

# technical update

September 2018 / Volume VIII / ASA



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.

## DIRECT TAX

### Amendments, Notifications & Court Rulings

- » Extension of due date for Income Tax Return filing and Audit Reports
- » Exemption to interest income on specified off-shore Rupee Denominated Bonds
- » Taxability of income earned on account of fees for technical services by UK based fiscally transparent entities

## INDIRECT TAX

### Amendments, Notifications & Court Rulings

- » Circular No. 59/33/2018-GST dated September 04, 2018
- » Order No. 4/2018-GST dated September 17, 2018
- » Notification No. 65/2018-Customs dated September 24, 2018
- » Notification No. 44/2018-Central Tax dated September 10, 2018
- » Notification No. 49/2018-Central Tax dated September 13, 2018

## COMPANY LAW

### Amendments, Notifications & Court Rulings

- » Notification of Companies (Prospectus and Allotment of Securities) Third Amendment Rules, 2018
- » Notification of Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2018
- » Notification of Companies (Appointment and Qualification of Directors) Sixth Amendment Rules, 2018
- » Notification of Companies (Registered Valuers and Valuation) Third Amendment Rules, 2018

## MCA, RBI & DGFT Notifications

- » Directors KYC – FORM DIR-3 KYC
- » Process Re-engineering of LLP-Incorporation related forms– Precautions to be taken by professionals and users
- » Return of Significant Beneficial Owners – Form No. BEN-2
- » External Commercial Borrowings (ECB) Policy – Liberalisation
- » Amendment in Foreign Trade Policy, 2015-2020

## DIRECT TAX

### 1. Extension of due date for Income Tax Return filing and Audit Reports

Central Board of Direct Taxes ('CBDT') vide order u/s 119 of the Income tax Act, 1961 ("Act") dated September 24, 2018 has extended the due dates for filing the return of income and audit reports of auditable assesseees i.e. a company or a person (whose accounts are required to be audited under any law) or a working partner of a firm (whose accounts are required to be audited under any law) from September 30, 2018 to October 15, 2018.

However, there shall be no extension of the due date for purpose of interest calculation u/s 234A and the assessee shall remain liable for payment of interest as per provisions of section 234A.

*Source: CBDT F.No.225/358/2018/ITA.11 dated September 24, 2018*

### 2. Exemption to interest income on specified off-shore Rupee Denominated Bonds

CBDT has exempted the interest income on rupee denominated bonds earned by non-resident, including foreign company. The objective of bringing such exemption is to reduce the cost of foreign borrowings through off-shore rupee denominated bonds and to increase the foreign exchange inflow.

In order to avail the exemption the following conditions has to be complied with:

- Rupee denominated bonds must be issued either by Indian Company or Business Trust
- Bonds must be issued to non-resident, including foreign company and it must be issued outside India
- Interest income will be exempt provided bonds are issued between September 17, 2018 to March 31, 2019.

Accordingly, no TDS u/s 194LC shall be deducted on the payment of interest on the said bonds on satisfaction of the above conditions.

*Source: Press Release dated September 17, 2018*

### 3. Taxability of income earned on account of fees for technical services by UK based fiscally transparent entities

In a recent ruling in the case of Linklaters LLP vs. DCIT, Mumbai Tribunal has clarified the taxability of income earned on account of fees for technical services by UK based fiscally transparent entities.

The assessee in the present case is a Limited Liability Partnership incorporated under the Laws of United Kingdom (UK), offering legal consultancy services to its clients all over the world including India.

Services rendered by assessee did not 'make available' any technical knowledge, know-how or experience to its clients and therefore did not fall under the category

of fees for technical services taxable in India as envisaged under Article-13 of the India-UK Double Taxation Avoidance Agreement ('DTAA').

It was held that these services cannot be brought to tax by applying the provisions of section 9(1)(vii) of the Income Tax Act, 1961 since, the assessee is entitled to claim the benefit of India-UK DTAA.

The assessee is eligible for the benefit of India- UK DTAA so long as the entire profits of the partnership firm are taxed in UK, whether in the hands of firm or in the personal capacity of the partners.

*Source: Linklaters LLP vs. DCIT [IT APPEAL NO. 1540 (MUM.) OF 2016 dated August 29, 2018*

## INDIRECT TAX

### 1. CBIC clarifies refund related issues

Seeks to clarify the procedures to be followed while submitting the GST refund application and the related issues.

*Source: – Vide Circular No. 59/33/2018-GST dated September 04, 2018*

### 2. CBIC extends the period for submitting the declaration in FORM GST TRAN-1

Seeks to extend the period for submitting the declaration in FORM GST TRAN-1 till January 31, 2019, for the class of registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal and whose cases have been recommended by the Council.

*Source: – Vide Order No. 4/2018-GST dated September 17, 2018*

### 3. Exemption from Integrated Tax and Compensation Cess on goods imported by EOU

Seeks to extend the exemption from Integrated Tax and Compensation Cess up to 31.03.2019 on goods imported by EOU

*Source: – Vide Notification No. 65/2018-Customs dated September 24, 2018*

### 4. CBIC extends the due date for filing of FORM GSTR-1

Seeks to extend the due date for filing of FORM GSTR - 1 for taxpayers having aggregate turnover above Rs 1.5 crore rupees in the preceding financial year or the current financial year, for the months from July, 2017 to September, 2018 till the 31st day of October, 2018 and for the months from October, 2018 to March, 2019 till the eleventh day of the succeeding month.

*Source: – Vide Notification No. 44/2018-Central Tax dated September 10, 2018*

## 5. CBIC introduces the GST audit report, FORM GSTR-9C.

Seeks to amend the CGST Rules, 2017 (Tenth Amendment Rules, 2018), inserting FORM GSTR-9C (reconciliation statement and certification) after FORM GSTR-9A.

Source: – Vide Notification No. 49/2018-Central Tax dated September 13, 2018

## COMPANY LAW

### 1. Notification of Companies (Prospectus and Allotment of Securities) Third Amendment Rules, 2018

The MCA, vide notification dated September 10, 2018, has amended the Companies (Prospectus and Allotment of Securities) Rules, 2014. The following changes come into effect from such notification date:

1. Every Unlisted Public Company is required to issue the securities only in Dematerialized form and facilitate Dematerialization of all its existing Securities.
2. Every holder of securities who intends to transfer or subscribe to any securities of Unlisted Public Company on or after October 02, 2018 has to make sure that all the existing securities are held in Dematerialized Form.

Source: [http://www.mca.gov.in/Ministry/pdf/CompaniesProspectus3amdRule\\_10092018.pdf](http://www.mca.gov.in/Ministry/pdf/CompaniesProspectus3amdRule_10092018.pdf)

### 2. Notification of Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2018.

The MCA, vide notification dated September 12, 2018, has amended the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014. With this Notification, approval of Central Government is not required for payment of remuneration to Managerial Person exceeding the limit specified in the Companies Act, 2013.

Source: [http://www.mca.gov.in/Ministry/pdf/companiesAmendRules\\_13092018.pdf](http://www.mca.gov.in/Ministry/pdf/companiesAmendRules_13092018.pdf)

### 3. Notification of Companies (Appointment and Qualification of Directors) Sixth Amendment Rules, 2018

The MCA, vide notification dated September 20, 2018, has amended the Companies (Appointment and Qualification of Directors) Rules, 2014. With this Notification, due date for filing KYC (Know Your Customer) document with MCA for holders of Director Identification Number (DIN) has been extended from September 15, 2018 to October 05, 2018. Further the late fee for submission of KYC documents has been reduced from ₹. 5,000/- to ₹. 500/- till October 05, 2018.

Source: [http://www.mca.gov.in/Ministry/pdf/AppointmentAndQualificationSixthAmendmentRules\\_20092018.pdf](http://www.mca.gov.in/Ministry/pdf/AppointmentAndQualificationSixthAmendmentRules_20092018.pdf)

#### 4. Notification of Companies (Registered Valuers and Valuation) Third Amendment Rules, 2018

The MCA, vide notification dated September 25, 2018, has amended the Companies (Registered Valuers and Valuation) Rules, 2017. With this Notification, any person who is rendering valuation services under the Companies Act, 2013, on the date of commencement of these rules, may continue to render valuation services without a certificate of registration up to January 31, 2019.

Source: [http://www.mca.gov.in/Ministry/pdf/CompaniesThirdAmendment\\_25092018.pdf](http://www.mca.gov.in/Ministry/pdf/CompaniesThirdAmendment_25092018.pdf)

### MCA, RBI & DGFT Notifications

#### 1. Directors KYC – FORM DIR-3 KYC

As you are aware the last date for filing form DIR-3 KYC without fee has expired on 15 September, 2018. The process of deactivating the non-compliant DINs has since been completed and their status has been updated as 'Deactivated due to non-filing of DIR-3 KYC. However, the non-compliant DIN holders may file DIR-3 KYC with a fee of Rs. 500 (Rupees

Five Hundred Only) from September 21, 2018 till October 5, 2018 (both days inclusive) to get their DINs reactivated. From October 6, 2018 onwards, a fee of Rs. 5000 (Rupees Five Thousand Only) becomes payable for reactivation.

Source: [http://www.mca.gov.in/Ministry/pdf/RegistrationOfficesFeesFifthAmendmentRules\\_20092018.pdf](http://www.mca.gov.in/Ministry/pdf/RegistrationOfficesFeesFifthAmendmentRules_20092018.pdf) dated September 20, 2018

#### 2. Process Re-engineering of LLP-Incorporation related forms– Precautions to be taken by professionals and users

In the wake of successfully initiating Ease of Doing Business (EoDB) reforms by introducing game changing, simplified and integrated procedures viz. SPICe (Simplified Proforma for Incorporating Company electronically), Reserve Unique Name (RUN) for starting a business in India, the Ministry of Corporate Affairs has now launched another major reform by way of process reengineering of incorporation of Limited Liability Partnership (LLP) as well on a big scale.

Source: [http://www.mca.gov.in/Ministry/pdf/LLPIncorporationProcessReengineering\\_19092018.pdf](http://www.mca.gov.in/Ministry/pdf/LLPIncorporationProcessReengineering_19092018.pdf) dated September 19, 2018

#### 3. Return of Significant Beneficial Owners – Form No. BEN-2

Relaxation of additional fees and extension of last date of filings of Form BEN-2 under the Companies Act, 2013

Source: [http://www.mca.gov.in/Ministry/pdf/General\\_Circular\\_No.\\_7\\_06082018.pdf](http://www.mca.gov.in/Ministry/pdf/General_Circular_No._7_06082018.pdf) dated September 20, 2018

#### 4. External Commercial Borrowings (ECB) Policy – Liberalization

It has been decided, in consultation with the Government of India, to liberalize some aspects of

The ECB policy including policy on Rupee denominated bonds

Source: [https://rbidocs.rbi.org.in/rdocs/notification/PDFs/](https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NT480A7F93682BC84156B82F4AD508937A0C.PDF)

NT480A7F93682BC84156B82F4AD508937A0C.PDF dated September 19, 2018

#### 5. Amendment in Foreign Trade Policy, 2015-2020

##### a. Amendment in the Para 2.47 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 Foreign Trade Policy.

Source: [http://dgft.gov.in/sites/default/files/NOT-36-27092018\\_0.pdf](http://dgft.gov.in/sites/default/files/NOT-36-27092018_0.pdf) dated September 27, 2018

##### b. Extension of Integrated Goods and Service Tax (IGST) and Compensation cess exemption under Advance Authorization, EPCG and EOU Scheme up to 31.03.2019.

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 Foreign Trade Policy.

Source: <http://dgft.gov.in/sites/default/files/Notification%20No%2035%20%E2%80%932026-09-2018%20English.pdf> dated September 27, 2018

# ASA & ASSOCIATES LLP

CHARTERED ACCOUNTANTS

[www.asa.in](http://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