The Union Cabinet has given its approval for signing and ratification of protocol amending the Agreement between India and China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income.

Also, there are some updates in existing provisions for exchange of information to the latest international standards. Further the Protocol will incorporate changes required to implement treaty related minimum standards under the Action reports of Base Erosion & Profit shifting (BEPS) Project, in which India had participated on an equal footing. Besides minimum standards, the Protocol will also bring in changes as per BEPS Action reports as agreed upon by two sides.

Source: CBDT Press release dated February 2, 2018

3. Significant economic presence resulting in business connection

The scope of existing provisions of section 9(1)(i) of Income Tax Act, 1961 is restrictive as it essentially provides for physical presence based nexus rule for establishing business connection of the non-resident in India in order to tax the business income of the non-resident in India.

A new Explanation 2A to section 9(1)(i) provides for a nexus rule for emerging business models such as digitized businesses which do not require physical presence of the non-resident or his agent in India.

Accordingly, the following shall be regarded as significant economic presence resulting into business connection of the non-resident in India:

- Any transaction in respect of any goods, services or property carried out by non-resident in India including the provision of download of data or software in India, provided the transaction value exceeds the threshold as may be prescribed: or

- Systematic and continuous soliciting of business activities or engaging in interaction with number of users in India through digital means provided such number of user exceeds the threshold as may be prescribed.

This amendment would apply irrespectively, whether the non-resident has a residence or place of business in India or renders services in India.

However, only so much of income as is attributable to above transactions or activities shall be deemed to accrue or arise in India.

Source: Finance Bill, 2018 dated February 1, 2018.

4. Revised double taxation agreement (DTAA) between India and Kenya notified

The revised DTAA signed between both countries on July 11, 2016 has been notified in the Official Gazette on February 19, 2018. Some of the key features of the revised DTAA are highlighted as under:

- i. Reduction in rates of withholding tax from 15% to 10% on dividends, from 15% to 10% on interest, from 20% to 10% on royalties and from 17.5% to 10% on fees for management, professional and technical services in order to promote flow of investments and technology.
- ii. Insertion of Article on Limitation of Benefits to allow treaty benefits to bonafide residents of both countries, to combat treaty abuse by third country residents and to allow application of domestic law to prevent tax avoidance or evasion.
- iii. Updating of Article on Exchange of Information the latest international standard to provide for exchange of information, including banking information for tax purposes, to the widest possible extent.
- iv. Insertion of a new Article on Assistance in Collection of Taxes to enable assistance in collection of tax revenue claims between both countries.

The revised DTAA is expected to improve transparency in tax matters, help curb tax evasion and tax avoidance, remove double taxation and will stimulate the flow of investment, technology and services.

Source: CBDT press release, dated February 22, 2018.

5. CIT can cancel registration of charitable institution only from October 1, 2004

The Honorable Supreme Court in Industrial Infrastructure Development Corporation (Gwalior) M.P. Ltd. v/s Commissioner of Income Tax ('CIT') [(2018) 90 taxmann.com 281 (SC)] has clarified that the CIT had no express power of cancellation of the registration u/s.12A of the Income Tax Act, 1961 until October 1, 2004.

Prior to insertion of section 12AA(3) there was no express provision in the Act vesting the CIT with the power to cancel the registration certificate.

The order passed under Section 12A granting registration as charitable institution by the CIT is quasi-judicial in nature and it could be withdrawn/recalled by the CIT only when there was express power vested in him under the Act to do so.

The CIT can therefore, cancel the registration only with effect from October 1, 2004 i.e., Assessment Year 2004-2005 since the amendment made in Section 12AA(3) by Finance (No-2) Act, 2004 conferring express power on the CIT to cancel the registration certificate was not retrospective but prospective in nature.

Source: Industrial Infrastructure Development Corporation (Gwalior) M.P. Ltd. v/s CIT [(2018) 90 taxmann.com 281 (SC)] dated February 16, 2018

INDIRECT TAX

1. Seeks to postpone the coming into force of the E-Way Bill rules

The appointed date for bringing into force the provisions of E-Way Bill Rules has been deferred from February 01, 2018 and shall be subsequently notified.

Source: – Vide Notification No. 11/2018 – Central Tax dated February 02, 2018

2. Clarification regarding non-utilisation of disputed credit and blocked credit

Clarification has been issued to restrict utilisation of transitioned credits disputed under earlier regime. Also, CENVAT Credit being ineligible in terms of Section 17(5) of the CGST Act, 2017 should not be transitioned.

Source: – Vide Circular No 33/07/2018-GST dated February 23, 2018

3. Seeks to exempt levy of Education Cess on all goods in the First schedule to the Customs Tariff Act, 1975

Levy of Education Cess on all import of goods specified in First Schedule to the Customs Tariff Act, 1975 has been exempted.

Source: – Vide Notification No. 07/2018 – Customs dated February 02, 2018

4. Seeks to exempt levy of Secondary and Higher Education Cess on all goods in the First schedule to the Customs Tariff Act, 1975

Levy of Secondary and Higher Education Cess on all import of goods specified in First Schedule to the Customs Tariff Act, 1975 has been exempted.

Source: – Vide Notification No. 08/2018 – Customs dated February 02, 2018

5. Alternative Mechanism to rectify Export Invoice mis-match cases

Alternative Mechanism in order to ensure speedy disposal of IGST refund applications for shipping bills filed till December 31, 2017 has been clarified.

Source: – Vide Circular No. 05/2018 – Customs dated February 23, 2018

COMPANY LAW

1. Notification regarding Exemption to Government Companies under Section 129(6) of Companies Act, 2013 from recognizing Deferred Tax Assets/ Deferred Tax Liability under AS-22/IND AS-12

The MCA vide notification dated February 05, 2018 has exempted the Government Companies under Section 129(6) of Companies Act, 2013 from recognizing Deferred Tax Assets/ Deferred Tax Liability under AS-22/IND AS-12. The detailed information is given in the below link

Source: http://mca.gov.in/Ministry/pdf/Generalcircular16_29122017.pdf

2. Commencement Notification of various sections of Companies Amendment Act, 2017

The MCA vide notification dated February 09, 2018 has notified the various sections of Companies Amendment Act, 2017. The detailed information is given in the below link

Source: http://mca.gov.in/Ministry/pdf/Commencementnotification_12022018.pdf

FEMA & OTHER LAWS

1. Cabinet approves amendment to MSME act to change classification criteria

The Union Cabinet has approved change in the basis of classifying Micro, Small and Medium enterprises from 'investment in plant & machinery/equipment' to 'annual turnover'.

At present the MSMED Act (Section 7) classifies the MSMEs producing goods and rendering services on the basis of investment in plant and machinery for manufacturing units, and investment in equipment for service enterprises whereas now the same shall be defined on the basis of annual turnover, which is as follows:

- Micro enterprise: unit with annual turnover not exceeding INR 50 million;
- Small enterprise: unit with annual turnover exceeding INR 50 million but does not exceed INR 750 million;
- Medium enterprise: unit with annual turnover exceeding INR 750 million but not exceed INR 2.5 billion.

Source: <http://pib.nic.in/newsite/PrintRelease.aspx?relid=176353> dated February 07, 2018

2. Relief for Micro, Small and Medium Enterprises (MSMEs) Borrowers registered under Goods and Services Tax (GST)

The Reserve Bank of India (RBI) granted a big relief to the MSMEs established in the country, by declaring that the loans up to INR 250 million (as on January 31, 2018) disbursed to concerned MSMEs would now be classified as bad loan or non-performing assets (NPAs) only after expiry of 180 days from their original due date.

At present, MSMEs were given 90 days for repayment before their account got classified as NPA. After the notification came into effect, GST registered borrowers (as on January 31, 2018) will get a relaxed window to pay dues if their accounts were standard as on August 31st, 2017.

Source: <https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=11216&Mode=0> dated February 07, 2018

3. RBI Revisits Framework for Resolution of Stressed Assets

RBI has come out with a revised framework for resolution of stressed assets which aims at creating a structure for banks to provide early warning signals for stressed accounts and prompt reporting of default to the National Company Law Tribunal (NCLT) for initiating bankruptcy proceedings under the Insolvency and Bankruptcy Code, 2016 (IBC).

The framework will enable lenders to take timely action in case of defaults, for resolution of the stressed accounts by classifying them as Special Mention Accounts (SMA) as per the following categories:

Sub-categories	Basis for classification- Principal or interest payment or any other amount wholly or partly overdue between
SMA-0	SMA-0
SMA-1	31 - 60 days
SMA-2	61 - 90 days

As soon as there is a default in the borrower entity's account with any lender, all lenders – singly or jointly – shall initiate steps to cure the default as per the framework issued by RBI.

Source: <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11218&Mode=0> dated February 12, 2018

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