



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 draft rule prescribing methodology for determination of Fair Market Value of inventory which is converted into a capital asset

The Finance Act, 2018 has inserted clause (via) to section 28 of the Income tax Act, 1961 so as to provide that any profit and gains from conversion of inventory into capital asset or its treatment as capital asset shall be charged to tax as business income. It has also been provided that for this purpose the fair market value (FMV) of inventory on the date of conversion or treatment determined in prescribed manner shall be deemed to be the full value of consideration. To give effect to the same a new rule 11UAB is proposed to be inserted for determination of FMV. FMV so determined is considered as the cost of acquisition of the converted capital asset. Such cost is also considered as cost for the purpose of depreciation, if such capital asset is used by a tax payer in business or profession.

As per, draft of notification uploaded on www.incometaxindia.gov.in, the FMV will be determined as follows:

Sr No.	Type of capital asset	Fair Market Value
1	Immovable property, being land or building or both	Stamp duty value as on date of conversion
2	Jewellery, archaeological collections, drawings, paintings, sculptures, any work of art, shares or securities	Valuation as provided in existing sub rule (1) of rule 11UA as on date of conversion
3	Any other property	Price property would fetch on sale in the open market

Stakeholders were invited to give their comments/suggestions on the draft notification.

Source: Press Release dated May 3, 2018

2. Cuttack Tribunal defines the term “order of assessment”

The Honorable Cuttack Tribunal in a recent decision stated that simply determining the total income of the assessee and determining its tax liability on a piece of paper and signing the same may constitute an assessment but only on its communication to the assessee it becomes an “order of assessment”. Hence communication i.e dispatch of order must be within a period of limitation prescribed by law though the communication may end after the prescribed period of limitation. On failure of valid communication the order of assessment is time barred and fit to be set aside.

Source: Nidan Infront of Dig Officer vs. Assistant Commissioner of Income tax [(2018) 53 CCH 0046 CuttackTrib] dated May 16, 2018

3. Supreme Court upholds that curative amendment should be given retrospective effect.

The Supreme Court in a recent case decided that the amendment to s. 40(a)(ia) by the Finance Act, 2010 w.e.f 01.04.2010 to provide that all TDS made during the previous year can be deposited with the Government by the due date of filing the return of income should be interpreted liberally and equitably and applied retrospectively from the date when s. 40(a)(ia) was inserted i.e., with effect from the AY 2005-2006 so that an assessee should not suffer unintended and deleterious consequences beyond what the object and purpose of the provision mandates. The amendment is curative in nature and should be given retrospective operation as if the amended provision existed even at the time of its insertion to avoid genuine hardship to the assessee.

Source: Commissioner of Income tax vs. Calcutta Export Company [Civil Appeal Nos. 4339-4340 of 2018 (Supreme Court)] dated April 24, 2018

4. Supreme Court rules waiver of loan is not taxable as business income

The Supreme Court in a recent ruling in a batch of connected appeal matters, with the lead case being Mahindra and Mahindra has held that waiver of loan is not taxable as business income. The common issue was the taxability of waiver of the principal amount of loan as business income.

Under Section 28 (iv) of the Income tax Act, 1961 (“the Act”) the value of any benefit or perquisite arising from business or profession of taxpayers is taxable as business income. Further Section 41 of the Act provides for taxation of any benefit that accrues to the tax payer on account of remission or cessation of a trading liability in respect of which deduction has been allowed in past years. In case of assessee there was waiver of loan which was used for acquiring capital assets on which the tax payer had claimed depreciation.

The Supreme Court ruled that waiver of loan taken for acquiring capital asset is taxable only when the benefit was received in a form other than money. Waiver of loan by the creditor results in the debtor having extra cash in his hands and hence the amount of loan cannot be taxed u/s 28(iv) of the Act. Further the benefit of waiver of loan is neither taxable u/s 41 since the said provision only covers remission of trading liability whereas a loan represents a liability other than trading liability.

Source: Commissioner of income tax vs. Mahindra and Mahindra ltd. [(2018) 101 CCH 0194 SC] dated April 24, 2018

INDIRECT TAX

1. Introduction of monetary limit for appeals to Commissioner (appeals)

A monetary limit of Rs 2,50,000/- has been fixed for filing appeal before Commissioner (Appeals) in case of legacy matters and shall also apply to cases currently pending at the level of Commissioner (Appeals).

Source: – Vide CBIC instruction No. F No. 390/Misc/116/2017-JC dated May 25, 2018

2. Seeks to clarify the applicability of IGST on goods supplied while being deposited in a customs bonded warehouse

It has been clarified that supply of goods before their clearance from the warehouse would not be subject to the levy of integrated tax and the same would be levied and collected when the warehoused goods are cleared for home consumption from the customs bonded warehouse.

Source: – Vide Circular No 3/1/2018-IGST dated May 25, 2018

3. Seeks to waive late fee payable for delay in filing GSTR-3B

The Central Government has waived late fee for failure to furnish FORM GSTR-3B by due dates for October, 2017 to April, 2018 for registered persons whose declaration in FORM GST TRAN-1 was submitted but not filed on common portal on or before December 27, 2017, provided that FORM GST TRAN-1 and FORM GSTR-3B has been filed on or before May 10, 2018 May 31, 2018 respectively.

Source: –Central Tax- Notification No. 22/2018 dated May 14, 2018

4. Seeks to clarify issues related to taxability of ‘tenancy rights’ under GST

It has been clarified that the activity of transfer of ‘tenancy rights’ to a new tenant against consideration in the form of tenancy premium is taxable except grant of tenancy rights in residential dwelling for use as residence against tenancy premium or periodic rent.

Source: – Vide Circular No. 44/18/2018-CGST dated May 02, 2018

COMPANY LAW

☛ Notification of the Companies (Audit and Auditors) Amendment Rules, 2018

The MCA vide notification dated May 07, 2018 has amended the Companies (Audit and Auditors) Rules, 2014. With this notification the MCA has done away with the requirement of ratification of appointment of Statutory Auditors at every Annual General Meeting.

Source: http://mca.gov.in/Ministry/pdf/AuditAuditorsRules_07052018.pdf

☛ Notification of Companies (Meetings of Board and its Powers) Amendment Rules, 2018

The MCA vide notification dated May 07, 2018 has amended the Companies (Meetings of Board and its Powers) Rules, 2014. With this Notification MCA the following changes will come into effect:

- If there is quorum presence in a meeting through physical of directors, any other director may participate conferencing through video or other audio visual means even for the meeting called for approval of financials, Board report, prospectus etc.

Source: http://mca.gov.in/Ministry/pdf/Companies Boards Powers Rules_07052018.pdf

☛ Notification of Companies (Registration Offices and Fees) Second Amendment Rules, 2018

The MCA vide notification dated May 07, 2018 has amended the Companies (Registration Offices and Fees) Rules, 2014. With this Notification, following changes will come into effect:

In case the due date of filings under Section 92 (Annual Return) or 137 (Annual Financial Statement) of the Companies Act, 2013 expires after June 30, 2018, the additional fee of ₹. 100 per day shall become payable in respect of MGT-7, AOC-4, AOC-4 XBRL and AOC-4 CFS.

In all other cases where the belated annual returns or balance sheet/financial statement which were due to be filed whether under the Companies Act, 1956 (23AC, 23ACA, 23AC XBRL, 23ACA XBRL, 20B, 21A) or the Companies Act, 2013 (MGT-7, AoC-4, AoC-4 XBRL and AoC-4 CFS) additional fee as per the applicable slab for the period of delay up to 30th June 2018 plus Rs.100 per day w.e.f 1st July 2018 shall become payable.

Source: http://mca.gov.in/Ministry/pdf/CompaniesOfficesFeesRules_07052018.pdf

FEMA & MCA NOTIFICATION

1. Monitoring of foreign investment limits in listed Indian companies

Currently, Reserve Bank of India receives data on investment made by Foreign Portfolio Investors (FPI) and Non-resident Indians (NRI) on stock exchanges from the custodian banks and Authorized Dealer Banks for their respective clients, based on which restrictions beyond a threshold limit is imposed on FPI/NRI investment in listed Indian companies.

In order to enable listed Indian companies to ensure compliance with the various foreign investment limits, Reserve Bank in consultation with Securities and Exchange Board of India (SEBI), has decided to put in place a new system for monitoring foreign investment limits, for which the necessary infrastructure and systems for operationalizing the monitoring mechanism, shall be made available by the depositories. The same has been notified by SEBI vide Circular-IMD/FPIC/CIR/P/2018/61 dated April 05, 2018 read with Circular- IMD/FPIC/CIR/P/2018/74 dated April 27, 2018.

All listed Indian companies are required to provide the specified data/ information on foreign investment to the depositories. The requisite information may be provided before May 15, 2018. The listed Indian companies, in non-compliance with the above instructions will not be able to receive foreign investment and will be non-compliant with Foreign Exchange Management Act, 1999 (FEMA) and regulations made there under.

Source: https://www.rbi.org.in/scripts/FS_Notification.aspx?Id=11270&fn=5&Mode=0 dated May 03, 2018

2. External Commercial Borrowings (ECB) Policy – Rationalisation and Liberalisation

In light of the requests received and experience gained in administering the ECB regime, it has been decided, in consultation with the Government of India, to further rationalize and liberalize the ECB guidelines in the following areas:-

1. Rationalisation of all-in-cost for ECB under all tracks and Rupee denominated bonds (RDBs)
2. Revisiting ECB Liability to Equity Ratio provisions:
3. Expansion of Eligible Borrowers' list for the purpose of ECB
4. Rationalisation of end-use provisions for ECBs

Source: https://www.rbi.org.in/scripts/FS_Notification.aspx?Id=11267&fn=5&Mode=0 dated April 27, 2018

3. Clarification on Condonation of Delay Scheme, 2018

Where petitions have already been filed before NCLT under section 252 of the Companies Act 2013, during the currency of the scheme and orders are pending before the NCLT and whether such struck off companies can file CODS upon obtaining orders for the same even after 01.05.2018. The matter has been examined and it is clarified that as per para 4(v) of the General Circular No.16/2017 dt 29.12.2017, which states "In the event of defaulting companies whose names have been removed from the register of companies under section 248 of the Act and which have filed applications for revival under section 252 of the Act up to the date of this scheme, the Director's DIN shall be re-activated only NCLT order of revival subject to the company having filing of all overdue documents". It, is therefore, hereby directed that in such cases the Registrar(s) of Companies shall raise a ticket through Change Requirement Form (CRF) on MCA21 portal along with copy of NCLT order and E-governance shall activate DIN of the directors such struck off companies that have been revived through NCLT to file e-CODS, 2018.

However, the directors whose DINs are proposed to be activated through CRF should not be directors on any other company which has been struck off under section 248(1) of the Act (other than the one revived through NCLT order as mentioned in CRF). This may be ensured by the ROC before raising CRF with E-governance.

Source: http://www.mca.gov.in/Ministry/pdf/CODSCircular_17052018.pdf dated May 17, 2018

4. The Companies (Registration Offices and Fees) Second Amendment Rules

The Companies (Registration Offices and Fees) Second Amendment Rules 2018 has been notified on 7th May 2018. Accordingly, in case the due date of filings under Section 92 (Annual Return) or 137 (Annual Financial Statement) of the Companies Act, 2013 expires after 30/06/2018, the additional fee @ Rs.100 per day shall become payable in respect of MGT-7, AoC-4, AoC-4 XBRL and AoC-4 CFS. In all other cases where the belated annual returns or balance sheet/financial statement which were due to be filed whether under the Companies Act,1956 or the Companies Act, 2013 additional fee as per the applicable slab for the period of delay up to 30th June 2018 plus @ Rs.100 per day w.e.f 1st July 2018 shall become payable.

Source: <http://www.mca.gov.in> dated May 7, 2018

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