

# Tax & Corporate law Bulletin

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**JANUARY 2017**

COMMITTED TO  
PROVIDE  
INNOVATIVE  
SOLUTIONS

**From the Editor's Desk...**

Dear Reader,

Greetings for the season,

*CBDT issues clarification for smooth implementation of Income Computation And Disclosure Standards (ICDs); Clarification on Taxation and investment regime for Pradhan Mantri Garib Kalyan Yojana; Clarification regarding determination of Place of Effective Management (POEM); SEBI goes digital on all payments 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 90 of the Income-tax Act, 1961 – Double Taxation Agreement – Signing of Joint Declaration by India and Switzerland for Implementation of Automatic Exchange of Information (AeoI) between two countries**

**Press Release, dated 22/11/2016**

Fighting the menace of Black Money stashed in offshore accounts has been a key priority area for this Government. To further this goal, Mr. Sushil Chandra, Chairman, CBDT on behalf of India and Mr. Gilles Roduit, Deputy Chief of Mission of Swiss Embassy in India, on behalf of Switzerland, signed the 'Joint Declaration' for the implementation of Automatic Exchange of Information (AEOI) between India and Switzerland. As a result, it will now be possible for India to receive from September, 2019 onwards, the financial information of accounts held by Indian residents in Switzerland for 2018 and subsequent years, on an automatic basis.

- **Section 37(1) of the Income-tax Act, 1961 – Business Expenditure – Allowability of – Admissibility of Expenditure incurred by a firm on Keyman Insurance Policy in case of a Partner Circular No. 38/2016 [F. No. 279/Misc./140/2015-Itj], dated 22/11/2016**

CBDT Circular No. 762/1998 dated 18/2/1998 clarifies that the premium paid on the Keyman Insurance Policy is allowable as business expenditure. However, in case of such expenditure incurred on a partner of a firm, the general approach of the assessing officers was to treat the expenditure as not incurred for the purpose of business and

disallow the same. The High Court of Punjab and Haryana in the case of M/s. Ramesh Steels, ITA No. 437 of 2015, vide judgment dated 2/2/2016 [2016], held that, "the said policy when obtained to secure the life of a partner to safeguard the firm against a disruption of the business is equally for the benefit of the partnership business which may be effected as a result of premature death of a partner. Thus, the premium on the Keyman Insurance Policy of partner of the firm is wholly and exclusively for the purpose of business and is allowable as business expenditure". The above view has been accepted by CBDT and the judgment has not been further contested. In view of this, it is a settled position that in case of a firm, premium paid by the firm on the Keyman Insurance Policy of a partner, to safeguard the firm against a disruption of the business, is an admissible expenditure under section 37 of the Act.

- **Section 80-Ib, read with section 80-Ic, of the Income-tax Act, 1961 – Deductions – Profits and Gains from Industrial Undertakings other than Infrastructure Development Undertakings – Notified Scheme for purposes of section 80-Ib(10) Circular No. 39/2016 [F. No. 279/Misc./140/2015/Itj], dated 29/11/2016**

The issue whether revenue receipts such as transport, power and interest subsidies received by an industrial undertaking/eligible business are part of profits and gains of business derived from its business activities within the meaning of sections 80-IB/80-IC of the Income-tax Act, 1961 (hereinafter referred to as "the Act") and thus eligible for claim of corresponding deduction under Chapter VI-A of the Act has been a contentious one. Such receipts are often treated as 'Income from other sources' by the Assessing Officers.

The Hon'ble Supreme Court in its judgment dated 9/3/2016 in the case of Meghalaya Steels Ltd. in CA No. 7622 of 2014 reported in [2016], has held that the subsidies of transport, power and interest given by the Government to the industrial undertaking are receipts which have been reimbursed for elements of cost relating to manufacture/sale of the products. Thus, there is a direct nexus between profit and gains

of the industrial undertaking/business and reimbursement of such business subsidies. Accordingly, such subsidies are part of profits and gains of business derived from the industrial undertaking and are not to be included under the head 'Income from other sources'. Therefore, deduction is admissible under section 80-1B/80-IC of the Act on such revenue receipts derived from the industrial undertaking. In view of the above, it is a settled position that revenue subsidies received from the Government towards reimbursement of cost of production/manufacture or for sale of the manufactured goods are part of profits and gains of business derived from the industrial undertaking /eligible business, and are thus, admissible for applicable deduction under Chapter VI-A of the Act.

➤ **Section 132 of the Income-tax Act, 1961 – Search & Seizure – General Clarifications with respect to gold jewellery under Income-tax Law**

**Press Release, dated 1/12/2016**

In order to remove any doubt about the current position of Income-tax Law with respect to gold jewellery, the following points are categorically clarified:

- ❖ There is no limit on holding of gold jewellery or ornaments by anybody provided it is acquired from explained sources of income including inheritance.
- ❖ Vide circular dated 11/5/1994, instructions have been issued in the matter of search and seizure of gold jewellery:-Jewellery and ornaments to the extent of 500 gms. for married lady, 250 gms. for unmarried lady and 100 gms. for male member will not be seized, even if prima facie, it does not seem to be matching with the income record of the assessee.
- ❖ Officer conducting search has discretion not to seize even higher quantity of gold jewellery based on factors including family customs and traditions.

➤ **Section 147, read with section 119, of the Income-tax Act, 1961 – Income Escaping Assessment – General Directions under Section 119 Circular No. 40/2016 (F. No. 225/326/2016/Ita.ii), dated 9/12/2016**

Recent initiatives of the Government to curb the black economy in the country has encouraged people to shift towards digital mode of payment while making financial transactions. By adopting digital mode of payment, no financial transactions would remain undisclosed and consequently an enhanced turnover of business might get reflected in the books of account. Under the circumstances, an apprehension has been raised that increased turnover in the current year may lead to reopening of earlier years' cases involving lower turnover u/s. 147 of the Income-tax Act, 1961 ('Act') by the Assessing Officer causing undue harassment to taxpayers

It is hereby clarified that reopening of cases u/s. 147 of the Act is feasible only when the Assessing Officer "has reason to believe that any income chargeable to tax has escaped assessment for any assessment year" and not merely on the basis of any reason to suspect. Mere increase in turnover, because of use of digital means of payment or otherwise, in a particular year cannot be a sole reason to believe that income has escaped assessment in earlier years. Hence, Assessing Officers are advised not to reopen past assessments in cases merely on the ground that the current year's turnover has increased.

➤ **Section 139(5) of the Income-tax Act, 1961 – return of Income – Revised Return - Filing of Revised Income Tax Returns by taxpayers post demonetisation of currency**

**Press Release, dated 14/12/2016**

Under the existing provisions of section 139(5) of the Income-tax Act, 1961 ('Act'), Revised Return can only be filed if any person, who has filed a return under section 139(1) of the Act or in response to notice u/s. 142(1), discovers any omission or any wrong statement therein. Post demonetisation of the currency on 8th November, 2016, some taxpayers may misuse this provision to revise the return-of-income filed by them for the earlier assessment year,

for manipulating the figures of income, cash-in-hand, profits etc. with an intention to show the current year's undisclosed income (including the unaccounted income held in the form of demonetised currency in current year) in the earlier return.

It is hereby clarified that the provision to file a revised return of income u/s. 139(5) of the Act has been stipulated for revising any omission or wrong statement made in the original return of income and not for resorting to make changes in the income initially declared so as to drastically alter the form, substance and quantum of the earlier disclosed income.

It is brought to the notice of taxpayers that any instance coming to the notice of Income-tax Department which reflects manipulation in the amount of income, cash-in-hand, profits etc. and fudging of accounts may necessitate scrutiny of such cases so as to ascertain the correct income of the year and may also attract penalty/prosecution in appropriate cases as per provisions of law.

➤ **Government decides to reduce existing rate of deemed profit u/s. 44AD**

Government decides to reduce the existing rate of deemed profit under section 44AD of the Income-tax Act in respect of amounts/receipts through banking channel/digital means.: Under the existing provisions of Section 44AD of the Income-tax Act, 1961 (the Act), in case of certain assesseees (i.e. an individual, HUF or a partnership firm other than LLP) carrying on any business (other than transportation, agency, brokerage and commission) and having a turnover of Rupees Two Crore or less, the profit is deemed to be 8% of the total turnover. In order to achieve the Government's mission of moving towards a less cash economy and to incentivise small traders/businesses to proactively accept payments by digital means, it has been decided to reduce the existing rate of deemed profit of 8% u/s. 44AD of the Act to 6% in respect of the amount of total turnover or gross receipts received through banking channel/digital means for the financial year 2016-17. However, the existing rate of deemed profit of 8% referred to in Section 44AD of the Act, shall

continue to apply in respect of total turnover or gross receipts received in cash. Legislative amendment in this regard shall be carried out through the Finance Bill, 2017. (Press Information Bureau, Government of India, Ministry of Finance, 19th December, 2016).

## RECENT JUDGEMENT



➤ **CIT vs. Yokogawa India Limited (Supreme Court)**

Sections 10A/ 10B: Sections 10A/10B were amended by FA 2000 w.e.f. 1/4/2001 to change "exemption" to "deduction", the "deduction" contemplated therein is qua the eligible undertaking of an assessee standing on its own and without reference to the other eligible or non-eligible units or undertakings of the assessee. The benefit of deduction is given by the Act to the individual undertaking and resultantly flows to the assessee. The deduction of the profits and gains of the business of an eligible undertaking has to be made independently and before giving effect to the provisions for set off and carry forward contained in Sections 70, 72 and 74. The deductions u/ss. 10A/10B are prior to the commencement of the exercise to be undertaken under Chapter VI of the Act for arriving at the total income of the assessee from the gross total income.

If the specific provisions of the Act provide [first proviso to Sections 10A(1); 10A(1A) and 10A(4)] that the unit that is contemplated for grant of benefit of deduction is the eligible undertaking and that is also how the contemporaneous Circular of the department (No. 794 dated 9/8/2000) understood the situation, it is only logical and natural that the stage of deduction of the profits and gains of the business of an eligible undertaking has to be made

independently and, therefore, immediately after the stage of determination of its profits and gains. At that stage the aggregate of the incomes under other heads and the provisions for set off and carry forward contained in Sections 70, 72 and 74 of the Act would be premature for application. The deductions under Section 10A therefore would be prior to the commencement of the exercise to be undertaken under Chapter VI of the Act for arriving at the total income of the assessee from the gross total income. The somewhat discordant use of the expression “total income of the assessee” in Section 10A has already been dealt with earlier and in the overall scenario unfolded by the provisions of Section 10A the aforesaid discord can be reconciled by understanding the expression “total income of the assessee” in Section 10A as ‘total income of the undertaking’.

➤ **Jeans Knit Private Limited vs. DCIT (Supreme Court)**

Writ Petition to challenge the issue of a reopening notice u/s. 148 is maintainable as per the law laid down in Calcutta Discount 41 ITR 191 (SC). The law laid down in ChhabilDass Agarwal 357 ITR 357 (SC) deals with the maintainability of a Writ to challenge the reassessment order and does not apply to a challenge to the reassessment notice [Sections 147/ 148]:

The High Courts dismissed the writ petitions preferred by the assessee challenging the issuance of notice u/s. 148 of the Income-tax Act, 1961 and the reasons which were recorded by the Assessing Officer for reopening the assessment. The writ petitions were dismissed by the High Courts as not maintainable. The aforesaid view taken is contrary to the law laid down by this Court in Calcutta Discount Limited Company vs. Income Tax Officer, Companies District I, Calcutta&Anr. [(1961) 41 ITR 191 (SC)]

➤ **Pr. CIT vs. Atotech India Ltd. (P&H High Court)**

Penalty u/s. 271(1)(c) cannot be levied in a case where the assessee has relied on legal opinion of a professional and there is no tax impact i.e. the loss disallowed in year one is allowed set off in a later year.

The Tribunal noted that the respondent had claimed

the set off of its business income of ` 1.85 crores against the brought forward business losses of the earlier years on the basis of a legal opinion received from a leading firm of Chartered Accountants. The Tribunal found nothing clandestine in the manner in which the opinion was sought. In any event, even our attention was not invited to anything which suggests any mala fides either in the obtaining of the opinion or otherwise. Further, the loss was allowed to be carried forward in the assessment year, namely, assessment year 2002-03.

➤ **Torm Shipping India Pvt. Ltd. vs. ITO (ITAT Mumbai)**

Reopening opens a “Pandora’s box” and cannot be done in a casual manner. The reasons cannot be based on mere doubts or with a view to verify basic facts. If the AO takes the view that the income referred to in the reasons has not escaped assessment, he loses jurisdiction to assess other escaped income that comes to his notice during reassessment.

The reasons have been recorded on the basis of mere doubts. There were no bases with the AO to allege that too with the support of any cogent material that impugned income was not included by the assessee in its income offered to tax. Reopening of an assessment is not permitted merely on the basis of some notions or presumptions. Nor it is allowed merely for making verification of some basic facts. There must be existence of some tangible material indicating escapement of income.

Then only, an AO is permitted to resort to provisions of reopening contained in sections 147 to 151 of the Act. Because, once an assessment is reopened on valid basis, entire pandora’s box is open before the AO. Therefore the AO may then bring to tax not only income escaped from tax which was mentioned in the reasons recorded, but also any other escaped income that may come to his notice during the course of reassessment proceedings. Reopening of an assessment attacks and pierces the concept of finality of litigation. Therefore, an invalid reopening done in the casual manner and without following parameters of law may cause undue hardship to the taxpayers.

## INDIRECT TAX

### Service Tax



#### ➤ **Service Tax amendments on Hotel Aggregators**

The Hotel aggregators such as OYO Rooms, Make my trip etc. who arranges stay for us are cruelly come under the ambit of service tax. These aggregators are liable to pay service tax on the entire accommodation. The service tax law defines the aggregator as a person who owns and manages an application and enables potential customers to avail the service of a particular service provider under the brand name of an aggregator.

#### ➤ **Amendment in Service Tax on Services for transportation of goods by vessel from a place outside India**

Through this notification, the service provided or agreed to be provided by way of transportation of goods by vessel from a place outside India up to the custom station of clearance in India shall be covered under complete Reverse Charge Mechanism where **service receiver** is liable to pay 100% service tax.

For this purposes, **Service Receiver** shall be the person in India who complies with section 29, 30 or 38 read with section 148 of the Customs Act, 1962 with respect to such goods.

In other words, in respect of services provided or agreed to be provided by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India, person liable to pay service tax shall be the person who is getting the goods cleared from Customs.

## VAT

#### ➤ **DVAT (IST) Amendment Bill, 2016 passed by Delhi Assembly**

**Insertion of section 3(11):** This new section has been inserted to collect advance tax from importers at the time of import. The liability to pay tax has been fastened from point of sale to point of import. Notification in this regard shall be issued by Department which will outline the items, condition, exemption and rate of advance tax on such items. The advance tax paid under this notification shall be adjusted with at the time of making final tax liability by the dealers. If the importer of goods in Delhi proves that these goods are not for sale, not for manufacturing or processing for goods meant for sale in Delhi than advance tax shall not be collected. Further if the importer of goods does not prove otherwise it will be presumed that these goods are not sold below price at which they are imported.

**Insertion of section 29(2):** The signing of returns by digital signature has been legalized earlier the Department made it mandatory to file return by using digital signature from IVth quarter of 2015-16 but later the notification was extended and made applicable from first quarter of 2016-2017.

**Insertion of Section 50A:** Communication of information of sale invoice instantly by installing such physical device or software as notified by the Government. The objective of this provision is to ensure that dealers do not manipulate the sales data afterwards. In the proposed GST regime, business organization will submit their sales data to Govt. invoice wise. The only concern is to ensure hassle free website and these provisions must be prescribed for big dealers.

**Amendment of section 86(10):** By amending this section Govt. has reduced the minimum amount of penalty from ten thousand to one thousand. This amount of penalty was very harsh for small dealers where tax deficiency was say 500 the amount of penalty was minimum ten thousand.

**Insertion of Section 91A:** The proposal for insertion of new section 91A is to make enabling provisions for setting up of Special Courts for speedy trials of the offences. The provisions once notified will empower Govt. to setup such courts after consultation with Chief justice of Delhi High Court.

**Amendment of Section 92:** The proposed amendment of section 92 aims to empower investigation under the Indian Penal Code, 1860 where commission of an offence under the Delhi Value Added Tax Act, 2004 required prosecution or otherwise. If Commissioner gives his approval for prosecution then authorised officer shall launch prosecution before Metropolitan Magistrate having jurisdiction over area.

**Amendment of Section 93:** The amendment in section 93 is to disallow compounding of offences to a habitual offender. Before amendment the defaulters could reach to Commissioner for compounding of offences again and again thereby avoiding prosecution of case.

**Amendment of section 107:** This section is basically amended to announce amnesty scheme at any time in future which will not necessitate amendment of Act at that time. In my personal view before introduction of GST amnesty scheme shall be announce in general for all class of dealers who are not paying taxes.

## Goods & Services Tax



### ➤ Transitional Challenges under Revised Model GST Law

India is committed to implement Goods and Service Tax (GST). GST is expected to be implemented from April 2017 or a little later. The tax system is currently in the drafting stages with a few undecided issues holding up the agreement between the states

and the Centre. The implementation of GST does not just involve tax reform, it is instead a complete business reform. Therefore, changing the historical ways of doing business calls for larger challenges and increased sense of responsibility as any slip up can also have the business continuity/ survival risks. This article discusses the various transitional aspects that needs to be looked into and the challenges that the businesses face in doing the same. Various transitional challenges are as under:

#### **Finalising the GST Transition Model:**

The first and foremost challenge in the implementation of the GST is to understand what is the right model for your business to implement the GST. Broadly, there are three models as under:

#### **a) Model – 1: In-house implementation**

**Model:** Implementing the GST with its own internal team by developing a core GST Team. This can be an appropriate model when the system and controls are well-organised and the company has separate tax team with complete pool of industry knowledge and the knowledge of taxation apart from the resources to execute the plan.

#### **b) Model – 2: Out-source implementation**

**Model:** Outsourcing the entire GST transition aspects from planning to execution to outside professionals. This can be apt where the size of the business is very small and the company does not have any resources in manpower and expertise in the taxation either to plan or to execute the GST implementation.

#### **c) Model – 3: In-House + Outsource implementation**

**Model:** Developing a core internal GST team plus obtaining the assistance of professionals as a knowledge partner. In this model, GST is implemented with collaborated efforts of internal team and the outside professionals clearly dividing the roles and responsibilities of internal team and the external experts. This is more appropriate model for major of the companies who have fairly decent capacities in respect of the executing manpower and knowledge of the taxation system. The capacity and the knowledge can be optimally utilized by partnering with the professionals.



### ➤ GST- Input Tax Credit Cycle

ITC in GST is like the oxygen to human body. Everything revolves around how the credit would get distributed and who would be the person actual bearing the liability to in which treasure box this collection will ultimately fall into Central/State government. To availing the credit only by those who are registered under the **GST system** being the mandatory condition. Here I would be throwing light on role of ITC in the GST reform-

#### What is Input Tax Credit?

The tax which the purchaser credits to his ledger on the inputs as goods/service used by him for final product further sold. This chain of taking input tax credit continues till the product reaches the ultimate consumer. The GST which is to come into force would help to remove the cascading effect which is now faced by the industry and borne by the consumer eliminating the multiple tax with the single tax rate.

#### Who are all Eligible for Input Tax Credit?

- ❖ Every registered taxable person
- ❖ A person who has applied for registration within the prescribed time i.e. 30days-entitled to take credit of stock held on immediately preceding the date of registration
- ❖ A person who has applied for registration under 19(3) i.e. voluntary registration- entitled to take credit of stock held on immediately preceding the date of registration
- ❖ Where a person is no longer under composition scheme- entitled to take credit of stock held on immediately preceding the date of registration

#### Under what Conditions/Circumstances input tax credit will not be available?

- ❖ Motor vehicle except Transportation of passenger/goods and used for imparting driving skills
- ❖ Goods/Supplies that are exempted except zero rated
- ❖ Personal Use
- ❖ Goods used in works contract resulting in immovable property except P&M
- ❖ Goods used which result into immovable property except P&M
- ❖ Tax payable u/s 8
- ❖ One who claims depreciation on capital goods

### Conditions where a registered person would be denied credit

- ❖ Not having documentary proof (like invoice if in installment the same shall be allowed)
- ❖ Received goods/services (deemed delivered when received by supplier or on his direction by agent)
- ❖ Tax paid
- ❖ Return filled

## COMPANY LAW

### ➤ Process of Incorporation of Company- Spice Forms

Ministry of Corporate Affairs ('MCA') has come with new rules for Incorporation of Company under Companies Act, 2013 with simplified procedure (SPICE).

An significant step is taken by Ministry of Corporate Affairs by introduce e-form INC-32 under SPICE scheme vide MCA's notification dated 01/10/2016 notifying Companies (Incorporation) Fourth Amendment Rules, 2016.SPICE means Simplified Performa for Incorporating Company Electronically.

The SPICE form was introduced with a function to prepare e-Moa & e-Aoa (Electronic MOA/ AOA). This facility is first time providing by the Ministry in the history of India for Incorporation of Company via this attribute there is no opportunity to prepare the manual MOA & AOA and no option to physically sign the MOA & AOA by subscribers and witness

### Simplified Performa for incorporation of Companies Electronically (SPICE)

#### Single Window Form:

Earlier if a Person wants to incorporate Company then it has to apply for the DIN, Approval of the Name Availability, Separate form for first Director, Registered office address, PAN, TAN etc. But this form is a single window for Incorporation of Company.

#### This form can be used for the following purposes:

- ❖ Application of DIN (upto 3 Directors)
- ❖ Application for Availability of Name

- ❖ No need to file separate form for first Director (DIR-12)
- ❖ No need to file separate form for address of registered office (INC-22)
- ❖ No need to file separate form for PAN & TAN

**Mandatory to file e-Form inc-32–**

This form available on MCA w.e.f. 03.10.2016. Ministry has moved toward with notification dated 29<sup>th</sup> December, 2016 by this notification Companies can be incorporated only by following forms:

- ❖ One Person Company = INC-32 (SPICe )
- ❖ Private Limited Company (with 7 or less than 7 subscribers) = INC-32 (SPICe )
- ❖ Public Limited Company (with 7 or less than 7 subscribers) = INC-32 (SPICe )
- ❖ Section 8 Company (with 7 or less than 7 subscribers) = INC-32 (SPICe )
- ❖ Producer Company (with 7 or less than 7 subscribers) = INC-32 (SPICe )
- ❖ Producer Company (with more than 7 subscribers) = INC-7
- ❖ Company with foreign Subscribers (up to 7) = INC-32 (SPICe )

\*According to the above notification, the Companies which are requisite to be incorporated through INC-32 can't be incorporated by filing e-form INC-7 on or after 29<sup>th</sup> December, 2016. Hence, it is obligatory to file e-form INC-32 (SPICe ) for Incorporation of Company w.e.f. 29<sup>th</sup> December, 2016.

**Features of SPICe (inc-32) form:**

- ❖ Maximum details of subscribers are SEVEN (7). In case of more subscribers, follow the normal incorporation procedure in INC-7.
- ❖ Maximum details of directors are TWENTY (20).
- ❖ Maximum THREE (3) directors are allowed for filing application of allotment of DIN while incorporating a Company.
- ❖ Person can apply the Name also in this form.
- ❖ By affixation of DSC of the subscriber on the INC-33 (e-moa) date of signing will be appear automatically by the form.
- ❖ Applying for PAN / TAN will be compulsory for all fresh incorporation applications filed in the new version of the SPICe form.

**Confusion in SPICe (inc-32) form:**

- ❖ How to apply for Incorporation of Company with Foreign Subscribers, without violating the

Rule 13 of the Companies (Incorporation) Rules, 2014.

- ❖ If Name of a Company is already approved by INC-1 then whether company can apply for incorporation in e-form INC-32.
- ❖ If both the person doesn't have DIN No. whether they can apply for the incorporation of Company. Or one person mandatorily requires having DIN for filing of this form.
- ❖ Whether producer company can be incorporated through this form or not.
- ❖ If a person wants to incorporate through INC-7 whether they can do or no.

➤ **Transfer of petitions of winding up to be transferred to National Company Law Tribunal (NCLT)**

The pending Petitions relating to winding up due to inability to pay debts, which have not been served to the concerned respondent, be transferred to NCLT from High Court in accordance with their territorial jurisdiction. Petitioner be required to submit the requisite information, including details of the proposed insolvency professional, within 6 months (instead of 60 days) of the Notification. No fees be payable for proceedings transferred

➤ **Exemption to Specified IFSC Private company under section 462 of the Companies Act, 2013**

MCA has notified certain relaxations or modifications and adaptations from the application of certain provisions of the Companies Act 2013 to an unlisted public company which is licensed to operate by the RBI or SEBI or IRDA from the International Financial Services Centre located in an approved multi services Special Economic Zone.

➤ **Section 248 to 252 of Companies Act effective from 26.12.2016**

In exercise of the powers conferred by sub-section (3) of Section 1 of the Companies Act, 2013 (18 of 2013), the Central Government hereby appoints the 26<sup>th</sup> December, 2016 as the date on which the provisions of section 248 to 252 of the said Act, shall come into force.

Removal of Names of Companies from The Register of Companies

Power of Registrar to Remove Name of Company from Register of Companies.

248(1) Where the Registrar has reasonable cause to believe that—

- (a) a company has failed to commence its business within one year of its incorporation  
1[or];

## POLICY WATCH



### ➤ **Cabinet gives approval for the Varishtha Pension BimaYojana 2017**

The Union Cabinet gave its approval for launching the Varishtha Pension BimaYojana- 2017. The scheme aims to provide security to senior citizens over the age of 60 years, against a future fall in interest income due to uncertain market conditions. The scheme will be open for subscription for a period of one year.

The 2017 scheme will be implemented through the Life Insurance Corporation of India (LIC). It will provide senior citizens an assured pension at a guaranteed rate of 8% per annum for 10 years. A subscriber may choose to receive pension on a monthly, quarterly, half-yearly or annual basis. The difference between the return generated by LIC and the assured return of 8% will be borne by the government as subsidy on an annual basis.

A similar scheme was launched in the year 2014- 15 for which the subscription was open till August 2015.

### ➤ **Cabinet approves Indian Institute of Management Bill, 2017**

The Union Cabinet has approved the Indian Institute of Management (IIM) Bill, 2017.<sup>13</sup> Under the Bill, IIMs would be declared as Institutions of National

Importance which will enable them to grant degrees to their students.

All IIMs are separate autonomous bodies registered under the Societies Act, 1860. Being societies, IIMs are not authorised to award degrees and, hence, they award Post Graduate Diploma and Fellow Programme in Management. Key features of the Bill are:

**Granting of degrees and autonomy:** IIMs can grant degrees to their students. The institutions will have complete autonomy combined with adequate accountability.

**Composition and functions of the Board:** Management of the IIMs will be Board driven, and the Chairperson and Director of an institution will be selected by the Board. There will be greater participation of experts and alumni, and inclusion of women and members from Scheduled Castes/Tribes on the Board.

**Review:** A periodic review of the performance of the institutions will be done by independent agencies, and the results of the same will be placed in the public domain. Further, the annual report of the institutions will be placed in Parliament and CAG will audit their accounts.

The Bill is not yet available in the public domain.

### ➤ **SwachhSwasthSarvatra scheme guidelines released**

SwachhSwasthSarvatra (SSS) is an inter- ministerial joint initiative between the Ministry of Drinking Water and Sanitation (MDWS) and the Ministry of Health and Family Welfare.<sup>16</sup> The objective of the SSS scheme is to build on two existing programmes – Swachh Bharat Mission and Kayakalp. Kayakalp is a scheme to encourage public health facilities to achieve certain standards related to cleanliness, hygiene, waste management and infection control.

Under the SSS guidelines, those geographical locations will be made Open Defection Free (ODF) where public health facilities have demonstrated high standards of cleanliness.

Key activities under the SSS include:

**Primary Health Centre (PHC) level:** The activities focussing on PHCs include:

- (i) enabling gram panchayats where Kayakalp awarded PHCs are located to become ODF;
- (ii) identifying nodal institutional points between State Health Mission and counterparts in the MDWS; and
- (iii) training of PHC representatives.

#### **Community Health Centre (CHC) level:**

The activities focussing on CHCs include:

- (i) strengthening these in ODF blocks to achieve a high level of cleanliness to meet Kayakalp criteria through a support of Rs 10 lakh to each selected CHC under National Health Mission, and
- (ii) facilitating their internal assessment using Kayakalp assessment to identify gaps and generate appropriate action plans.

## INDUSTRY WATCH & CORPORATE HIGHLIGHT



#### **TRAI releases consultation paper on net neutrality**

The Telecom Regulatory Authority of India (TRAI) released a consultation paper on net neutrality on January 5, 2017.<sup>26</sup> The paper seeks the views of stakeholders on establishing a comprehensive framework to: (i) provide flexibility to telecom service providers to manage their networks, and (ii) prevent them from discriminating against content providers.

In May 2016, TRAI issued a pre-consultation paper to map relevant issues associated with net neutrality. As a follow-up, in the current paper, TRAI is consulting on formulation of views on policy interventions raised in the pre-consultation paper. TRAI is seeking comments on the paper until February 15, 2017. Key issues on which consultation is sought include:

**Traffic management:** Service providers generally use various techniques to manage the safety, security and efficiency of their networks. To ensure that service providers do not use such techniques in a discriminatory manner, the paper proposed two regulatory approaches. The first approach is to set contours of reasonable traffic management principles of what can be regarded as acceptable or unacceptable forms of interference. The second approach is to adopt a negative list of non-reasonable traffic management practices by service providers.

There may be a need to carve out certain exceptions, such as, prioritising emergency services or complying with directions regarding unlawful content.

**Transparency:** While service providers are allowed to engage in reasonable traffic management practices, the affected end users should be aware of such practices.

**Monitoring framework:** In the context of rapid changes in technology and business models, and with an evolving regulatory environment, there is a need for a monitoring mechanism.

#### ➤ **Guidelines for Penalties on Defence Business Dealings amended**

The Ministry of Defence amended the guidelines on Penalties in Business Dealings with Entities.<sup>27</sup> The guidelines were issued in November 2016 to regulate levy of penalties (i.e. financial penalties, suspension and banning) on persons that enter into contracts with the Ministry of Defence regarding procurement of goods and services.<sup>28</sup>

Currently, under the guidelines, the Defence Minister may ban an entity from ongoing and future procurements if it has engaged in misconduct. In case of certain kinds of misconduct (ex. misconduct that affects national security or using corrupt means to secure contract), the ban may be of five years or more. The amendment provides that the ban may be up to 10 years in such cases.

## Statuary compliance calendar for the month of JAN 2017

Due Date	Statuary Compliance Under Act	Particulars	Governing Authority
 WHEN			
05/01/2017	GAR-7	Last date for payment of Service Tax	CENTRAL BOARD OF EXCISE AND CUSTOM
7/01/2017	CHALLAN 281	Payment of TDS/TCS deducted/collected in Dec, 2016	CENTRAL BOARD OF DIRECT TAX
10/01/2017	ER-1, ER-3	Last date of filing of ER-1 & ER-3 (monthly return for large tax payers & SSI unit respectively for Dec 2016-17)	CENTRAL BOARD OF EXCISE AND CUSTOM
15/01/2017	FORM-27EQ	Last date of filing TCS return for Q3	CENTRAL BOARD OF DIRECT TAX
16/01/2017	ELECTRONIC CHALLAN CUM RETURN(ECR)	E-Payment of PF for January	PROVIDENT FUND
21/01/2017	ONLINE	Payment of ESIC Liability for January	ESIC
	DVAT	Last date for E-Payment of D-VAT for the month of December.	DELHI VALUE ADDED TAX
22/01/2017	DVAT-43	Issue of DVAT certificate for deduction made in December.	DELHI VALUE ADDED TAX
25/01/2017	DVAT-16	File DVAT/CST Return online for Quarter ended December,2016	DELHI VALUE ADDED TAX
28/01/2017	DVAT-23	Furnish Application for refund in form DVAT-23 online	DELHI VALUE ADDED TAX
30/01/2017	TCS FORM-16	Quarterly TCS certificate (in respect of tax collected by any person) for the quarter ending December 31st ,2016	CENTRAL BOARD OF DIRECT TAX
31/01/2017	TDS	Due date for deposit of tax deducted at source under Section 194-IA for purchase of property for the month of June, 2016	TDS ON PROPERTY SALE
	GST	Last date for Provisional registration of GST - for existing taxpayer registered under sales & Service Tax.	GOODS AND SERVICES TAX
	FORM 24Q AND 26S	Submission of Quarterly statement of TDS deposited for the quarter ending December 31, 2016	CENTRAL BOARD OF DIRECT TAX

**Glossary**

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

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

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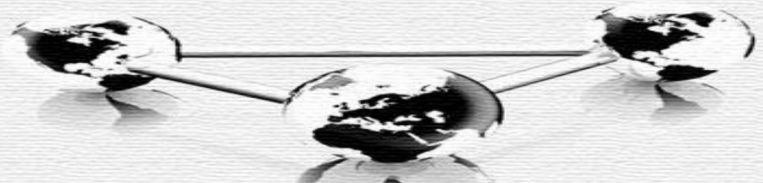
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