

Tax & Corporate law Bulletin

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JANUARY 2016

From the Editor's Desk...

Dear Reader,

Greetings for the season.

Guidelines for implementation of e-payment of refund/ rebate; Section 245F: The Settlement Commission does not have the power to direct a special audit u/s 142(2A); Government removes 5% export duty on iron ore pellets. And Read many more...

We eagerly await your feedback on the bulletin.

Yours truly,

Rajput Jain & associates
Chartered accountants



Your partners
for success

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“Adapting swiftly to the
global business environment”



DIRECT TAX



- **Amendment in the Gazette of India, dated 16th December, 2015, Section 3(i) at page 17, in line 49 for “does not exceed” read as “exceeds”.**

Notification No. 1/2016 [F. No. 133/41/2015 – TPL] / GSR 21(E): Corrigendum dated 12th January, 2016.

The notification of the Government of India in the Ministry of Finance, Department of Revenue (Central Board of Direct Taxes), number 93/2015, dated the 16th December, 2015, published vide number G.S.R. 978(E), dated the 16th December, 2015, in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), at page 17, in line 49, for “does not exceed” read “exceeds”.

- **Section 90 of the Income-tax Act, 1961 – Double Taxation Agreement – Agreement for Avoidance of Double Taxation and Prevention of Fiscal Evasion with Foreign Countries – Belarus**

Notification No. 2/2016 [F.No. 501/07/1999-FTD-I] / SO 111(E) dated 13th January, 2016.

Whereas, a Protocol amending the agreement between the Government of the Republic of India and the Government of the Republic of Belarus for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on property (Capital) of the 27th September, 1997 (hereinafter referred to as the said Protocol) as set out in the Annexure to this notification, was signed at Minsk, Belarus on the 3rd June, 2015;

And whereas, the date of entry into force of the said Protocol is the 19th November, 2015, being the date of the latter of the notifications of completion of the legal requirement and procedures for giving effect to the said Protocol in accordance with paragraph 1 of Article 2; The said Protocol provides that the

provisions of the same shall have effect forthwith from the date of entry into force;

The Central Government hereby notifies that all the provisions of the said Protocol annexed hereto, shall be given effect to in the Union of India with effect from the 19th November, 2015.

- **Income-tax (First Amendment) Rules, 2016 – Substitution of Rule 17 & Form 10 and insertion of Form 9A**

Notification No.3/2016 /2015 [F. No. 142/16/2015-TPL] / SO 127 (E): Income-tax (1st Amendment) Rules, 2016 dated 14th January, 2016.

In the Income-tax Rules, 1962 (hereinafter referred to as the said rules), for rule 17, the following rule shall be substituted, namely: -

“17. Exercise of option etc under section 11.

(1) The option to be exercised in accordance with the provisions of the Explanation to subsection (1) of section 11 in respect of income of any previous year relevant to the assessment year beginning on or after the 1st day of April, 2016 shall be in Form No. 9A and shall be furnished before the expiry of the time allowed under sub-section (1) of section 139 for furnishing the return of income of the relevant assessment year.

(2) The statement to be furnished to the Assessing Officer or the prescribed authority under sub-section (2) of section 11 or under the said provision as applicable under clause (21) of section 10 shall be in Form No. 10 and shall be furnished before the expiry of the time allowed under sub-section (1) of section 139, for furnishing the return of income.

(3) The option in Form No. 9A referred to in sub-rule (1) and the statement in Form No.10 referred to in sub-rule (2) shall be furnished electronically either under digital signature or electronic verification code.

(4) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall-

- (i) Specify the procedure for filing of Forms referred to in sub-rule (3);
- (ii) Specify the data structure, standards and manner of generation of electronic verification code, referred to in sub-rule(3),

for purpose of verification of the person furnishing the said Forms; and

- (iii) Be responsible for formulating and implementing appropriate security, archival and retrieval policies in relation to Forms so furnished.”

In the said rules, in Appendix II, -

- (a) After Form No.9, the following Form shall be inserted, namely:-

“FORM NO.9A” - Application for exercise of option under clause (2) of the Explanation to sub-section (1) of section 11 of the Income - tax Act, 1961.

- (b) For Form No.10, the following Form shall be substituted, namely:-

“FORM NO. 10” - Statement to be furnished to the Assessing Officer/Prescribed Authority under sub-section (2) of section 11 of the Income-tax Act, 1961.

- **Notification No. 4/2016 [F. No.178/21/2014-ITA-I] /S.O. 223(E) : CORRIGENDUM dated 22nd January, 2016**

The Government of India in the Ministry of Finance, Department of Revenue (Central Board of Direct Taxes) number S.O. 3313 (E), dated the 8th December, 2015, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), dated the 8th December, 2015, in the English version, in line 5, for “9th December, 2015” read “8th December, 2015”.

RECENT JUDGEMENTS



- **Controversy on whether Section 80-1A(9) mandates that the amount of profits allowed as deduction u/s 80-1A(1) has to be reduced from the profits of the business of the undertaking while computing deduction under any another provisions under heading C in Chapter VI-A**

of the Income-tax Act, 1961 referred to larger Bench

ACIT vs. Micro Labs Ltd (Supreme Court)

Fact of the case

The Supreme Court had to consider whether section 80-1A (9) of the Income-Tax Act, 1961 mandates that the amount of profits allowed as deduction under section 80-1A (1) of the Act has to be reduced from the profits of the business of the undertaking while computing deduction under any another provisions under heading C in Chapter VI-A of the Income-tax Act, 1961? It was noted that the Bombay High Court had in *Associated Capsules Private Limited v. Deputy Commissioner of Income Tax* and another [2011] 332 ITR 42 (Bom) dissented from the view taken by the Delhi High Court in *Great Eastern Exports v. Commissioner of Income-Tax* [2011] 332 ITR 14 (Delhi).

Held

While Hon'ble Mr. Justice Anil R. Dave took the view that the judgement of the Delhi High Court in *Great Eastern Exports v. Commissioner of Income-Tax* [2011] 332 ITR 14 (Delhi) lays down the correct position in law and allowed the appeals of the Revenue, Hon'ble Mr. Justice Dipak Misra dissented and held that the law laid down by the Bombay High Court had in *Associated Capsules Private Limited v. Deputy Commissioner of Income Tax* and another [2011] 332 ITR 42 (Bom) lays down the correct position in law and dismissed the appeals of the Revenue.

In view of difference of opinion, the matters have been referred to a larger Bench in terms of signed reportable judgment. The Registry has been directed to place the matters before the Hon'ble the Chief Justice of India.

- **Section 245F: The Settlement Commission does not have the power to direct a special audit u/s 142(2A)**

Agson Global Pvt. Ltd vs. ITSC (Delhi High Court)

Fact of the case

The High Court had to consider whether the Income Tax Settlement Commission has the power to direct a special audit under section 142(2A) in the course of settlement proceedings under Chapter XIX-A of the said Act. HELD by the High Court:

The powers and functions of an income tax authority which are to be exclusively exercised by the

settlement commission (subject to the provisions of section 245D (3)) must be in the context of and have a nexus with the settlement proceedings. That being the case, since the requirement of a special audit falls under the procedure for assessment which is distinct and different from settlement proceedings, the settlement commission would not, in our view, have jurisdiction to direct a special audit as it does not have any nexus with the settlement proceedings. If the settlement commission is of the view that an assessee has not made a full and true declaration of the undisclosed income then the application is liable to be rejected. The exclusive jurisdiction of the settlement commission to exercise the powers and perform the functions of an income tax authority, in terms of section 245F(2) of the said Act, is to be exercised and performed for the purpose of settlement of the case under Chapter XIX-A and not for assessment under Chapter XIV.

Held

The settlement commission cannot, by itself, enter upon an assessment and step into the shoes of an assessing officer for the purposes of making an assessment. That being the case, the powers and functions which are in the exclusive jurisdiction of the settlement commission are circumscribed by the object and role which has been ascribed to the settlement commission, which is to settle the case in terms of the procedure stipulated in Chapter XIX-A. Since assessment of the type contemplated under section 143(3) is outside the purview of settlement proceedings, a special audit under section 142(2A), which is in aid of assessment, would also be beyond the scope of settlement proceedings.

- **Section 271C: Penalty for failure to deduct TDS cannot be levied if Dept is unable to show contumacious conduct on the part of the assessee**

CIT vs. Bank of Nova Scotia (Supreme Court)

Fact of the case

Penalty was levied on the assessee for failure to deduct TDS without proving his contumacious conduct.

Held

The Tribunal deleted the levy of penalty u/s 271-C for failure to deduct tax at source on the basis that the department has to show that there was “contumacious conduct on the part of the assessee”. It held:

“In the present appeals we are concerned with levy of penalty u/s 271-C for which it is necessary to establish that there was contumacious conduct on the part of the assessee. We find that on similar facts Hon’ble Delhi High Court have deleted levy of penalty u/s 271-C in the case of M/s. Itochu Corporation, reported in 268 ITR 172 (Del) and in the case of CIT Vs. Mitsui & Company Ltd. Reported in 272 ITR 545. Respectfully following the aforesaid judgments of Hon’ble Delhi High Court and the decision of the ITAT, Delhi in the case of Television Eighteen India Ltd., we allow the assessee’s appeal and cancel the penalty as levied u/s 271-C.”



The department’s appeal was dismissed by the High Court. On appeal to the Supreme Court, Held dismissing the appeal:

“On facts, we are convinced that there is no substantial question of law, the facts and law having properly and correctly been assessed and approached by the Commissioner of Income Tax (Appeals) as well as by the Income Tax Appellate Tribunal. Thus, we see no merits in the appeal and it is accordingly dismissed. No costs.”

- **Section 147: Reopening of assessment to take remedial action pursuant to audit objections as per Instruction No. 9 of 2006 is not valid if AO disagrees with the objections. Instruction No. 9 cannot override the requirement in s. 147 that AO should form his own belief that income has escaped assessment.**

Sun Pharmaceuticals Industries Ltd vs. DCIT (Delhi High Court)

Fact of the case

The revenue audit raised objections on the assessment of the assessee. Though the AO did not accept the audit objections, he nevertheless issued a notice u/s 148 to reopen the assessment. It was claimed that the s. 148 notice was issued to take remedial measures as a result of Instruction No. 9/2006 dated 7th November, 2006 issued by the Central Board of Direct Taxes (‘CBDT’).

Held

Instruction No. 9 of 2006 has been issued for the purpose of issuing instructions is “to set out the procedure to be followed at different stages of audit objections and for the appropriate remedial action to be taken thereon.” The CBDT has issued these instructions so that “management and processes relating to audit objections are streamlined with a greater sense of accountability.” In terms of the said instruction No. 9 of 2006 remedial action is expected to be taken even where an objection raised by the audit is not accepted by the Commissioner of Income-tax (CIT).

The decision to reopen the assessment had to be taken by the AO alone and no one else. The AO could not have been subject to any compulsion in the form of an instruction by the CBDT to take a decision with regard to reopening of the assessment in terms of Section 147 of the Act. The proviso (a) to Section 119(1) of the Act makes it clear that there cannot be any such orders, instructions or directions of the CBDT which “require any income tax authority to make a particular assessment or to dispose of a particular case in a particular manner”.

In the present case apart from a bland statement at the end of the reasons that the assessee failed to truly disclose the material particulars, it is not pointed out which material particular was not disclosed in the course of the original assessment by the assessee. Consequently, the Court has no hesitation in holding that reason (2) for reopening the assessment is based merely on a change of opinion and not on any tangible material warranting reopening of the assessment under Section 147/148 of the Act.

- **Bogus Sales/ Purchases: Addition solely on the basis of information received from the sales-tax department is not sustainable. Suspicion of the highest degree cannot take the place of evidence**



Hiralal Chunilal Jain vs. ITO (ITAT Mumbai)

Fact of the case

The AO received information from the investigation wing of STD, Maharashtra that the assessee was one of the beneficiaries of accommodation entries, that Shiv Sagar the supplier of the goods was one of the entities who had admitted to have bogus bills, that the assessee had asked for cross examination of the supplier but same was not given, that the AO had not supplied the copy of the statements of Shiv Sagar to the assessee, that in the books of accounts of the assessee all the purchases and sales were recorded, that payments were made through banking channels, that the AO had made addition of entire purchases u/s.69 of the Act, that the FAA had reduced it to 20%. It is a fact that the AO had not rejected the sales of the assessee and the assessee was maintaining the quantitative details and stock register. In our opinion, once the sales are accepted as genuine or not doubted the AO cannot reject the entire purchase.

Held

The tribunal has held written as under:

“We find that AO had made the addition as one of the supplier was declared a hawala dealer by the VAT Department. Suspicion of highest degree cannot take place of evidence. He could have called for the details of the bank accounts of the suppliers to find out as whether there was any immediate cash withdrawal from their account. We find that no such exercise was done.”

In the present case, the AO had made the addition on the basis of information received from the Sales tax department, but, he did not make any independent inquiry. He did not follow the principles of natural justice before making the addition. The FAA had reduced the addition to 20%, but he has not given any justification except stating that same was done to plug the probable leakage revenue. Considering the peculiar facts and circumstances of the case, we are reversing the order of the FAA.

INDIRECT TAX

SERVICE TAX



➤ **Increase in monetary limits below which appeal shall not be filed.**

CBEC, vide Letter F. No. 390/MISC./163/2010-JC dated 1st January, 2016.

The CBECE has clarified that instruction (F. No. 390/MISC./163/2010-JC dated 17th December, 2015) issued earlier related to increase in monetary limits below which appeal shall not be filed by the Revenue in Tribunal, High Court & the Supreme Court will apply to all pending appeals in High Courts/CESTAT.

➤ **Guidelines for implementation of e-payment of refund/ rebate.**

CBEC, vide Circular No. 1013/1/2016-CX dated 12th January, 2016.

The CBECE has issued guidelines for implementation of e-payment of refund/rebate. The claimants opting for this facility shall provide one-time authorization in prescribed format in duplicate, duly certified by the beneficiary bank while filing refund/rebate claim for the first time. One copy shall be retained by the department and one copy shall be sent to the bank with the first refund sanction order of the applicant. The Circular may be referred for detailed guidelines related to procedure for e-payment & reconciliation of such e-payments by department.

➤ **Valuation of flats handed over by the builder/developer to the landowner under tripartite construction model.**

CBEC, vide Letter F. No. 354/311/2015-TRU dated 20th January, 2016.

The CBECE has clarified on the valuation of flats handed over by the builder/developer to the landowner under tripartite construction model. It is clarified by CBECE that

- ❖ The value of these flats would be equal to the value of similar flats charged by the builder/developer from other buyers.
- ❖ In case the prices of flats/houses undergo a change over the period of sale (from the first sale of flat/house in the residential complex to the last sale of the flat/house), the value of similar flats as are sold nearer to the date on which land is being made available for construction should be used for arriving at the value for the purpose of tax.
- ❖ Service tax is liable to be paid by the builder/developer on the "construction service"

involved in the flats to be given to the land owner, at the time when the possession or right in the property of the said flats are transferred to the land owner by entering into a conveyance deed or similar instrument (e.g. allotment letter).

- ❖ Since the above clarifications issued by Circular No.151/2/2012- ST dated 10th February, 2012 are in accordance with the provisions relating to valuation as laid down in the Finance Act, 1994 and the Service Tax Determination of Value) Rules, 2006, the said Circular shall prevail over the CBECE Education Guide on Taxation of Services, 2012 which states that the value of construction service provided to such land owner will be the value of the land when the same is transferred and the point of taxation will also be determined accordingly.

CENTRAL EXCISE



- **Amendment in Notification No. 12/2012-Central Excise dated 17.03.2012 so as to increase the Basic Excise Duty rates on Petrol and Diesel(both unbranded and branded)**

CBEC, vide Notification No. No. 1/2016-Central Excise dated 1st January, 2016.

The Central Government, on being satisfied that it is necessary in the public interest so to do, hereby make the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.12/2012-Central Excise, dated the 17th march, 2012, namely:-

In the said notification, in the Table,-

- i. In serial number 70,-
 - (a) Against item (i) of column (3), for the entry in column (4), the entry "Rs. 7.73 per litre shall be substituted;
 - (b) Against item (ii) of column (3), for the entry in column (4), the entry "Rs. 8.91 per litre shall be substituted;

ii. In serial number 71,-

- (a) Against item (i) of column (3), for the entry in column (4), the entry "Rs. 7.83 per litre shall be substituted;
- (b) Against item (ii) of column (3), for the entry in column (4), the entry "Rs. 10.19 per litre" shall be substituted;

2. This notification shall come into force with effect from the 2nd day of January, 2016.

➤ **Amendment in Notification No 12/2012-Central Excise dated 17.03.2012 so as to increase the Basic Excise Duty rates on Petrol and Diesel (both unbranded and branded)**

CBEC, vide Notification No.2/2016-Central Excise dated 15th January, 2016.

The Central Government, on being satisfied that it is necessary in the public interest so to do, hereby make the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.12/2012-Central Excise, dated the 17th march, 2012, namely:-

In the said notification, in the Table,-

I. In serial number 70,-

- (a) Against item (i) of column (3), for the entry in column (4), the entry "Rs. 8.48 per litre" shall be substituted;
- (b) Against item (ii) of column (3), for the entry in column (4), the entry "Rs. 9.66 per litre" shall be substituted;

In the serial number 71,-

- (a) Against item (i) of column (3), for the entry in column (4), the entry "Rs. 9.83 per litre" shall be substituted;
- (b) Against item (ii) of column (3), for the entry in column (4), the entry "Rs. 12.19 per litre" shall be substituted;

2. This notification shall come into force with effect from the 16th day of January, 2016.

➤ **Amendments in Notifications No. 12/2012-Central Excise dated 17.03.2012 so as to increase the Basic Excise Duty rates on Petrol and Diesel (both unbranded and branded)**

CBEC, vide Notification No. 04/2016-Central Excise dated 30th January, 2016.

The Central Government, on being satisfied that it is necessary in the public interest so to do, hereby make the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.12/2012-Central Excise, dated the 17th march, 2012, namely:-

In the said notification, in the Table,-

A. In serial number 70,-

- (a) Against item (i) of column (3), for the entry in column (4), the entry "Rs. 9.48 per litre" shall be substituted;
- (b) Against item (ii) of column (3), for the entry in column (4), the entry "Rs. 10.66 per litre" shall be substituted;

In the serial number 71,-

- (a) Against item (i) of column (3), for the entry in column (4), the entry "Rs. 11.33 per litre" shall be substituted;
- (b) Against item (ii) of column (3), for the entry in column (4), the entry "Rs. 13.69 per litre" shall be substituted;

2. This notification shall come into force with effect from the 31st day of January, 2016.

FEMA



➤ **Foreign Exchange Management (Acquisition and transfer of immovable property outside India) Regulations, 2015**



RBI, vide Notification No. FEMA 7(R)/ 2015-RB dated 21st January, 2016

The Reserve Bank of India hereby makes the following regulations relating to acquisition and transfer of immovable property outside India, namely:-

Acquisition and Transfer of Immovable Property outside India:-

1. A person resident in India may acquire immovable property outside India, -
 - a. By way of gift or inheritance from a person referred to in sub-section (4) of Section 6 of the Act, or referred to in clause (b) of regulation 4;
 - b. By way of purchase out of foreign exchange held in Resident Foreign Currency (RFC) account maintained in accordance with the Foreign Exchange Management (Foreign Currency accounts by a person resident in India) Regulations, 2015;
 - c. Jointly with a relative who is a person resident outside India, provided there is no outflow of funds from India;
2. A person resident in India may acquire immovable property outside India, by way of inheritance or gift from a person resident in India who has acquired such property in accordance with the foreign exchange provisions in force at the time of such acquisition.
3. A company incorporated in India having overseas offices, may acquire immovable property outside India for its business and for residential purposes of its staff, in accordance with the direction issued by the Reserve Bank of India from time to time.

Explanation:

For the purposes of these regulations, 'relative' in relation to an individual means husband, wife, brother or sister or any lineal ascendant or descendant of that individual.

➤ **Foreign Exchange Management (Export of Goods and Services) Regulations, 2015**



RBI, vide Notification No. FEMA 23(R)/ 2015-RB dated 12th January, 2016

The Reserve Bank of India hereby makes the following regulations relating to acquisition and transfer of immovable property outside India, namely:-

❖ **Declaration of exports:-**

1. In case of exports taking place through Customs manual ports, every exporter of goods or software in physical form or through any other form, either directly or indirectly, to any place outside India, other than Nepal and Bhutan, shall furnish to the specified authority, a declaration in one of the forms set out in the Schedule and supported by such evidence as may be specified, containing true and correct material particulars including the amount representing –
 - a. The full export value of the goods or software; or
 - b. If the full export value is not ascertainable at the time of export, the value which the exporter, having regard to the prevailing market conditions expects to receive on the sale of the goods or the software in overseas market, and affirms in the said declaration that the full export value of goods (whether ascertainable at the time of export or not) or the software has been or will within the specified period be, paid in the specified manner.
2. Declarations shall be executed in sets of such number as specified.
3. For the removal of doubt, it is clarified that, in respect of export of services to which none of the Forms specified in these Regulations apply, the exporter may export such services without furnishing any declaration, but shall be liable to realise the amount of foreign exchange which becomes due or accrues on account of such export, and to repatriate the same to India in accordance with the provisions of the Act, and these Regulations, as also other rules and regulations made under the Act.
4. Realization of export proceeds in respect of export of goods / software from third party should be duly declared by the exporter in the appropriate declaration form.

❖ **Indication of importer-exporter code number:-**

The importer-exporter code number allotted by the Director General of Foreign Trade under Section 7 of

the Foreign Trade (Development & Regulation) Act, 1992 (22 of 1992) shall be indicated on all copies of the declaration forms submitted by the exporter to the specified authority and in all correspondence of the exporter with the authorised dealer or the Reserve Bank, as the case may be.

❖ **Authority to whom declaration is to be furnished and the manner of dealing with the declaration:**

A. Declaration in Form EDF

- a. The declaration in form EDF shall be submitted in duplicate to the Commissioner of Customs.
- b. After duly verifying and authenticating the declaration form, the Commissioner of Customs shall forward the original declaration form/data to the nearest office of the Reserve Bank and hand over the duplicate form to the exporter for being submitted to the authorised dealer.

B. Declaration in Form SOFTEX

- a. The declaration in Form SOFTEX in respect of export of computer software and audio/video/television software shall be submitted in triplicate to the designated official of Ministry of Information Technology, Government of India at the Software Technology Parks of India (STPIs) or at the Free Trade Zones (FTZs) or Special Economic Zones (SEZs) in India.
- b. After certifying all three copies of the SOFTEX form, the said designated official shall forward the original directly to the nearest office of the Reserve Bank and return the duplicate to the exporter. The triplicate shall be retained by the designated official for record.

C. Duplicate Declaration Forms to be retained with Authorised Dealers

On the realisation of the export proceeds, the duplicate copies of export declaration forms viz. EDF and SOFTEX and Exchange Control copies of the shipping bills shall be retained by the Authorised Dealers.

❖ **Manner of payment of export value of goods:-**

Unless otherwise authorised by the Reserve Bank, the amount representing the full export value of the goods exported shall be paid through an authorised dealer in the manner specified in the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2000 as amended from time to time.

❖ **Certain Exports requiring prior approval:- Exports under trade agreement/rupee credit etc.**

- a. Export of goods under special arrangement between the Central Government and Government of a foreign state, or under rupee credits extended by the Central Government to Govt. of a foreign state shall be governed by the terms and conditions set out in the relative public notices issued by the Trade Control Authority in India and the instructions issued from time to time by the Reserve Bank.
- b. An export under the line of credit extended to a bank or a financial institution operating in a foreign state by the Exim Bank for financing exports from India, shall be governed by the terms and conditions advised by the Reserve Bank to the authorised dealers from time to time.

❖ **Project exports:-**

1. Where an export of goods or services is proposed to be made on deferred payment terms or in execution of a turnkey project or a civil construction contract, the exporter shall, before entering into any such export arrangement, submit the proposal for prior approval of the approving authority, which shall consider the proposal in accordance with the guidelines issued by the Reserve Bank of India from time to time.
2. In case a guarantee is required to be given prior to post award approval, the same may be issued by an authorized dealer bank/ a person resident in India being an exporting company, for performance of a project outside India, or for availing of credit facilities, whether fund-based or non-fund based, from a bank or a financial institution outside India in connection with the execution of such project, provided that the contract / Letter of Award stipulates such requirements.

CORPORATE LAWS



➤ **HUF or its Karta cannot become a partner or designated partner in LLP**

MCA Circular No. 2/2016 dated 15th January 2016 –

MCA has clarified that HUF or its Karta cannot become a partner or designated partner in an LLP. As per General Circular No. 13/2013 wherein, in paragraph 2, it has been clarified that 'as per section 5 of LLP Act, 2008 only an individual or body corporate may be a partner in a Limited Liability Partnership.

A HUF cannot be treated as a body corporate for the purposes of LLP Act, 2008. Therefore, a HUF or its Karta cannot become partner or designated partner in LLP'. However, the clarification inadvertently does not mention partner in the last sentence of the paragraph quoted above which has been pointed out by a stakeholder. It is hereby clarified that a HUF or its Karta cannot become partner or designated partner in LLP.

➤ **Roadmap for implementation of Indian Accounting Standards (IND AS) converged with International Financial Reporting Standards (IFRS) for Scheduled commercial banks (excluding RRBs), insurers/ insurance companies and Non-Banking Financial Companies (NBFC's).**

MCA, vide press release no. 11/10/2009 CL-V dated 18th January, 2016.

In pursuance to the budget announcement by the Union Finance Minister, after consultations with RBI, IRDA and PFRDA, the following roadmap for implementation of Indian Accounting Standards (IND AS) converged with International Financial Reporting Standards (IFRS) for Scheduled commercial banks (excluding RRBs), insurers/ insurance companies and Non-Banking Financial Companies (NBFC's) has been drawn up:

(I.) Scheduled commercial banks (excluding RRBs) and Insurer/Insurance Companies:

1. Scheduled commercial banks (excluding RRBs), All-India Term-lending Refinancing Institutions (i.e. Exim Bank, NABARD, NHB and SIDBI) and Insurers/ Insurance companies would be required to prepare IND AS based financial statements for accounting periods beginning from April 1, 2018 onwards, with comparatives for the periods ending March 31, 2018 or thereafter.

IND AS would be applicable to both consolidated and individual financial statements.

2. Notwithstanding the roadmap for companies, the holding, subsidiary, joint venture or associate companies of Scheduled commercial banks (excluding RRBs) would be required to prepare IND AS based financial statements for accounting periods beginning from April 1, 2018 onwards, with comparatives for the periods ending March 31, 2018 or thereafter.
3. Urban Cooperative Banks (UCBs) and Regional Rural Banks (RRBs) shall not be required to apply IND AS and shall continue to comply with the existing Accounting Standards, for the present.

(II.) NBFCs:

NBFCs will be required to prepare IND AS based financial statements in two phases:

1. **Under Phase I**, the following categories of NBFCs shall be required to prepare IND AS based financial statements for accounting periods beginning from April 1, 2018 onwards with comparatives for the periods ending March 31, 2018 or thereafter. IND AS would be applicable to both consolidated and individual financial statements.
2. NBFCs having net worth of Rs.500 crores or more.
3. Holding, subsidiary, joint venture or associate companies of companies covered under (a)(i) above, other than those companies already covered under the corporate roadmap announced by the Ministry of Corporate Affairs (MCA), Government of India (GOI).
4. **Under Phase II**, the following categories of NBFCs shall be required to prepare IND AS based financial statements for accounting periods beginning from April 1, 2019 onwards with comparatives for the periods ending March 31, 2019 or thereafter. IND AS would be applicable to both consolidated and individual financial statements.
 - a. NBFCs whose equity and/ or debt securities are listed or are in the process of listing on any stock

exchange in India or outside India and having net worth less than Rs.500 crores.

- b. NBFC'S other than those covered in (a)(i) and (b)(i) above, that are unlisted companies, having net worth of Rs. 250 crores or more but less than Rs. 500 crores.
- c. Holding, subsidiary, joint venture or associate companies of companies covered under (b) (i) and (b)(ii) above, other than those companies already covered under the corporate roadmap announced by the MCA, GOI.

NBFCs having net worth below Rs. 250 Crores and not covered under the above provisions shall continue to apply Accounting Standards specified in Annexure to Companies (Accounting Standards) Rules, 2006.

(III.) Scheduled commercial banks (excluding RRBs)/ NBFCs/ insurance companies/ insurers shall apply Indian Accounting Standards (IND AS) only if they meet the specified criteria, they shall not be allowed to voluntarily adopt Indian Accounting Standards (IND AS).

This however, does not preclude an insurer/ insurance company / NBFC from providing IND AS compliant financial statement data for the purposes of preparation of consolidated financial statements by its parent/ investor, as required by the parent/ investor to comply with the existing requirements of law.

- **Notification under section 396 of Companies Act, 2013 for discharging or carrying out the function of processing and disposal of applications for reservation of names under the provisions of the said Act.**

MCA, vide Notification No. S.O. 218 (E). [F. No. A-42011/03/2016-Ad.II], dated 22nd January, 2016.

The Central Government hereby establishes a Central Registration Centre (CRC) having territorial jurisdiction all over India, for discharging or carrying out the function of processing and disposal of applications for reservation of names under the provisions of the said Act.

1. The CRC shall function under the administrative control of Registrar of Companies, Delhi (ROC Delhi), who shall act as the Registrar of the CRC

until a separate Registrar is appointed to the CRC. The CRC shall process applications for reservation of name i.e., e-Form No. INC-1 filed along with the prescribed fee as provided in the Companies (Registration of Offices and Fees) Rules, 2014.

2. Processing and approval of name or names proposed in e-Form No. INC-29 shall continue to be done by the respective Registrar of Companies having jurisdiction over incorporation of companies under the Companies Act, 2013 as per the provisions of the Act and the rules made there under.
3. The CRC shall be located at Indian Institute of Corporate Affairs (IICA), Plot No. 6,7, 8, Sector 5, IMT Manesar, District Gurgaon (Haryana), Pin Code-122050.
4. This notification shall come into force from 26th January, 2016.

POLICY WATCH

POLICY WATCH



- **Government approves setting up a Nuclear Liability Fund with a corpus of Rs 2,000 crore.**

A Nuclear Liability Fund with a corpus of Rs 2,000 crore is proposed to be set up to allow government to pitch in if damages resulting from a nuclear accident in the country exceed the limit specified for nuclear plant operators under the law. The operators will have to pay a levy of 5-10 paise per unit of electricity sold to the fund, which will be the biggest addition to the pool of compensation available for nuclear damages.

According to the Nuclear Liability Fund Rules, 2015, the fund will comprise the levy collected from operators of nuclear installations. The operators will have to pay to the fund a levy at the rate of 5 paise or a levy at such rate between 5 and 10 paise for every

unit of electricity sold to the customers, says the notification, a copy of which has been seen by ET.

"The levy shall be collected and paid to the fund till the total amount reaches Rs 2,000 crore, and thereafter, the process shall resume in the event of any withdrawals from the fund so as to ensure that the fund balance remains at Rs 2,000 crore at any given time," the new rules specify.

The payments made by an operator towards the fund will be credited to the Consolidated Fund of India and then transferred to the Public Account under the 'MH 8235 General and Other Reserve Fund'. The Centre will be required to take Parliament's approval before making payments out of the fund after due assessment and operators delaying quarterly payments to the fund will pay interest to the tune of 18% on daily basis, as per the rules.

➤ **Government set to start consultations on law to enable shops, restaurants to stay open all night.**

The government is set to kick-start consultations on a proposed law that will enable malls, restaurants, theatres and local markets to remain open round-the clock, levelling the playing field between bricks-and-mortar retailers and online sellers.

A senior official told disclosed that the labour ministry will hold the first round of tripartite consultations with trade unions, employers and state representatives on Tuesday to elicit the views of all stakeholders on the draft Shop and Establishment Act that it has prepared.

Under the existing state laws, shops are required to close on a specified day. There is no provision for shops to remain open round- the clock either, so malls and restaurants close at midnight and local markets even earlier generally. Beyond that, malls only stay open to let moviegoers exit after the last show. In contrast, the rapidly growing ecommerce sector faces no such restrictions.

India's retail industry is growing at 15% and expected to touch \$1 trillion by 2020 from \$600 billion now. Modern retail, comprising e-commerce and bricks-and mortar stores, is expected to more than double its share of the overall market to 20% from 8% in the next five years.

➤ **Government plans to make PAN as Business Identification Number for companies and firms.**

The government plans to make the permanent account number (PAN) as the Business Identification Number (BIN) for companies and firms. The move is aimed at doing away with the need for separate registration with authorities ranging from the registrar of companies to the direct and indirect tax wings, the labour department and for export and import.

Currently, entities first need to get a Company Identification Number (CIN) from registrar of companies, followed by PAN from the income tax department and labour identification number.

The government is also trying to make eBiz issue unique ID for all registrations. Although the eBiz project was conceived as the one-stop shop for all clearances from central, state and local authorities several years ago, it has not yet produced the intended results with even central government agencies not fully linked to the portal.

Separately, the government has initiated steps to speed up liquidation and restructuring of companies to make it easier to exit a business. The government is looking to move India among the top 50 countries on ease of doing business rankings. Department of industrial policy and promotion DIPP has separately initiated steps to ensure that steps for this year are taken before May-end.

➤ **Government launches CRC to make company incorporation easier.**

The corporate affairs ministry has launched Central Registration Centre (CRC) to speed up company incorporation related services. The CRC will look into applications for name availability (INC-1 e-forms) submitted online across the country and will process these by the end of the next working day.

The process involves a three-pronged approach of further automating some of the approval processes by utilising advance software tools and engines, rationalising and modifying some of the rules and engaging professionals to expedite the process of manual scrutiny.

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engaging professionals to expedite the process of manual scrutiny.

➤ **Government to make LPG available to all in 3 years.**

Government declared 2016 as the 'Year of LPG Consumers' while unveiling plans to make the clean cooking fuel available to all households by end of 2018 and roll out online bill payment facility and transparent gas cylinders.

"The 2016 will be Year of LPG Consumers. We will work to increase accessibility and availability of the cooking in the country. In coming three calendar years 2016, 2017 and 2018, we will set an ambitious target to provide clean cooking fuel to entire population," Oil Minister Dharmendra Pradhan said.

About the availability of LPG in the country, the minister said that there are 27 crore subscribers in the country, of which 16.5 crore are active subscribers and oil marketing companies cover about 60 per cent of the population.

On the launch of composite transparent cylinder, the minister assured that it will be a reality in the financial year 2016-17.

➤ **Government removes 5% export duty on iron ore pellets.**

The government has removed the 5% export duty on iron ore pellets as it meets yet another demand of steel and mining sector companies reeling under low demand and weak prices. It follows a series of strong measures announced by the NDA government since September 2015 to protect the iron & steel industry from rising imports including safeguard duty, hike in customs duty and imposition of stringent quality norms on imported steel. The step is expected to benefit pellet makers, which includes top miners, as well as leading steel players. The 5% export duty on iron ore pellets was imposed in 2014.

"The Central Government being satisfied that it is necessary in public interest so to do, hereby makes following further amendments in the notification of the Government of India Ministry of Finance (Department of Revenue) No. 27/2011- Customs, dated the 1st March, 2011," the Central Board for Excise and Customs (CBEC) said in a notification. In the said notification, in the Table, against serial number 23 (Iron Ore Pellets), in column (4), for the entry "5 per cent", the entry "Nil" shall be substituted, it added.

INDUSTRY WATCH & CORPORATE HIGHLIGHT



➤ **IDBI Bank raises Rs 900 crore through Basel-III compliant bonds.**

Public lender IDBI Bank said it has raised Rs 900 crore by way of issuing Basel-III compliant tier-II bonds.

"IDBI Bank mobilized Rs 900 crore through issue of Basel-III compliant tier-II bonds on private placement basis to strengthen the bank's capital adequacy," the bank said in a regulatory filing.

➤ **Ashok Leyland sales up 31.4% in December.**



ASHOK LEYLAND

Hinduja Group flagship firm Ashok Leyland reported a 31.4 per cent increase in total sales at 12,209 units in December 2015.

The company had sold 9,290 units in the same month last year.

The sales of medium and heavy commercial vehicles jumped 35.33 per cent to 9,758 units in December as against 7,210 in the same month a year ago, the company said in a statement.

Light commercial vehicles sales grew 17.83 per cent to 2,451 units as against 2,080 in December 2014.

➤ **Tata Capital private equity fund invests \$5 million in Alef Mobitech.**

Tata Capital Innovations Fund (TCIF), a Private Equity Fund managed by Tata Capital, announced an investment of around \$5 million in Alef Mobitech Solutions Private Limited, a fully owned subsidiary of Alef Mobitech Inc, a next generation Mobile Internet enhancement pioneer.



The investment by TCIF will help Alef Mobitech Solutions strengthen its business development, marketing and R&D initiatives to establish a leadership position in the Mobile Internet space.

"The consumption of data in general and videos in particular, is increasing exponentially," said Vineet Chadha, Partner, Tata Capital Innovations Fund. "While smart phones have become ubiquitous, the current mobile technologies available are unable to handle the enormous growth in mobile data. Alef's solution enhances customer experience on mobile networks by providing rich, high quality mobile content along with superior quality interactions.

➤ **HDFC Bank Q3 net up 20% as expected, bad loans rise.**

HDFC Bank has reported a 20% increase in its net profit to Rs 3,357 crore for the quarter to December, following an increase in demand for loans from individuals and small businesses at India's second largest private lender.

The numbers are a shade better than the estimate of Rs 3,350 crore in a Bloomberg poll of 31 analysts. Loan growth in both retail and corporate segments was strong during the third quarter of the fiscal. Retail loans grew 29%, driven by auto loans and loans for small businesses. Corporate loan growth was 19%, higher than the average growth of 10.5% in the sector.

HDFC Bank's net interest margin (NIM), or the difference between the yield a bank earns on loans and that it earns on deposits, dropped to 4.3% from 4.4% in December 2014 but was higher than the 4.2% reported in September 2015.

➤ **Cairn India climbs 5% even as Q3 net falls 99%.**

Shares of Cairn IndiaBSE 3.09 % surged nearly 5 per cent in Monday's trade after a host of brokerages retained their ratings on the stock even as the company posted a 99 per cent YoY drop in net profit to Rs 9 crore in the December quarter.



The stock rose 4.87 per cent to hit a high of Rs 118.40 on the BSE. At the prevailing price, the stock is up 11 per cent from its 52-week low of Rs 106.60 on January 19. The company said its net profit tumbled 42 per cent YoY to Rs 2,039 crore, largely

due to a sharp drop in crude oil prices during the quarter.

Deutsche Bank expects Cairn's EPS to fall 43 per cent over FY15- 17 due to lack of production growth in low price environment.

➤ **Renault-Nissan alliance plans self-driving cars over next 4 years.**



The alliance between automakers Renault and Nissan will launch more than 10 cars with self-driving technology over the next four years in the United States, Europe, China and Japan. The alliance also said it hired technology executive Ogi Redzic to lead its connected car efforts as senior vice president for connected vehicles and mobility services.

Renault-Nissan is a partnership between Paris-based Renault and Japanese carmaker Nissan that combined the companies' engineering teams. They still operate as two separate companies.

➤ **Samsung flags 15% increase in Q4 operating profit.**

Samsung Electronics on Friday flagged a 15 percent increase in 2015 Q4 operating profit, rounding off a year in which the world's largest smart phone producer struggled with intense competition from arch-rival Apple and cut-price Chinese competitors.



In an earnings estimate, the South Korean tech giant predicted an operating profit of 6.1 trillion won (\$5.1 billion) for the October-December period, up from 5.4 trillion won a year earlier.

Samsung lost more than \$8.0 billion in market value in 2015 as sales of its high-end Galaxy S6 smart phone struggled against the latest Apple iPhone and models from Chinese makers like Huawei.

The company's shares posted a third straight annual decline last year, dropping 5.1 percent.

Statutory compliance calendar for the month of January 2016

Due date	Statutory compliance under Act	particulars	Governing Authority
			
06/01/2016	Service Tax	Payment of monthly service tax for the month of October by all tax payers electronically	Central Board of Excise and Custom
	Central Excise	Payment of monthly central excise duty for the month of October on goods by assesses other than SSI units electronically	Central Board of Excise and Custom
07/01/2016	Income Tax	Deposit of Income Tax TCS and TDS deducted in October	Central Board of Direct Tax.
	NBFC-ND-SI	Monthly return of source and application of funds, profit and loss account, asset classification	Reserve Bank of India.
	NBFC-D	Monthly return of exposure to capital markets in form NBS-6 by NBFC having total assets of ` 100 crore and above	Reserve Bank of India.
10/01/2016	Central Excise	Monthly central excise return in form ER-1/ER-2 by other than SSI	The Central Board of Trustees , The Employees' Provident Fund Scheme, 1952
	NBFC-ND-SI	Monthly statement of short term dynamic liquidity in form NBS-ALM1	Reserve Bank of India.
	Central Excise	Monthly return of receipts and consumption of Principal Inputs by specified manufacturers of excisable goods in form ER-6	The securities and exchange board of India Act-1992
15/01/2016	Income Tax	Advance income tax under section 211 of Income Tax Act by corporate (third installment) and non-corporate assesses (second installment)	Central Board of Direct Tax.
	Provident Fund	(a) Payment of monthly dues of Provident Fund for the month of November (b) Monthly return in form 5 for employees joining Provident Fund during November along with declaration in form 2 furnished by the employees (c) Monthly return of Provident Fund in form 10 of employees leaving the service during November	The Central Board of Trustees , The Employees' Provident Fund Scheme, 1952
21/01/2016	ESIC	Payment of ESIC contribution for the month of November	The employees' state insurance Act-1948. Ministry of labour and employment.
25/01/2016	Provident Fund	Monthly contribution statement (abstract) in form 12A, along with copy of receipted challans regarding payment of contribution.	The Central Board of Trustees , The Employees' Provident Fund Scheme, 1952

Glossary

AAR	Authority of Advance Rulings
ADR	American Depository Receipt
ALP	Arm's Length Price
AO	Assessing Officer
AP	Association of Persons
APA	Advance Pricing Agreement
ATM	Automated Teller Machine
AY	Assessment Year
BCD	Basic Customs Duty
BI	Body of Individuals
BP	Balance of Payments
CA	Chartered accountant
CAD	Current Account Deficit
CBDT	Central Board of Direct Taxes
CBEC	Central Board of Excise & Customs
CENVAT	Central Value Added Tax
Customs Act	Customs Act, 1962
CIT	Commissioner of Income Tax
CPI	Consumer Price Index
CSR	Corporate Social Responsibility
CD	Countervailing Duty
DDT	Dividend Distribution Tax
DTA	Domestic Tariff Area
ECB	External Commercial Borrowings
ESI	Employee's state insurance
FDI	Foreign Direct Investment
FEMA	Foreign Exchange Management Act
FERA	Foreign Exchange Regulation Act
FII	Foreign Institutional Investors
FIPB	Foreign Investment Promotion Board
FPI	Foreign Portfolio Investment
FTS	Fees for Technical Services
FY	Financial Year
GDP	Gross Domestic Product
GDR	Global Depository Receipt
GI	Government of India
GST	Goods and Services Tax
HUF	Hindu Undivided Family
ICAI	Institute of chartered accountant
IFRS	International Financial Reporting Standard
IDR	Indian Depository Receipt
IIP	Index of Industrial Production
IRDA	Insurance Regulatory Development Authority
ITR	Income tax return

LCD	Liquid-crystal Display
MP	Madhya Pradesh
MP	Market price
MF	Mutual fund
MSME	Micro Small and Medium Enterprises
NBFC	Non Banking Finance Company
NHAI	National Highway Authority of India
NPS	National Pension Scheme
NRI	Nonresident in India
NABARD	National Bank for Agriculture and Rural Development
OEM	Original Equipment Manufacturer
OET Act	Odessa Entry Tax Act, 1999
PSU	Public Service Undertakings
P&L	Profit & loss
PF	Provident fund
POTR	Point of Taxation Rules
QE	Quantitative Easing
QFI	Qualified Foreign Investor
RBI	Reserve Bank of India
REF	Renewable Energy Fund
REIT	Real Estate Investment Trust
Rules	Income-tax Rules, 1962
SA	Standard on Auditing
SAD	Special Additional Duty
SC	Scheduled Caste
SC	Supreme Court
SEBI	Securities and Exchange Board of India
SEZ	Special Economic Zone
ST	Scheduled Tribes
ST	Service Tax
STP	Software Technology Park
STR	Service Tax Rules
STCG	Short Term Capital Gain
TIN	Transaction identification number
TNNM	Transactional Net Margin Method
Tribunal	Income tax Appellate Tribunal
TDS	Tax Deducted at Source
TPO	Transfer Pricing Officer
TED	Terminal Excise Duty
VAT	Value Added Tax
VCC	Venture Capital Companies
VCF	Venture Capital Fund
WPI	Wholesale Price Index
WT	Wealth tax
WB	World bank

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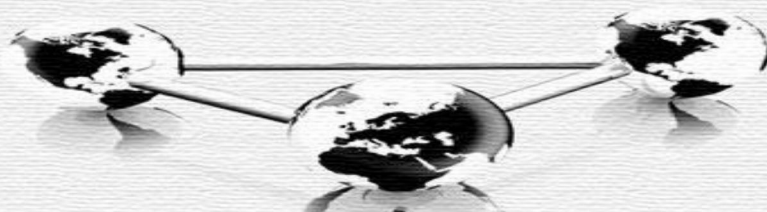
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