

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 hereunder.

DIRECT TAX

Amendments, Notifications & Court Rulings

- » Signing of Inter-Governmental Agreement for exchange of CbC Reports between India and USA
- » CBDT notifies exemption for start-ups from “angel tax” as per relaxations notified by DPIIT

INDIRECT TAX

Amendments, Notifications & Court Rulings

- » Notification No. 10/2019 - Central Tax dated the March 07, 2019
- » Notification No. 14/2019 - Central Tax dated March 07, 2019
- » Circular No. 92/11/2019 - GST Central Tax dated March 07, 2019
- » Circular No. 93/12/2019 - GST Central Tax dated March 08, 2019
- » Notification No. 09/2019 - Customs dated March 25, 2019

COMPANY LAW

Amendments, Notifications & Court Rulings

- » Notification on the Companies (Incorporation) Second Amendment Rules, 2019
- » Notification on the Companies (Incorporation) Third Amendment Rules, 2019

MCA Circulars & RBI Notifications

- » Clarification on filing of e-form RD-1 - Conversion of public company into private Company and change in a Financial Year
- » Foreign Exchange Management (Export and import of Currency) (Amendment) Regulations, 2019
- » Establishment of Branch Office (BO) / Liaison Office (LO) / Project Office (PO) or any other place of business in India by foreign entities
- » Reserve Bank of India (Prevention of Market Abuse) Directions, 2019
- » Master Direction - External Commercial Borrowings, Trade Credits and Structured Obligations

- » Foreign Exchange Management (Deposit) Regulations, 2016 - Opening of NRO Accounts by Long Term Visa (LTV) holders, changes related to Special Non-Resident Rupee (SNRR) Account and Escrow Account
- » Establishment of Branch Office (BO) / Liaison Office (LO) / Project Office (PO) or any other place of business in India by foreign entities

DIRECT TAX

1. Signing of Bilateral Agreement for exchange of CbC Reports between India and USA

India and the United States of America ('USA') signed an Inter-Governmental Agreement for Exchange of Country-by-Country ('CbC') Reports on March 27, 2019. This Agreement for Exchange of CbC Reports, along with the Bilateral Competent Authority Arrangement between the two Competent Authorities, will enable both the countries to automatically exchange CbC Reports filed by the ultimate parent entities of Multinational Enterprises ('MNE's) in the respective jurisdictions, pertaining to the years commencing on or after January 1, 2016. It would also obviate the need for Indian subsidiary companies of US MNEs to do local filing of the CbC Reports, thereby reducing the compliance burden.

A CbC Report has aggregated country-by-country information relating to the global allocation of income, the taxes paid, and certain other indicators of an MNE group. India has already signed the Multilateral Competent Authority Agreement for exchange of CbC Reports, which has enabled exchange of CbC Reports with 62 jurisdictions. This information will enable an enhanced level of assessment of tax risk by both tax administrations.

Source: CBDT Press release dated March 27, 2019.

2. CBDT notifies exemption for start-ups from "angel tax" as per relaxations notified by DPIIT

Central Board of Direct Taxes ('CBDT') has notified that the provisions of section 56(2)(viib) of the Income Tax Act, 1961 pertaining to taxation of excess share premium received by companies from a resident investor, popularly known as "angel tax", shall not apply to a company which fulfils the conditions specified by Department for Promotion of Industry and Internal Trade ('DPIIT') vide notification number G.S.R. 127(E), dated February 19, 2019 ('2019 DPIIT Notification').

The 2019 DPIIT Notification substantially relaxed the conditions and procedure for exemption from "angel tax" for start-up companies by adopting a "green channel" process in place of the earlier approval-based process. In order to claim exemption, the "start-up company" which fulfils the modified conditions¹ has to merely file a self-declaration stating that the eligible start-up has not invested in non-qualifying assets which shall be transmitted by the DPIIT to the CBDT.

The present CBDT Notification comes into force retrospectively from February 19, 2019, being the date of the 2019 DPIIT Notification.

Source: CBDT Notification No. 13 of 2019 [F. No. 370142/5/2018-TPL (Pt.)] dated March 5, 2019

¹ Start-up with an aggregate share capital and share premium of INR 250 million excluding shares issued to non-residents, venture capital company (VCC) or a venture capital fund (VCF) or a specified listed company

INDIRECT TAX

1. Seeks to give exemption from registration for any person engaged in exclusive supply of goods and whose aggregate turnover in the financial year does not exceed Rs.40 lakhs

The threshold limit for obtaining GST registration for any person engaged in exclusive supply of goods is increased to INR 40 lakhs. However, this aforesaid exemption is not allowed for person-

- i) Required to take compulsory registration u/s 25;
- ii) Making intra-state supply in the States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura, Uttarakhand;
- iii) Engaged in making supplies of specified goods like Ice cream and other edible ice, Pan Masala and Tobacco and manufactured tobacco substitutes.
- iv) Who has obtained voluntary registration and intends to continue it

Source: Vide Notification No. 10/2019 – Central Tax dated March 07, 2019.

2. Seeks to supersede notification No. 08/2017 - Central Tax dated 27.06.2017 in order to extend the limit of threshold of aggregate turnover for availing Composition Scheme u/s 10 of the CGST Act, 2017 to Rs. 1.5 crores

An eligible registered person, whose aggregate turnover in the preceding financial year did not exceed one crore and fifty lakh rupees, may opt to pay, in lieu of the tax payable by him under sub-section (1) of section 9 of the said Act, an amount of tax as prescribed under rule 7 of the Central Goods and Services Tax Rules, 2017.

Provided that the said aggregate turnover in the preceding financial year shall be seventy-five lakh rupees in the case of an eligible registered person, registered under section 25 of the said Act, in any of the following States, namely: –

Arunachal Pradesh, (ii) Manipur, (iii) Meghalaya, (iv) Mizoram, (v) Nagaland, (vi) Sikkim (vii) Tripura, (viii) Uttarakhand

Source: – Vide Notification No. 14/2019 – Central Tax dated March 07, 2019.

3. Seeks to clarify various doubts related to treatment of sales promotion scheme under GST

- i) It is clarified that samples which are supplied free of cost, without any consideration, do not qualify as 'supply' under GST, except where the activity falls within the ambit of Schedule I of the said Act. ITC shall not be available to the supplier on the inputs, input services and capital goods to the extent they are used in relation to the gifts or free samples distributed without any consideration.
- ii) 'Buy One, Get One Free' is a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one. Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply. ITC shall be available on such supplies.

- iii) Value of supply shall not include any discount by way of issuance of credit note(s), except in cases where the provisions contained in clause (b) of sub-section (3) of section 15 of the said Act are satisfied. There is no impact on availability or otherwise of ITC in the hands of supplier in this case. No impact on availability of ITC in the hands of supplier

Source: Vide Circular No. 92/11/2019 – Central Tax dated March 07 2019.

4. Seeks to clarify nature of supply of Priority Sector Lending Certificates (PSLC)

Nature of supply of PSLC between banks may be treated as a supply of goods in the course of inter-State trade or commerce. Accordingly, IGST shall be payable on the supply of PSLC traded over e-Kuber portal of RBI for both periods i.e. 01.07.2017 to 27.05.2018 and from 28.05.2018 onwards. However, where the bank liable to pay GST has already paid CGST/SGST or CGST/UTGST as the case may be, such banks for payment already made, shall not be required to pay IGST towards such supply.

Source: Vide Circular No. 93/12/2019 – Central Tax dated March 08, 2019.

5. Seeks to amend Notification No.52/2003-Customs dated 31.03.2003 for extending exemption from IGST and compensation cess to EOUs on imports till 31.03.2020

Central Government extends the time period for availing the exemption from payment of IGST and Compensation Cess on import of specified goods procured by EOU's, STP Units, EHTP units etc. for specified purposes by amending the Notification No. 52/2003 – CT dated March 31, 2003 till March 31, 2020.

Source: Vide Notification No. 09/2019-Central Tax dated February 20, 2019.

COMPANY LAW

1. Notification on the Companies (Incorporation) Second Amendment Rules, 2019

The MCA has amended Companies (Incorporation) Rules, 2014 and notified the Companies (Incorporation) Second Amendment Rules, 2019 vide notification dated March 06th, 2019 and made following key changes will come into effect from March 18th, 2019:

Rule 38(2) Companies (Incorporation) Rules, 2014 - In case of companies incorporated, with effect from the 26th day of January, 2018, with a nominal capital of less than or equal to rupees fifteen lakhs (*Initially it was Ten Lakhs*) or in respect of companies not having a share capital whose number of members as stated in the articles of association does not exceed twenty, fee on INC-32 (SPICe) shall not be applicable.

Source: http://www.mca.gov.in/Ministry/pdf/Companies_IncorporationII_Amendment_Rules_07032019.pdf

2. Notification on the Companies (Incorporation) Third Amendment Rules, 2019.

The MCA has amended Companies (Incorporation) Rules, 2014 and notified the Companies (Incorporation) Third Amendment Rules, 2019 vide notification dated March 29th, 2019 and made following key changes:

The application for incorporation of a company (e-Form SPICE) under rule 38 of Companies (Incorporation) Rules, 2014 shall be accompanied by e-form AGILE (INC-35) (Application for Goods and services tax Identification number, employees state Insurance corporation registration plus Employees provident fund organisation registration) containing an application for registration of the following numbers, namely:-

- (a) GSTIN with effect from 31st March, 2019
- (b) EPFO with effect from 8th April, 2019
- (c) ESIC with effect from 15th April, 2019

Source: http://www.mca.gov.in/Ministry/pdf/companiesINC3rdAmendmentRules_30032019.pdf

MCA Circulars & RBI Notifications

1. Clarification on filing of e-form RD-1 - Conversion of public company into private Company and change in a Financial Year

In terms of MCA notification no. G.S.R 1219(E) dated 18/12/18, Regional Directors are advised to process e-form RD-1 for the referred applications, if 'others' is selected on account of aforesaid two counts, till the revised form is deployed by this ministry and that such applications filed in e-form no.RD-1 should not be rejected merely on the ground that "others" is selected and "e-form is not available", till the said form is deployed by this Ministry.

Source: http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo3_11032019.pdf dated March 11, 2019

2. Foreign Exchange Management (Export and import of Currency) (Amendment) Regulations, 2019

In terms of clause (g) of sub-section (3) of Section 6 and Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank of India hereby makes the following amendments to the Foreign Exchange Management (Export and import of Currency) Regulations, 2015 (Notification No. FEMA 6(R)/RB-2015 dated December 29, 2015) (hereinafter referred to as 'the Principal Regulations')

Source: <https://rbidocs.rbi.org.in/rdocs/notification/PDFs/FEMA6R120197198141F085C44998130724A7F93E98D.PDF> dated February 26, 2019

3. Establishment of Branch Office (BO) / Liaison Office (LO) / Project Office (PO) or any other place of business in India by foreign entities

In terms of extant Regulations, applications received from a Non-Government Organisation, Non-Profit Organization, Body/Agency/Department of a foreign Government for opening of a branch office or a liaison office or a project office or any other place of business in India are to be forwarded to the Reserve Bank

for prior approval and be considered in consultation with the Government of India. This has since been reviewed and as notified through Notification No FEMA 22(R)(1), it is advised that if such an entity is engaged, partly or wholly, in any of the activities covered under Foreign Contribution (Regulation) Act, 2010 (FCRA), it shall obtain a certificate of registration under the said Act and shall not seek permission under FEMA 22(R).

Source:https://rbidocs.rbi.org.in/rdocs/notification/PDFs/APDIR200C249E6943444A_B68B99AEC2427265F6.PDF dated February 27, 2019

4. Reserve Bank of India (Prevention of Market Abuse) Directions, 2019

In terms of Paragraph 12 of the Statement on Developmental and Regulatory Policies of the Second Bi-monthly Monetary Policy Statement for 2018-19 dated June 06, 2018, wherein it was announced that the Reserve Bank shall introduce regulations, in line with best global practices, to prevent abuse in markets regulated by the Reserve Bank, the directions have been finalized.

Source:https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NT141DCB01288F6D245_52A898041355981711.PDF dated March 15, 2019

5. Master Direction - External Commercial Borrowings, Trade Credits and Structured Obligations

Transactions on account of External Commercial Borrowings (ECB) and Trade Credits (TC) are governed by clause (d) of sub-section 3 of section 6 of the Foreign Exchange Management Act, 1999 (FEMA). Various provisions in respect of these two types of borrowings are included in the following Regulations framed under FEMA:

- i) Foreign Exchange Management (Borrowing and Lending) Regulations, 2018, notified vide Notification No. FEMA 3R/2018-RB dated December 17, 2018, as amended from time to time; and
- ii) Foreign Exchange Management (Guarantees) Regulations, 2000, notified vide Notification No. FEMA 8/2000-RB dated May 03, 2000, as amended from time to time.

Source:<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/5MD2603201979CA1390E9E546869B2A9A92614DEDBF.PDF> dated March 26, 2019

6. Foreign Exchange Management (Deposit) Regulations, 2016 - Opening of NRO Accounts by Long Term Visa (LTV) holders, changes related to Special Non-Resident Rupee (SNRR) Account and Escrow Account

In terms of Foreign Exchange Management (Deposit) Regulations, 2016 notified vide Notification No. FEMA 5(R)/2016-RB dated April 1, 2016 and A.P.(DIR Series) Circular No.67/2015-16[(1)/5(R)] dated May 5, 2016. The FEM (Deposit) (Amendment) Regulations 2018 i.e FEMA 5(R)(1) have since been notified by the Government of India vide GSR No 1093(E) dated November 9, 2018 necessitating changes to the extant instructions.

Source:https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NT155A638C6424CF4496_59E82CB1DA2D5DD4E.PDF dated March 28, 2019

7. Establishment of Branch Office (BO) / Liaison Office (LO) / Project Office (PO) or any other place of business in India by foreign entities

The extant Regulations regarding requirement of prior approval of the Reserve Bank of India, for opening of a Branch Office (BO) / Liaison Office (LO) / Project Office (PO) or any other place of business in India, where the principal business of the applicant falls in the Defence, Telecom, Private Security and Information and Broadcasting sector, have since been reviewed in consultation with the Government of India and the amendments have been notified by Government vide Notification No. FEMA 22(R)(2)/2019-RB dated January 21, 2019.

Source: <https://rbidocs.rbi.org.in/rdocs/notification/PDFs/APDIR27763286B8263F49EBBBE59065635213F9.PDF> dated March 28, 2019

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