

# 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 here under.

## DIRECT TAX

### Amendments, Notifications & Court Rulings

- » Finance Ministry hikes monetary limit for filing tax appeals to Rs. 20 Lakhs
- » Issues of TP adjustments based on comparables can be taken up to ITAT level only
- » CBDT amends Form 3CD to include disclosure on secondary adjustments, interest deduction limitation and GAAR
- » Income tax Department has sought stakeholder comments on Significant Economic Presence test.

## INDIRECT TAX

### Amendments, Notifications & Court Rulings

- » Central Tax (Rate)- Notification No. 20/2018 dated July 26,2018
- » Central Tax (Rate) -Notification No. 15/2018 dated July 26, 2018
- » Central tax (Rate)-Notification No. 14/2018 dated July 26, 2018
- » Central Tax (Rate)- Notification No. 12/2018 dated June 29,2018
- » Central Tax -Notification No. 30/2018 dated July 30, 2018

## COMPANY LAW

### Amendments, Notifications & Court Rulings

- » Notification of Companies (Appointment and Qualification of Directors) fourth Amendment Rules, 2018
- » Notification of Companies (Authorized to Register) Second Amendment Rules, 2018
- » Notification of Companies (Registration of Charges) Amendment Rules, 2018

## RBI, DGFT & MCA Notifications

- » Detection and Impounding of Counterfeit Notes
- » Amendment in the Chapter-I of FTP 2015-2020
- » Directors KYC – FORM DIR-3 KYC

## DIRECT TAX

### 1. Finance Ministry hikes monetary limit for filing tax appeals to Rs. 20 Lakhs

CBDT via circular dated July 11, 2018 has revised the monetary limits of tax effects for filing of appeals by the Department before ITAT, High Court and Supreme Court with a motive to reduce litigation in small cases. The comparative monetary limits are as under:

Sr. No	Appeals/SLPs in Income Tax Matters	Earlier limit	New limit
1.	Before ITAT	Rs. 10 Lakhs	Rs. 20 Lakhs
2.	Before High Court	Rs. 20 Lakhs	Rs. 50 Lakhs
3.	Before Supreme Court	Rs. 25 Lakhs	Rs. 100 Lakhs

The Circular instructs that a case shall not be filed merely because the tax effect is more than the prescribed monetary limit. Filing of appeal has to be decided on the merits of the case along with the tax effect.

However in case of composite order of any appellate authority which involves more than one year appeals shall be filed for all such years even if the tax effect of any particular assessment year is less than the monetary limit if it is decided to file appeal in respect of the year(s) in which tax effect exceeds the monetary limit.

Further, the Circular also states the non-applicability of the monetary limits in situations involving Constitutional validity of the Act, the illegality of CBDT's order, notification, instruction or circular, in cases where Revenue Audit objection has been accepted by the Department, addition in respect of undisclosed foreign assets/bank accounts and inability to calculate tax effect in case of charitable trusts.

The Circular will apply to SLPs/appeals/cross objections/references to be filed henceforth in SC/HCs/Tribunals and shall also apply retrospectively to pending SLPs/appeals/cross objections/references which may be withdrawn or not pressed.

*Source: CBDT Circular No. 3/2018 dated July 11, 2018*

### 2. Issues of TP adjustments based on comparables can be taken up to ITAT level only

The Karnataka High Court in a recent ruling in case of Softbrands India (P.) Ltd has held that transfer pricing matters involving whether comparables have been rightly picked up or not, filters for arriving at correct list of comparables have been rightly applied or not, do not give rise to any substantial question of law and as such the ITAT would be the final decision making authority in respect of such fact finding matters.

Only cases involving interpretation of provisions of Double Taxation Avoidance Agreements (DTAA), interpretation of provisions of the Income Tax Act or overriding effect of the treaties over the domestic legislations or the questions like treaty shopping, Base Erosion and Profit Shifting (BEPS), transfer of shares in tax havens if based on relevant facts, such substantial questions of law could be raised before High Court under section 260-A.

The ITAT's findings of fact cannot be challenged in the High Court unless it is shown that the findings are ex-facie perverse and unsustainable and exhibit total non-application of mind by the ITAT to the relevant facts of the case and evidence before it. The exercise of fact finding or 'Arm's Length Price' determination or 'Transfer Pricing Adjustments' should be vested on the final fact finding authority i.e. ITAT.

Source: *Pr. CIT and ACIT vs. Softbrands India (P.) Ltd. [ITA No. 536/2015] dated June 25, 2018*

### 3. CBDT amends Form 3CD to include disclosure on secondary adjustments, interest deduction limitation and GAAR

CBDT vide Notification dated July 20, 2018 has amended Form 3CD to include additional disclosures/amend existing disclosures. A summary of the amendments is given below:

Clause	Amendment
4	GSTIN to be mentioned
19	Allowance u/s 32AD is to be reported
24	Deemed gains u/s 32AD is to be reported
26	Clause(g) of Section 43B(sum payable to Indian Railways for use of assets) is to be reported
31	Cash receipts more than Rs. 2 Lakhs u/s 269ST is to be reported
34	Details with respect to transactions not disclosed in TDS Return/ TCS Return is to be mentioned

A summary of the insertions is given below:

Clause	Insertion
29A	Advance received on capital asset forfeited to be reported here [Section 56(2)(ix)]
29B	Income of gifts exceeding Rs. 0.50 Lakhs to be reported here [Section 56(2)(x)]
30A	Details about "Primary Adjustment" in transfer pricing to be reported here as per Section 92CE
30B	Limitation of interest deduction for borrowings from a AE up to 30% of EBITDA is to be furnished here
30C	Details of Impermissible Avoidance Agreement to be furnished as referred in Section 96
36A	Dividend received u/s 2(22)(e) is required to be reported here
42	Details w.r.t Form 61, Form 61A and Form 61B is to be provided
43	Details w.r.t CbC Reporting as referred to in Section 286 is required to be reported
44	Break up of total expenditure in respect of GST Registered and Unregistered entities is required to be given

Source: *CBDT Notification no 33/2018/F.No. 370142/9/2018-TPL dated July 20, 2018*

#### 4. Income tax Department has sought stakeholder comments on Significant Economic Presence test.

The Finance Act, 2018 had introduced the concept of Significant Economic Presence (SEP) as digital advances have changed the way business is done, making it possible to deliver services without a 'Permanent Establishment' in India. The CBDT said the existing nexus rule based on physical presence no longer holds good for taxation of business profits in source country. As a result the definition of Business Connection in Explanation 2A to Section 9(1)(i) of the Act has been enlarged to include SEP for taxation of non-residents in India as follows:

- Any transaction in respect of any goods, services or property carried out by a nonresident in India including provision of download of data or software in India if the aggregate of payments arising from such transaction or transactions during the previous year exceeds the amount as may be prescribed; or
- Systematic and continuous soliciting of its business activities or engaging in interaction with such number of users as may be prescribed, in India through digital means.

In this regard comments/suggestions of stakeholders have been invited on the following:

- Revenue threshold of transaction in respect of physical goods or services carried out by a non-resident in India;
- Revenue threshold of transaction in respect of digital goods or services or property including provision of download of data or software carried out by a non-resident in India;
- Threshold for number of 'users' with whom a non-resident engages in interaction or carries out systematic and continuous soliciting of business activities in India through digital means.

Comments and suggestions can be sent electronically to [ustpl3@nic.in](mailto:ustpl3@nic.in) by August 10, 2018.

*Source: CBDT Letter F.NO.370142/11/2018-TPL] dated July 13, 2018*

## INDIRECT TAX

#### 1. Seeks to amend the notification No.5/2017-Central Tax (Rate), dated the 28th June, 2017 so as to grant the refund of unutilized ITC for certain goods.

It has been notified that refund of unutilized credit will be granted on account of inverted duty structure in respect of certain specified woven fabrics of silk, cotton, wool w.e.f. August 2018 while balance of unutilized input tax credit (ITC) lying as on July 31, 2018 shall lapse.

*Source: – Vide Notification No 20/2018- Central Tax (Rate) July 26, 2018*

2. Seeks to amend notification No. 13/2017- Central Tax (Rate) so as to specify services supplied by individual Direct Selling Agents (DSAs) to banks/ non-banking financial company (NBFCs) to be taxed under RCM.

Central government has notified the services procured from an Individual Direct Selling Agents (DSAs) by banks/Non-banking Financial Company (NBFCs) under Section 9(3) of the CGST Act, 2017.

*Source: – Vide Notification No 15/2018-Central Tax (Rate) dated July 26, 2018*

3. Exemption has been provided for the services rendered by an old age home.

Services given by an old age home run by Central Government, State Government or by an entity registered under section 12AA of the Income-tax Act, 1961 (43 of 1961) to its residents (aged 60 years or more) against consideration upto twenty-five thousand rupees per month per member, are exempted.

*Source: – Vide Notification No14/2018-Central tax (Rate) dated July 26, 2018*

4. Extension of exemption from Reverse Charge levy on the intra-State supplies of goods or services or both received by a registered person from an unregistered supplier.

The time limit for exempting intra-State supplies of goods or services or both received by a registered person from any supplier, who is not registered, from the whole of the central tax leviable thereon under sub-section (4) of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017) has been extended till 30th September 2018.

*Source: - Vide Notification No.12/2018-Central tax (Rate) June 29th 2018.*

5. Extension of due date for filing FORM GSTR-6 for the months from July 2017 to August, 2018.

The time limit for furnishing the return by an Input Service Distributor in FORM GSTR-6 for the months from July, 2017 to August, 2018 has been extended till September 30, 2018.

*Source: – Vide Notification No .30/2018-Central tax dated July 30, 2018.*

## COMPANY LAW

1. Notification of Companies (Appointment and Qualification of Directors) fourth Amendment Rules, 2018

The MCA vide notification dated July 05, 2018 has amended the Companies (Appointment and Qualification of Directors) Rules, 2014. Following changes will come into effect from July 10, 2018:

As part of updating its registry, MCA is conducting KYC of all Directors of all companies annually through a new e form viz. DIR-3 KYC. Accordingly, every Director who has been allotted DIN on or before 31st March, 2018 and whose

DIN is in 'Approved' status, would be mandatorily required to file form DIR-3 KYC on or before 31st August, 2018. While filing the form, the Unique Personal Mobile Number and Personal Email ID would have to be mandatorily indicated and would be duly verified by One Time Password (OTP). The form should be filed by every Director using his own DSC.

Source: [http://www.mca.gov.in/Ministry/pdf/Companies Appointment Qualification Rules\\_06072018.pdf](http://www.mca.gov.in/Ministry/pdf/Companies Appointment Qualification Rules_06072018.pdf)

## 2. Notification of Companies (Authorized to Register) Second Amendment Rules, 2018

The MCA vide notification dated July 05, 2018 has amended the Companies (Authorized to Register) Rules, 2014.

Source: [http://www.mca.gov.in/Ministry/pdf/Companies Authorised Register\\_06072018.pdf](http://www.mca.gov.in/Ministry/pdf/Companies Authorised Register_06072018.pdf)

## 3. Notification of Companies (Registration of Charges) Amendment Rules, 2018

The MCA vide notification dated July 05, 2018 has amended the Companies (Registration of Charges) Rules, 2014. Following changes will come into effect:

A Company or charge holder shall within a period of 300 days from the date of payment or satisfaction in full or any charge registered under Chapter VI, give intimation of the same to the Registrar in Form No. CHG-4 along with the Fee. Earlier the time period to file the satisfaction of charge with Registrar was 30 days from the date of satisfaction.

Source: [http://www.mca.gov.in/Ministry/pdf/Companies Registration ChargesRules\\_06072018.pdf](http://www.mca.gov.in/Ministry/pdf/Companies Registration ChargesRules_06072018.pdf)

## RBI, DGFT & MCA Notifications

### 1. Detection and Impounding of Counterfeit Notes

Master Circular DCM (FNVD) No.G-4/16.01.05/2015-16 dated July 1, 2015 (updated on 28 Sept 2015) consolidating the instructions issued till Sept. 28, 2015, relating to Detection and Impounding of Counterfeit Notes has been issued. The Master Circular has since been updated by incorporating the instructions issued till date and has been placed on the RBI website [www.rbi.org.in](http://www.rbi.org.in).

Source: [https://www.rbi.org.in/Scripts/BS\\_ViewMasCirculardetails.aspx?id=11059](https://www.rbi.org.in/Scripts/BS_ViewMasCirculardetails.aspx?id=11059) dated July 20, 2018

### 2. Amendment in the Chapter-I of FTP 2015-2020

In exercise of powers conferred by Section 3 of FT (D&R) Act, 1992, read with paragraph 1.02 and 2.01 of the Foreign Trade Policy, 2015-2020, as amended from time to time, the Central Government hereby amends the Import Policy Condition 2 to Chapter 87 of ITC(HS) 2017, Schedule 1 (Import Policy) and Vishakhapatnam port is added to the existing list of 15 ports 1 ICDs through which import of new vehicles is permitted under Policy Condition 2(11) (d) of Chapter 87 of ITC (HS) 2017, Schedule 1 (Import Policy).

Source: [dgft.gov.in/Exim/2000/NOT/NOT18/Notification%2018%20eng.pdf](http://dgft.gov.in/Exim/2000/NOT/NOT18/Notification%2018%20eng.pdf) dated July 12, 2018

### 3. Directors KYC – FORM DIR-3 KYC

As part of updating its registry, MCA would be conducting KYC of all Directors of all companies annually through a new eform viz. DIR-3 KYC. Accordingly, every Director who has been allotted DIN on or before March 31, 2018 and whose DIN is in 'Approved' status, would be mandatorily required to file form DIR-3 KYC on or before August 31, 2018. While filing the form, the Unique Personal Mobile Number and Personal Email ID would have to be mandatorily indicated and would be duly verified by One Time Password (OTP). The form should be filed by every Director using his own DSC and should be duly certified by a practicing professional (CA/CS/CMA). Filing of DIR-3 KYC would be mandatory for Disqualified Directors also.

After expiry of the due date by which the KYC form is to be filed, the MCA21 system will mark all approved DINs (allotted on or before 31st March 2018) against which DIR-3 KYC form has not been filed as 'Deactivated' with reason as 'Non-filing of DIR-3 KYC'. After the due date filing of DIR-3 KYC in respect of such deactivated DINs shall be allowed upon payment of a specified fee only, without prejudice to any other action that may be taken.

*Source: <http://www.mca.gov.in/MinistryV2/homepage.html> dated July 05, 2018*

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