

Tax & Corporate law Bulletin

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August 2016

From the Editor's Desk...

Dear Reader,

Greetings for the season,

E-filing of appeals – Extension of time limit Section 36(1)(VA), 43B Employees contribution to provident fund ; Price Dissemination through SMS/Electronic Communication Facility Constitution Amendment Bill on GST passed by Parliament and read many more...

We eagerly await your feedback on the bulletin.

Yours truly,

Rajput Jain & associates

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Individually, we are one Drop; Together we are an Ocean

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“Adapting swiftly to the global business environment”



DIRECT TAX



➤ **Section 206C – Collection at Source – Clarification on amendment made in Finance Act, 2016 [240 Taxman (St.) 1]**

Press Release - August 2016

In order to reduce the cash transactions in sale of goods and services, Finance Act, 2016 has expanded the scope of section 206C (1D) to provide that the seller shall collect tax at the rate of one per cent from the purchaser on sale in cash of any goods (other than bullion and jewelry) or providing of any services (other than payment on which tax is deducted at source under Chapter XVII-B) exceeding two lakh rupees. Further, with a view to bring high value transactions within the tax net, it has been provided in sub-section (1F) of section 206C of the Act that the seller who receives consideration for sale of motor vehicle exceeding ten lakh rupees, shall collect one per cent of the sale consideration as tax from the buyer. Any person who obtains in any sale, the goods of the nature specified in sub-section (1D) or (1F) of section 206C is a buyer.

The amendments brought in section 206C by Finance Act, 2016 are applicable from 1st June, 2016.

The CBDT has received number of queries about the scope of the provisions and the procedure to be followed. The CBDT vide Circular No. 22/2016 (F. No. 370142/17/2016-TPL) dated 08/6/2016 clarified the points raised by issue of circular in the form of questions and answers. There are seven

FAQ's. The detailed circular is available at above page of the magazine.

➤ **Bad debts u/s. 36 (1) (vii) of the Income-tax Act – Admissibility of claim of deduction of bad debts [239 Taxman (St.) 457]**

Press Release - August 2016

The CBDT vide Circular No. 12/2016 dated 30/5/2016 clarifies that the claim of any debt or part thereof in any previous year will be allowable u/s. 36(1) (vii) of the Act, if it is written off as irrecoverable in the books of account of the assessee for that previous year and it fulfils the conditions stipulated in sub-section (2) of section 36 of the Act. Accordingly, no appeal may henceforth be filed on this ground and appeals already filed if any on this issue before various Courts/Tribunals may be withdrawn/not pressed upon. This is in view of the fact that the various proposals received by the CBDT regarding filing of appeals/pursuing litigation on the issue of allow ability of bad debts that are written off as irrecoverable in the accounts of the assessee. The dispute relates to cases involving failure on the part of assessee to establish that a debt is irrecoverable. The CBDT has taken this view in accordance with the decision of Supreme Court in the case of TRF Ltd. in CA Nos. 5292 to 5294 of 2003 vide judgment dated 9/2/2010 (190 Taxman 391), has held that the position of the law is well settled. "After 1/4/1989, for allowing deduction for the amount of any bad debt or part thereof under section 36(1)(vii) of the Act, it is not necessary for assessee to establish that the debt, in fact has become irrecoverable; it is enough if bad debt is written off as irrecoverable in the books of account of assessee."

➤ **E-filing of appeals – Extension of time limit.**

Press Release Dated August 2016

The CBDT vide Circular No. 20/2016 (F. No. 279/MISC/M-54/2016/ITJ) dated 26/5/2016 extends the time limit for filing of e-appeals before the Commission of Income-tax (Appeals). E-appeals which were due to be filed by 15/5/2016 can be filed up to 15/6/2016. All e-appeals filed within this

extended period would be treated as appeal filed in time.

Rule 45 of the Income Tax Rules, 1962, mandates compulsory e-filing of appeals before Commissioners of Income Tax (Appeals) with effect from 1/3/2016 in respect of persons who are required to furnish return of income electronically. It has come to the notice of the Central Board of Direct Taxes that in some cases the taxpayers who were required to e-file Form 35, were unable to do so due to lack of knowledge about e-filing procedure and / or technical issues in e-filing. Also, the EVC functionality for verification of e-appeals was made operational from 12/5/2016 for individuals and from 19/5/2016 for other persons. Word limit for filing grounds of appeal and mapping of jurisdiction of Commissioners of Income Tax (Appeals) were also a cause of grievance in some cases.

The matter was examined by the board and in order to mitigate any inconvenience caused to the tax payer on account of the new requirement of mandatory e-filing appeals, decided to extend the time limit for filing such e-appeals.

➤ **Equalization Levy Rules, 2016 [239 Taxman (St.) 460]**

Press Release Dated August 2016

The Central Government vide Notification No. SO1905 (E) [No. 38/2016 (F. No. 370142/12/2016/TPL)] makes the rules for carrying out the provisions of Chapter VIII of the said Act relating to Equalization levy. These rules may be called the Equalization Levy Rules, 2016. It shall come into effect from 1/6/2016. The notification is issued in exercise of the power conferred by section 179(1) & (2) of the Finance Act, 2016. It contains the provision for payment of Equalization Levy, statement of specified services, time limit to be specified in the notice calling for statement of specified services etc.

The CBDT vide Press Release dated 25/5/2016 intimates as under.

Paperless assessment/e-mail based assessment on a pilot basis was commenced in the Financial Year 2015-16 in non-corporate charges of five cities i.e. Ahmedabad, Bengaluru, Chennai, Delhi and Mumbai. The e-mail based assessment scheme has now been extended to two more cities, namely Hyderabad and Kolkata during the current financial year. It shall now be open for all the taxpayers assessed in these seven cities, whose cases have been selected under scrutiny to opt for being scrutinized under the e-mail based paperless assessment proceedings by giving their consent. However, in case of practical difficulties in submission of scanned copies of voluminous documents through e-mail, the documents could be received by the Assessing Officer in physical form after recording reasons for the same.

RECENT JUDGEMENT



➤ **Section 36(1)(VA), 43B Employees contribution to provident fund**

Press Release Dated August 2016

Although technical reading of Section 43B and the provisions of sub-Section (2) of Section 24 (x) read with Section 36(1)(VA) of the Act creates the impression that the employees' contribution would continue to be treated differently under a different head of deduction, as the head of deduction is separate under Section 43B and Section 36 of the Act but on a broader reading of the amendments made to Section 43B repeatedly and the intention of

Parliament, there appears to be sufficient justification for taking the view that the employees' and the employer's contribution ought to be treated in the same manner. Relying on the decisions of the Bombay High Court in CIT vs. Ghatge Patil Transports Ltd. [2014] 368 ITR 749 (Bom.) and Punjab and Haryana High Court in the case of CIT vs. *Hemla Embroidery Mills (P.) Ltd.* [2014] 366 ITR 167 (P.&H.), it was held that employees contribution to provident fund paid after specified due date but before the due date of filing return of income be allowed as deduction – Bihar State Warehousing Corporation Ltd. vs. CIT [2016] 71 *taxmann.com* 247 (Patna).

➤ **Section 37(1) Allow ability of expenditure on stamp duty**

Press Release Dated August 2016

Stamp duty paid by the appellant during the year under consideration is a compulsory statutory levy and would not restrict the profits of the future years and ordinarily revenue expenditure incurred wholly and exclusively for the purpose of business must be allowed in its entirety in the year in which it is incurred and it cannot be spread over a number of years. However, in a case where the assessee himself wants to spread the expenditure over a period of ensuing years, it can be allowed only if the principle of “matching concept” is satisfied – Prithvi Associates vs. ACIT [2016] 71 *taxmann.com* 163 (Gujarat).

➤ **Section 45 Short / Long term gains**

Press Release Dated August 2016

By virtue of the agreement dated 18th May, 1980 the assessee had interest in the land. It was observed that consequent to the vendor not honoring the agreement dated 18th May, 1980, all that the appellant had was a right to seek specific performance which he sought to enforce by filing the suit. It is only on the Consent Terms being filed in Court that the appellant got ownership and possession on 11th March 1988. Assessee sold said land on 29th November 1988. On the facts of the case it was held that gains arising on sale of land are

short term capital gains – late Shri H. G. Malkani vs. CIT ITA No. 75 of 2001 (Bombay) Order dated 29/6/2016.

➤ **Section 245C Maintainability of application before Settlement Commission**

Press Release Dated August 2016

The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 comes into effect from 1/7/2015 and the petitioners had filed their Return of Income on 21/5/2015 and notice was issued under Section 148 of the Income-tax Act by the Assessing Officer on 29/5/2015 which is before coming into effect of the provisions of the Black Money Act, 2015. It was held that the applications submitted by the petitioners before the Commission are maintainable

➤ **Section 56(2) Interest on motor accident compensation**

Press Release Dated August 2016

Unless a receipt is not an income, there is no occasion for the provisions of Sections 56(1) or 56(2) coming into play. Section 56 does not decide what is an income. What it holds is that if there is an income, which is not taxable under any of the heads under Section 14, i.e., items A to E; it is taxable under the head ‘income from other sources’. The receipt being in the nature of income is a condition precedent for Section 56 coming into play, and not vice versa. To suggest that since an item is listed under Section 56(2), even without there being anything to show that it is of income nature, it can be brought to tax is like putting the cart before the horse. The very approach of the authorities below is devoid of legally sustainable merits. The ITAT also directed the Central Board of Direct Taxes to issue appropriate administrative instructions and ensuring that what was brought as a measure of relief to the taxpayers is not used, by the field officers, as a source of taxation. It was accordingly held that Interest awarded by Court on motor accident compensation, being a capital receipt, is not taxable as income

➤ **Section 56 Sum received from the trust by beneficiary**

Press Release Dated August 2016

The trust as such is not having a separate legal existence, but represents only its beneficiaries. Income of the trust is the income of the beneficiary. The trustees in a discretionary trust only have the power to decide when and how much money to distribute among the beneficiaries. This does not mean that they are the owners of the income. Thus what was received by the assessee as a beneficiary from the thirteen trusts were nothing but his own income in his status as a beneficiary of the said trust? What has flown from the trustee to the beneficiary is the income the trustee collected on behalf of the beneficiaries. Once the character of the income in the hands of the beneficiary takes the same color as that of the income in the hands of the trust, and once it is accepted that trust as such is not having a persona different or distinct from that of the beneficiary, it naturally flows that such income or receipt is not received without consideration. Hence it was held that money received by the assessee from various trusts could not have been taxed u/s. 56(2) (VI) of the Act

INDIRECT TAX



➤ **Exempted all the taxable services from levy of KrishiKalyan.**

Press Release - August 2016

Central Government, vide Notification No. 35/2016-ST dated 23rd June, 2016, has exempted all the taxable services from levy of Krishi Kalyan

Cess in respect of invoices which have been issued on or before the 31st May, 2016 subject to condition that the provision of such service has also been completed on or before the 31st May, 2016.

Central Government, vide Notification No. 36/2016-ST dated 23rd June, 2016, has exempted the taxable services of transportation of goods by a vessel from outside India up to the customs station in India with respect to which the invoice for the service has been issued on or before the 31st May, 2016, from the whole of service tax. The said exemption is subject to the condition that the import manifest or import report required to be delivered u/s. 30 of the Customs Act, 1962 has been delivered on or before the 31st May, 2016 and the service provider or recipient produces Customs certified copy of such import manifest or import report.

➤ **No physical verification of premises in case of registration of readymade garment manufacturers**

Notification No. 35/2001-Central Excise (NT) Dated August 2016

Manufacturers of branded readymade garments and textile made up articles, falling under Chapters 61, 62 or 63 (except laminated jute bags falling under Tariff ID 6305, 63090000 or 6310) and having RSP of ` 1,000/- and above, are covered under Central Excise levy vide Union Budget 2016-17. Accordingly, the manufacturers are required to get registered and pay appropriate duties.

Generally, the premises of manufacturer are physically verified before granting registration under Central Excise Laws. However, these manufacturers of branded readymade garments are granted exemption from mandatory physical verification of manufacturing premises vide amendments to Notification No. 35/2001-Central Excise (NT) dated 26th June, 2001.

➤ **Clearance of bunker fuels to Indian Ship/Vessel carrying containerized cargo.**

Notification No. 31/2016-CE (NT) Dated August 2016

IFO 180 CST and IFO 380 CST bunker fuels for use in specified Ships or Vessels is granted conditional exemption from Central Excise Duty vide Mega Exemption Notification No. 12/2012-CE dated 17th March, 2012.

In view of representation from trade and industry, Board has specified the procedure and conditions for supply of bunker fuel from the warehouse of the Oil Manufacturing Companies (OMCs) to the eligible ships/vessels. Therefore, now, warehousing facility is extended to such goods when intended for direct supply from warehouse. Further, bunker fuel from refinery to the warehouses of OMCs and for further supply to the eligible ships and vessels shall be cleared following existing warehousing and export warehousing procedure and also new procedure as prescribed under this Circular.

SEBI



➤ **SEBI advisory on 3 thing against which Investor must be Cautions.**

Press Release Dated August 2016

A. LEAGUES / SCHEMES / COMPETITIONS WHICH MAY INVOLVE DISTRIBUTION OF PRIZE MONIES

It has come to the notice of SEBI that various entities are soliciting investors by offering leagues/schemes/competitions etc. related to securities markets. Some of the schemes may involve distribution of prize monies. Participation in such schemes including sharing of confidential and personal trading data is at investors' own risk, cost and consequences as such schemes are neither approved nor endorsed by SEBI / SEBI recognized Exchange(s).

SEBI is issuing this caution to investors to warn about such schemes offered by third party or group company/associate of stock broker(s) etc. The investors may note that for any kind of disputes relating to such schemes or enforcement of any agreement / MoU, etc., none of the following recourses will be available to investors of such schemes:

- ❖ Benefits of investor protection under SEBI/ Exchange(s) Jurisdiction
- ❖ Exchange dispute resolution mechanism
- ❖ Investor grievance redressal mechanism administered by Exchange(s)

B. UNAUTHORIZED ELECTRONIC PLATFORMS

It has also come to the notice of SEBI that certain electronic platforms are facilitating fund raising on digital platforms like websites and other internet platforms, which are similar to the platforms of stock exchanges. These digital platforms are neither authorized nor recognized under any law governing the securities market. The electronic platforms are allegedly facilitating investment in the form of private placement with companies, as the offer is open to all the investors registered with the platform amounting to a contravention of the provisions of Securities Contract (Regulation) Act, 1956 (SCRA) and the Companies Act, 2013. Only recognized stock exchanges provide a platform where equity and other securities issued by companies are listed and traded in accordance with the provisions of the SCRA. The details of SEBI recognized stock exchanges are available on the SEBI website www.sebi.gov.in.

C. DEALING WITH UN-REGISTERED INVESTMENT ADVISERS AND RESEARCH ANALYSTS

The general public should not trade in the securities markets based on the tips/recommendations provided by unregistered investment advisers / research analysts and should not get attracted or lured by such trading tips and stock specific recommendations

received through Short Message Services (SMSs) or through any public media including websites or through any other social networking media. The public in general are advised to check the registration status of the entity/person on the SEBI website before availing the investment advisory services/ research services.

➤ **SECURITIES CONTRACTS (REGULATION) (STOCK EXCHANGES AND CLEARING CORPORATIONS) (THIRD AMENDMENT) REGULATIONS, 2016**

Press Release Dated August 2016

No. SEBI/LAD-NRO/GN/2016-17/011– In exercise of the powers conferred by section 31 of the Securities Contracts (Regulation) Act, 1956 read with sections 11 and 30 of the Securities and Exchange Board of India Act, 1992, the Securities and Exchange Board of India hereby makes the following regulations to further amend the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012, namely:—

1. These regulations may be called the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) (Third Amendment) Regulations, 2016.
2. They shall come into force on the date of their publication in the Official Gazette.
3. In the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012,

➤ **Price Dissemination through SMS/Electronic Communication Facility**

Circular No. SEBI/HO/CDMRD/DMP/CIR/P/2016/76

1. As per Section 131(4) of Finance Act, 2015 all rules, directions, guidelines, instructions, circulars, or any like instruments, made by the erstwhile FMC or the Central Government applicable to recognized associations under the FCRA would continue to remain in force for a period of one year from the

date on which FCRA was repealed (September 29, 2015), or till such time as notified by SEBI, whichever is earlier.

2. In the past the erstwhile FMC had issued directives regarding price dissemination through SMS in the commodity derivatives. This circular is being issued to consolidate and update such norms.

3. Exchanges shall make efforts for registration of subscribers of Price Dissemination services and disseminate derivatives prices to them on a daily basis. Such direct price dissemination service would provide information to subscribers instantly in an efficient and transparent manner and thus shall be of great benefit to market participants.

4. The Exchanges may provide price dissemination through SMS or any other electronic communication facility (instant messengers, email etc.) for all commodities.

5. The service is to be provided free of cost to the subscribers. However, the expenditure incurred for such price dissemination may be reimbursed from the interest accrued on the Investor Protection Fund (IPF).

6. The provisions of this circular shall come into effect from September 29, 2016 in supersession of all earlier directives issued by erstwhile FMC with regard to matters related to 'Price Dissemination through SMS'.

7. This circular is issued in exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

8. The Exchanges are advised to:

- i. to make necessary amendments to the relevant bye-laws, rules and regulations.
- ii. bring the provisions of this circular to the notice of the stock brokers of the Exchange and also to disseminate the same on their website.

Industry to be a Public Utility Service for the purpose of the aforesaid Act, for a period of six months with effect from 11th September, 2016.

- **Sub: Deduction of income tax (TDS) on provident fund withdrawal – Instructions thereof.**

Instruction No. WSU/6(1)2016/Finance Bill 2016/IT/12859

Head Office circular No. WSU/6(1)2011/IT/Vol-IV/5931 dt. 21.05.2015 (at Sl. No. 110 of 'Office orders & circulars' for 2015-16)
Head Office circular No. WSU/6(1)2016/Finance Bill 2016/IT/4376 dt 30.05.2016 (at Sl. No. 109 of 'Office orders & circulars' for 2016-17) 2. In para 5 of Head Office circular dated 05.2015 cited at (1) above, it was instructed that in the cases of provident fund withdrawal (Form-19) wherever TDS has to be deducted @10%, the same may be approved on Form-19 by the APFC (Accounts) and wherever TDS @34.608%, it shall be approved on Form-19 by RPFC level officer.

The issue has been reviewed at Head Office and it has been decided that henceforth all the cases of TDS (including 10% as well as 34.608%), in the process of settlement of provident fund claims (Form-19), shall be approved by the concerned approver (AO/APFC) of the claim.

FEMA



- **Settlement System under Asian Clearing Union (ACU)**

Presently participants in ACU mechanism have the option to settle their transactions either in 'ACU Dollar' or in 'ACU Euro'. The 'ACU Dollar' and

'ACU Euro' is equivalent in value to one US Dollar and one Euro, respectively. As the payment channel for processing 'ACU Euro' transactions is under review, it has become necessary to temporarily suspend operations in 'ACU Euro' with effect from July 1, 2016. Accordingly, all eligible current account transactions including trade transactions in 'Euro' are permitted to be settled outside the ACU mechanism until further notice.

- **External Commercial Borrowings (ECB) – Approval Route**

In terms of the extant direction, ECB cases under the approval route were required to be considered by an Empowered Committee set up by the Reserve Bank based on the specified parameters.

The Reserve Bank of India has, in order to rationalize and expedite the approval process, decided that only ECB proposals under the approval route received by the RBI which are above a certain threshold limit (refixed from time-to-time) be placed before the Empowered Committee.

- **Review of Foreign Direct Investment (FDI) Policy on various sectors**

Consequent to the decision made by the Government of India on June 20, 2016 to liberalize and simplify the FDI policy on various sectors, the DIPP has issued a Press Note to give effect to the said decisions and to amend the Consolidated FDI Policy Circular of 2016 dated June 7, 2016.

- **Discontinuation of Reporting of Bank Guarantee on behalf of service importers**

On a review of the reporting requirements and to reduce the burden of compliance, AD Category-I banks are advised to discontinue submission of reports about invocation of bank guarantee issued in favor of a non-resident service provider on behalf of their resident customers for service imports. However, they may maintain records of such invocations and furnish the required details to RBI whenever sought.

POLICY WATCH



➤ **Monsoon session of Parliament ends**

Press Release Dated August 2016

The Monsoon Session 2016 of Parliament ended on August 12, 2016.¹ In the session, Parliament passed 14 Bills, including the 122nd Constitutional Amendment Bill to enable the levy of the Goods and Services Tax (GST), the Enforcement of Security Interest (Amendment) Bill, the Compensatory Afforestation Fund Bill, the Child Labour (Amendment) Bill, and two Bills to replace the Ordinances which provided for a common entrance test for medical education institutions. Four Bills were passed by one House and are currently pending in the other House. These are the Employee's Compensation (Amendment) Bill, the Factories (Amendment) Bill, the Maternity Benefits (Amendment) Bill, and the Mental Health Care Bill. Of these, the Employee's Compensation Bill, Maternity Benefits Bill and Factories Bill were introduced in the session. Some other Bills were introduced in this session and are now pending in Parliament. These include the Transgender Persons (Protection of Rights) Bill, the Motor Vehicles (Amendment) Bill, and the Citizenship (Amendment) Bill. Of these, the Citizenship Bill was referred to a Joint Parliamentary Committee and the Motor Vehicles Bill was referred to the Standing Committee on Transport, Tourism and Culture. The First Supplementary Demand for Grants 2016-17 was also taken up and passed by Parliament in this session.

➤ **Constitution Amendment Bill on GST passed by Parliament**

Press Release Dated August 2016

The Constitution (122nd Amendment) Bill, 2014 to enable the levy of the Goods and Services Tax (GST) was passed with amendments in Parliament on August 8, 2016.⁷ The Bill permits both Parliament and state legislatures to make laws on the taxation of goods and services. The Bill was examined by a Rajya Sabha Select Committee in July 2015. Salient amendments to the Bill as passed in August 2016 include:

Additional tax up to 1% on interstate trade omitted: The 2014 Bill stated that an additional tax of up to 1% on the supply of goods would be levied by the centre in the course of inter-state trade or commerce. The tax would be directly assigned to the states from where the supply originates. It would be levied for two years or more, as recommended by the GST Council. The amendments omitted this provision.

Compensation to states for five years: The 2014 Bill stated that Parliament may, by law, provide for compensation to states for any loss of revenues, for a period which may extend to five years. This would be based on the recommendations of the GST Council. The amendments replaced the term may with the word shall. This implies that compensation must be provided for a full five-year period.

Dispute resolution: The 2014 Bill stated that the GST Council may decide upon the modalities to resolve disputes arising out of its recommendations. The amendments state that the GST Council shall establish a mechanism to adjudicate any dispute arising out of its recommendations. Disputes can be between: (a) the centre and one or more states; (b) the centre and states and one or more states; (c) state and state. The Bill will have to be ratified by at least 15 of the 29 state legislatures before it can receive the President's assent. This would exclude union territories with legislatures like Delhi and Puducherry.⁸ According to news reports, 15 states, namely: Assam, Bihar, Jharkhand, Himachal Pradesh, Chhattisgarh, Gujarat, Madhya Pradesh, Delhi, Nagaland, Maharashtra, Haryana, Telangana, Mizoram, Sikkim and Goa have ratified the Bill⁹

➤ **The Employee's Compensation (Amendment) Bill, 2016 passed by LS**

Press Release Dated August 2016

The Employee's Compensation (Amendment) Bill, 2016 was passed by Lok Sabha on August 9, 2016. It is currently pending in Rajya Sabha. The Bill amends the Employee's Compensation Act, 1923. The Act provides for the payment of compensation to employees and their dependants in the case of injury by industrial accidents, including occupational diseases. Salient features of the Bill include:

Duty to inform employee of right to compensation: The Bill introduces a provision which requires an employer to inform the employee of his right to compensation under the Act. Such information must be given in writing (in English, Hindi or the relevant official language) at the time of employing him.

Penalty for failure to inform: The Bill penalizes an employer if he fails to inform his employee of his right to compensation. Such penalty may be between Rs 50,000 to one lakh rupees.

Appeals from the Commissioner's order: The Act permits appeals against the Commissioner's orders related to compensation, distribution of compensation, and award of penalty or interest, among others. However, this is only if the amount in dispute is at least Rs 300. The Bill raises this amount to Rs 10,000. It permits the central government to raise this amount.

Withholding payments pending appeal: Under the Act, if an employer has appealed against a Commissioner's order, any payments towards the employee can be temporarily withheld. The Commissioner may do so only by an order of the High Court, until the matter is disposed of by the Court. The Bill deletes this provision.

➤ **RBI releases draft circular on customer protection**

Press Release Dated August 2016

The Reserve Bank of India (RBI) released a draft circular on "Customer Protection- Limiting Liability of Customers in Unauthorized Electronic Banking Transactions".¹⁹ The draft circular lays down directions for determining customer liability in cases involving unauthorized electronic

transactions. Electronic transactions include: (i) online payments, such as internet or mobile banking, and (ii) proximity payment transactions, such as ATM transactions. Key directions proposed down by RBI include:

Banks' responsibilities: Banks should take the following measures to ensure customer security: (i) lay down procedures to ensure safety of electronic banking transactions, (ii) incorporate fraud detection and prevention mechanisms, (iii) put in place mechanisms to assess risks due to unauthorized transactions, and (iv) incorporate measures to mitigate risks and protect banks from consequent liabilities.

Limited liability of consumers: The customer's liability in case of unauthorized transactions will be determined based on when the bank is notified about such transactions. If the unauthorized transaction occurs owing to the negligence of the bank, -6- the customer will have zero liability, regardless of whether the transaction was reported to the bank. **Burden of proof:**

The burden of proof regarding negligence in the case of unauthorized electronic banking transactions will lie with the bank.

INDUSTRY WATCH & CORPORATE HIGHLIGHT

➤ **Watch out for VAT applicability on banking activities**

Press Release Dated August 2016

The applicability of value added tax ("VAT") on banking activities has shifted from a broad exemption regime under VAT Law No. 04/NA dated 26 December 2006 – "operations relating to banking services, financial institutions" – to a limited exemption scope under VAT Law No. 52/NA dated 23 July 2014 – "deposit interest, loan interest from the transactions of commercial banks or financial institutions authorized by the Bank of Lao PDR".

In practice, even prior to the issuance of the most recent VAT law, the Ministry of Finance has been taking a progressively more restrictive interpretation of the exemption scope through its Instruction No.

3111/MOF dated 27 November 2009 in favor of six kinds of transactions, themselves restricted in their definitions:

- (1) granting of credit and guaranteeing of debts resulting from the granting of credit;
- (2) financial deposits and account operations;
- (3) exchange of currency and provision of cash;
- (4) supply of securities;
- (5) intermediation in financial transactions; and
- (6) management of investment funds.

Recently, the Tax Department has conducted a series of VAT audits targeting banking and financial services. Assessments have been made and penalties levied for the financial years subject to audit, i.e. FY2015 and onwards.

Some of the services that may be targeted in a VAT audit are:

- ❖ Financial leasing fees
- ❖ Investment or transaction fees
- ❖ Administration service fees
- ❖ Advisory service fees
- ❖ Telegraphic transfer fees
- ❖ Banking instrument issuance fees
- ❖ Other service fees, excluding deposit and loan interest transactions

The Tax Department has identified the following as the main areas of VAT non-compliance by banks and financial institutions:

- ❖ Failure to identify taxable and exempted fees in their operations and accounting
- ❖ Failure to invoice VATable services
- ❖ Failure to declare monthly VAT.

The main penalties are:

- ❖ 0.1% of the VAT due for the late submission of VAT
- ❖ LAK1 million plus 50% of the VAT due for not issuing a VAT invoice

➤ **Motor Vehicle (Amendment) Bill, 2016 introduced in Lok Sabha**

Press Release Dated August 2016

The Motor Vehicles (Amendment) Bill, 2016 was introduced in Lok Sabha on August 9, 2016. The Bill seeks to amend the Motor Vehicles Act, 1988. The 1988 Act provides for standards for motor vehicles, grant of driving licenses, and penalties for violation of these provisions. The Bill was referred to the Standing Committee on Transport, Tourism, and Culture, on August 16, 2016. The Committee has to submit its report within two months. Key provisions of the Bill include:

- ❖ Recall of vehicles: The Bill allows the central government to order for recall of motor vehicles if a defect in the vehicle may cause damage to the environment, or the driver, or other road users. Vehicles may also be recalled if defects in a vehicle are reported to the central government. The manufacturer will have to: (i) reimburse the buyers for the full cost of the vehicle, or (ii) replace the defective vehicle with another vehicle with similar or better specifications.
- ❖ Compulsory insurance: The Bill requires the central government to constitute a Motor Vehicle Accident Fund. The Fund will provide compulsory insurance cover to all road users in India. It will be credited with: (i) a cess or tax as approved by the central - 13- government, (ii) a grant or loan made by the central government, or (iii) any other source as prescribed by the central government. It will be managed by an authority specified by the central government. Aggregator services: The Bill defines an aggregator as a digital intermediary or market place. The aggregator's services may be used by a passenger to connect with a driver for transportation purposes. The Bill requires these aggregators to obtain licenses.
- ❖ The aggregators will also be required to comply with the Information Technology Act, 2000.

Statutory compliance calendar for the month of August 2016

Due Date	Statutory Compliance Under Act	Particulars
05/08/2016	Income Tax	- Return of Income & Wealth for Non Corporate Assesses
	Service Tax	- Service Tax payments for July If the Service Tax Payment is done online, then the due date of payment of service tax is 6th.
	Central Excise	- Duty Payment for all Assesses other than SSI Units for July
07/08/2016	Income Tax	- TDS Payment for July
10/08/2016	Central Excise	<ul style="list-style-type: none"> - Monthly Return in Form ER-1 (Ann-12) for other than units availing SSI exemption for July - Monthly Return in Form ER-2 (Ann-13) by 100% EOUs for July - Monthly information relating to principal units in Form ER-6 (Ann – 13AC) for specified assesses for September. - Exports – Procurement of specified goods from EOU for use in manufacture of Export goods in Form Ann-17B for DTA units, procuring specified goods from EOU for manufacture of export goods. - Proof of Exports in Form Ann.-19, once in a month for all exporters, exporting goods under Bond - Export details in Form Ann.-20, for Manufacturing following simplified export procedure. - Removal of excisable goods at concessional rate in Form Ann. -46 for Manufacturers receiving the excisable goods for specified use at concessional rate of duty in terms of Rules described in Col. 4.
15/08/2016	Provident Fund	- PF Payment for July
21/08/2016	ESIC	- ESIC Payment for July
	MVAT	- MVAT Monthly Return for July (TAX>1000000/-). If paid in time additional 10 days for uploading e-return.
30/08/2016	Profession Tax	- Monthly Return (covering salary paid for the preceding month) (Tax Rs. 50,000 or more)
	Central Excise	- Particulars relating to clearances, electricity load etc., in Form Ann.-4 exceeding the limit of Rs. 90 lakhs of exempted clearances for small scale units availing exemption and whose turnover exceeds or has exceeded Rs. 90 lakhs in a financial year, as the case may be.

Glossary

AAR	Authority of Advance Rulings	LCD	Liquid-crystal Display
ADR	American Depository Receipt	MP	Madhya Pradesh
ALP	Arm's Length Price	MP	Market price
AO	Assessing Officer	MF	Mutual fund
AP	Association of Persons	MSME	Micro Small and Medium Enterprises
APA	Advance Pricing Agreement	NBFC	Non Banking Finance Company
ATM	Automated Teller Machine	NHAI	National Highway Authority of India
AY	Assessment Year	NPS	National Pension Scheme
BCD	Basic Customs Duty	NRI	Nonresident in India
BI	Body of Individuals	NABARD	National Bank for Agriculture and Rural Development
BP	Balance of Payments	OEM	Original Equipment Manufacturer
CA	Chartered accountant	OET Act	Odessa Entry Tax Act, 1999
CAD	Current Account Deficit	PSU	Public Service Undertakings
CBDT	Central Board of Direct Taxes	P&L	Profit & loss
CBEC	Central Board of Excise & Customs	PF	Provident fund
CENVAT	Central Value Added Tax	POTR	Point of Taxation Rules
Customs Act	Customs Act, 1962	QE	Quantitative Easing
CIT	Commissioner of Income Tax	QFI	Qualified Foreign Investor
CPI	Consumer Price Index	RBI	Reserve Bank of India
CSR	Corporate Social Responsibility	REF	Renewable Energy Fund
CD	Countervailing Duty	REIT	Real Estate Investment Trust
DDT	Dividend Distribution Tax	Rules	Income-tax Rules, 1962
DTA	Domestic Tariff Area	SA	Standard on Auditing
ECB	External Commercial Borrowings	SAD	Special Additional Duty
ESI	Employee's state insurance	SC	Scheduled Caste
FDI	Foreign Direct Investment	SC	Supreme Court
FEMA	Foreign Exchange Management Act	SEBI	Securities and Exchange Board of India
FERA	Foreign Exchange Regulation Act	SEZ	Special Economic Zone
FII	Foreign Institutional Investors	ST	Scheduled Tribes
FIPB	Foreign Investment Promotion Board	ST	Service Tax
FPI	Foreign Portfolio Investment	STP	Software Technology Park
FTS	Fees for Technical Services	STR	Service Tax Rules
FY	Financial Year	STCG	Short Term Capital Gain
GDP	Gross Domestic Product	TIN	Transaction identification number
GDR	Global Depository Receipt	TNNM	Transactional Net Margin Method
GI	GOVERNMENT OF INDIA	Tribunal	Income tax Appellate Tribunal
GST	Goods and Services Tax	TDS	Tax Deducted at Source
HUF	Hindu Undivided Family	TPO	Transfer Pricing Officer
ICAI	Institute of chartered accountant	TED	Terminal Excise Duty
IFRS	International Financial Reporting Standard	VAT	Value Added Tax
IDR	Indian Depository Receipt	VCC	Venture Capital Companies
IIP	Index of Industrial Production	VCF	Venture Capital Fund
IRDA	Insurance Regulatory Development Authority	WPI	Wholesale Price Index
ITR	Income tax return	WT	Wealth tax
		WB	World bank

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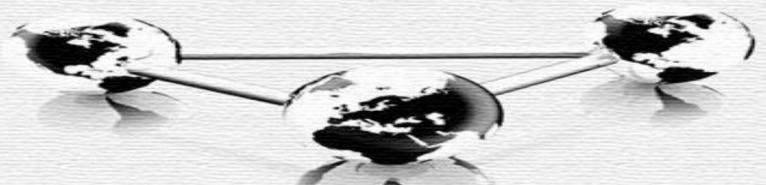
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