



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. India and Hong Kong sign Double Taxation Avoidance Agreement (DTAA)

On March 19, 2018 Government of India has signed an Agreement for Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income with the Hong Kong Special Administrative Region.

As per a press release by CBDT, the tax treaty will stimulate flow of investment, technology and personnel from India to Hong Kong and vice versa, prevent double taxation and provide for exchange of information between the two countries. It may also improve transparency in tax matters and help curb tax evasion and tax avoidance. The Agreement is on similar lines as entered into by India with other countries.

Source: CBDT Press release dated March 19, 2018.

2. CBDT invites feedback and suggestions on new Direct Tax Law (DTL)

The Government of India constituted a Task Force in November 2017, comprising high-ranking Government Officials and eminent professionals, to draft a new DTL.

In this endeavor of drafting a new DTL, the CBDT has invited feedback and suggestions on the difficulties faced by taxpayers under five categories viz. filing of return of income, grant of tax credits, processing/scrutiny of return, litigation and recovery of disputed tax demand and penalty and prosecution, from stakeholders and the general public on a new direct tax law (DTL).

The feedback and suggestions are required to be submitted latest by 2 April 2018, on departmental website www.incometaxindia.gov.in. The format can be downloaded from the website and suggestions/feedback may be sent through e-mail at rewriting-itact@gov

Source: CBDT Press release dated March 21, 2018.

3. Supreme Court upholds disallowance of expenditure in relation to exempt income from “strategic investment” and “stock in trade”

The Finance Act, 2001 inserted Section 14A (Section), with retrospective effect from 1 April 1962. The Section provides that for the purposes of computing total income, no deduction shall be allowed in respect of expenditure incurred by a taxpayer, in relation to the exempt income. The Finance Act, 2001 further amended the Section, with effect from April 1, 2007, to provide that the amount of disallowance shall be computed as per Rule 8D in the Income Tax Rules, 1961 inserted with effect from March 24, 2008.

Hon’ble Supreme Court (SC) in the case of Maxopp Investment Ltd vs. CIT [(2018) 91 taxmann.com 154 (SC)] has upheld the disallowance of expenditure incurred “in relation to” exempt income by way of dividend on shares held as “trading assets” and “stock-in-trade” under Section 14A of the Indian Tax Laws.

The issue before the SC was whether disallowance under the Section is warranted in a case where exempt dividend income is earned from shares but where the predominant intent of investing in shares is not to earn exempt dividend income, but to either retain controlling interest over the investee company or to earn profit from trading in shares (dominant purpose test).

The SC held that even if the dominant purpose of investing in shares is not to earn exempt dividend income, but to have controlling interest or to earn profit from trading in shares, it will not preclude the applicability of the Section.

The Section statutorily incorporates the principle of apportionment of expenses between exempt income and taxable income. If expenditure is incurred on earning dividend income, pro rata expenditure attributable to the dividend income has to be disallowed under the Section.

However, the computation of disallowance will depend upon the facts of each case and the Tax Authority needs to record satisfaction that, having regard to the facts of the case, suo moto disallowance made by the Taxpayer is not correct.

While recording such satisfaction, the Tax Authority has to examine the nature of loan taken by the Taxpayer for purchasing/making investment in the shares.

Source: Maxopp Investment Ltd vs CIT, New Delhi [2018] 91 taxmann.com 154 (SC), dated February 12, 2018

INDIRECT TAX

1. Notifying the date from which E-Way bill rules shall come into force.

CBEC has appointed April 01, 2018 as the date from which the Rules of E-Way Bill as notified in Notification 12/2018 – Central tax dated March 07, 2018 shall come into force.

Source: Vide Notification No. 15/2018 – Central Tax dated March 23, 2018

2. Prescribing the due dates for furnishing FORM GSTR-3B for the months of April to June 2018.

Filing of return in FORM GSTR-3B has been deferred till June 30, 2018 and the due date of furnishing the same will be 20th of the following month.

Source: Vide Notification No. 16/2018-Central Tax dated March 23, 2018

3. Exemption for payment of tax under section 9(4) of the CGST Act 2017 has been deferred.

Exemption provided for payment of tax under reverse charge by the recipient of supply, from un-registered person has been deferred till June 30, 2018.

Source: – Vide Notification No. 10/2018 – Central Tax Rate dated March 23, 2018

4. Clarifications on exports related refund issues.

Clarifications on various practical issues being faced by the exporters in filing of refund have been provided in order to ensure uniformity in the implementation of the provisions of the law across the field formations.

Source: Vide Circular No. 37/2018 – GST dated March 15, 2018

5. Seeks to extend the exemption from IGST and compensation cess leviable on imports made by the EOUs.

Exemption on payment of IGST and compensation cess leviable on imports made by EOUs has been extended to October 02, 2018 from April 01, 2018.

Source: Vide Notification No. 33/2018 – Customs dated March 23, 2018

COMPANY LAW

1. Notification of Companies (Incorporation) Second Amendment Rules, 2018

The MCA vide notification dated March 23, 2018 has amended the Companies (Incorporation) Rules, 2014. With this notification following changes will come into effect:

The Ministry will allow one re-submission option for stakeholders for reservation of name of the Company and earlier the name was either be approved or rejected without allowing any re-submission.

Source: http://mca.gov.in/Ministry/pdf/CompanyRule2303_23032018.pdf

2. Notification of Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Amendment Rules, 2018

The MCA vide notification dated March 08, 2018 has amended the Companies (Filing of Documents and forms in Extensible Business Reporting Language) Rules, 2015. With this notification following changes will come into effect.

Once the documents or forms are filed in Extensible Business Reporting Language (XBRL), the Companies are mandatorily required to file the documents or forms through XBRL, even though they may not fall under the class of companies specified therein in succeeding years.

Source: http://mca.gov.in/Ministry/pdf/CompaniesXBRL0803rule_15032018.pdf

FEMA & OTHER LAWS

1. Master Direction - External Commercial Borrowings, Trade Credit, Borrowing and Lending in Foreign Currency by Authorized Dealers and Persons other than Authorized Dealers

The Reserve Bank of India (RBI) has updated the master direction on External Commercial Borrowings, Trade Credit, Borrowing and Lending in Foreign Currency by Authorised Dealers and Persons other than Authorised Dealers.

Additional compliance has been introduced in the clause 5.5 of Part III (Guarantee for Trade Credit) of the existing master direction. Until now, the AD Category I banks were permitted to issue bank guarantees in favour of overseas supplier, bank or financial institution up to USD 20 million per import transaction for a maximum period up to one year in case of import of non-capital goods (except gold, palladium, platinum, rhodium, silver, etc). For import of capital goods, the period of such guarantees was allowed for a maximum period up to three years. The period was reckoned from the date of shipment and the guarantee period should be co-terminus with the period of credit.

After introduction of this new update by RBI, the issuance of such guarantees is subject to compliance with the provisions contained in Department of Banking Regulation Master Circular No.DBR.No.Dir. BC.11/13.03.00/2015-16 dated July 1, 2015 on “Guarantees and Co-acceptances”, as amended from time to time.

Source: https://rbi.org.in/scripts/BS_ViewMasDirections.aspx?id=10204 dated March 16, 2018

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