

# Tax & Corporate law Bulletin

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JULY 2016

## From the Editor's Desk...

Dear Reader,

Greetings for the season,

*Consequences of Filing Income Tax Return After Due Date; Exemption to goods manufactured by Job worker for its removal to special economic zone units; Features and steps involved in incorporating One Person Company 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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## DIRECT TAX



- **Section 139 of the income-tax act, 1961 – return of income – verification of tax returns for assessment years 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15 through EVC which are pending due to non-filing of ITR-V form and processing of such returns**

### **CIRCULAR NO. 13/2016**

The Central Board of Direct Taxes ('CBDT'), in exercise of powers under section 119(2)(a) of the Act, in case of returns for Assessment Years 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15 which were uploaded electronically by the taxpayer within the time allowed under section 139 of the Act and which have remained incomplete due to non-submission of ITR-V Form verification, hereby permits verification of such returns also through EVC.

Such verification process must be completed by 31/8/2016. As an alternative to EVC, the taxpayer is allowed to send a duly signed copy of ITR-V to the CPC, Bengaluru by this date by speed post. In such cases, CBDT also relaxes the time-frame for issuing the intimation as provided in second proviso to sub-section (1) of section 143 of the Act and directs that such returns shall be processed by 30/11/2016 and intimation of processing of such returns shall be sent to the taxpayer concerned as per the laid down procedure. In refund cases, while determining the interest, provisions of section 244A(2) of the Act would apply.

- **Income declaration scheme rules, 2016 - declaration of domestic black money from 1/6/2016 to 30/9/2016**

The Scheme shall apply to undisclosed income whether in the form of investment in assets or otherwise, pertaining to Financial Year 2015-16 or earlier. Where the declaration is in the form of investment in assets, the Fair Market Value of such asset as on 1st June 2016 shall be deemed to be the undisclosed income under the Scheme.

However, foreign assets or income to which the Black Money Act 2015, applies are not eligible for declaration under this scheme. Assets specified in the declaration shall be exempt from Wealth-tax. No scrutiny and enquiry under the Income-tax Act or the Wealth-tax Act shall be undertaken in respect of such declarations. Immunity from prosecution under the Income-tax Act and Wealth Tax Act is also provided along with immunity from the Benami Transactions (Prohibition) Act, 1988 subject to transfer of asset to actual owner within the period specified in the Rules.

Non-payment of total taxes, surcharge & penalty in time or declaration by misrepresentation or suppression of facts shall render the declaration void. The circumstances in which the Scheme shall not apply or where a person is held to be ineligible are specified in section 196 (Chapter IX) of the Finance Act, 2016. Non-declaration of undisclosed income under the Scheme, will render such undisclosed income liable to tax in the previous year in which it is detected by the Income tax Department. Other penal consequences will also follow accordingly.

- **Income-tax (fourteenth amendment) rules, 2016 – amendment in rule 8d**

### **NOTIFICATION NO. SO 1949(E) [F. NO. 370142/7/2016-TPL], DATED 2/6/2016**

In the Income-tax Rules, 1962, after Rule 126, following Rule shall be inserted, namely:—

Service of notice, summons, requisition, order and other communication.

For the purposes of sub-section (1) of section 282, the addresses (including the address for electronic mail or electronic mail message) to which a notice or summons or requisition or order or any other communication under the Act (hereafter in this rule referred to as “communication”) may be delivered or transmitted shall be as per sub-rule (2).



(2) The addresses referred to in sub-rule (1) shall be—

(a) For communications delivered or transmitted in the manner provided in clause (a) or clause (b) of sub-section (1) of section 282—

(i) The address available in the PAN database of the addressee; or

(ii) The address available in the income-tax return to which the communication relates; or

(iii) The address available in the last income-tax return furnished by the addressee; or

(iv) In the case of addressee being a company, address of registered office as available on the website of Ministry of Corporate Affairs:

Provided that the communication shall not be delivered or transmitted to the address mentioned in items (i) to (iv) where the addressee furnishes in writing any other address for the purposes of communication to the income-tax authority or any person authorised by such authority issuing the communication;

(b) For communications delivered or transmitted electronically—

(i) E-mail address available in the income-tax return furnished by the addressee to which the communication relates; or

(ii) The e-mail address available in the last income-tax return furnished by the addressee; or

(iii) In the case of addressee being a company, e-mail address of the company as available on the website of Ministry of Corporate Affairs; or

(iv) Any e-mail address made available by the addressee to the income-tax authority or any person authorised by such income-tax authority.

(3) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) shall specify the procedure, formats and standards for ensuring secure transmission of electronic communication and shall also be responsible for formulating and implementing appropriate security, archival and retrieval policies in relation to such communication.”

In exercise of the powers conferred by section 295 read with sub-section (2) of section 14A of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby makes the following rules further to amend the Income-tax Rules, 1962, namely: In the Income-tax Rules 1962, in Rule 8D,—

I. For sub-rule (2), the following sub-rule shall be substituted, namely: "(2) The expenditure in relation

to income which does not form part of the total income shall be the aggregate of following amounts, namely:

(i) The amount of expenditure directly relating to income which does not form part of total income; and

(ii) An amount equal to one per cent of the annual average of the monthly averages of the opening and closing balances of the value of investment, income from which does not or shall not form part of total income:

Provided that the amount referred to in clause (i) and clause (ii) shall not exceed the total expenditure claimed by the assessee."

II. Sub-rule (3) shall be omitted.

### ➤ **Consequences of Filing Income Tax Return After Due Date**

The due date for filing income tax return for corporate assesseees and other assesseees who are required to get their accounts audited under Income Tax Act 1961 or under any other law for the time being in force is 30th September and for others it is 31st July every year as have been prescribed u/s 139(1).

For a layman sometimes it may create doubt if he fails to file his return of Income within due date, whether he can file his return of Income after the due date, especially when he is under no obligation to get his accounts audited under Income Tax Act or under any other law.

The answer to this question is yes. Under section 139(4) a belated return can be filed as follows :-

For Assessment Year 2016-17 and Assessment Year Prior to A.Y 2016-17- at any time before before the expiry of one year from the end of relevant assessment year or before the completion of assessment whichever is earlier.

In other word a belated income tax return for FY 2015-16 (AY 2016-17) can be filed up to 31-03-2018 or before the completion of assessment whichever is earlier.

For Assessment Year 2017-18 and after- at any time before the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.

In other word a belated income tax return for FY 2016-17 (AY 2017-18) can be now filed only up to 31-03-2018 or before the completion of assessment whichever is earlier



But, where the assessee has some capital loss or loss from business or profession to be carried forward he should file his return of income within the due date as prescribed u/s 139(1). As per section 139(3), no loss shall be allowed to be carried forward under the head Business or Profession or under the head Capital Gain unless the return is filed within the due date as mentioned in section 139(1).

Where return of income is filed after the due date, interest u/s 234A will be payable. But if there is already tax has been deducted from the income of the assessee or advance tax has been paid by the assessee and there remains no tax to be paid after such T.D.S or advance tax then no interest is levied u/s 234A for filing the return after the due date.

It is to be noted that a penalty of Rs 5000 may be imposed u/s 271F if the return of income is not filed within the end of the relevant assessment year. For example, such penalty is imposable if return for asst. year 2011-12 is not filed by 31st March 2012.

It should also be noted that where a belated return is filed u/s 139(4), no revised return u/s 139(5) can be filed as it was held in Jagdish Chandra Sinha v. CIT 220 ITR 67 (SC).

Thus if your due date for filing return was 31st July and you miss to file it within due date you can still file it after the due date as stated above.

## RECENT JUDGEMENTS



### ➤ **CIT vs. Air Cargo Agents Association of India (Bombay High Court)**

Concept of mutuality is explained in the light of decision in the case of Bangalore Club 350 ITR 509 (SC)

The contributions made by the members to the assessee cannot be a subject matter of tax merely because the part of its excess of income over expenditure is invested in mutual funds. It is also not the case of the Revenue that the dividend received from mutual funds have not been offered

to tax by the assessee. The concept of mutual concerns not being subject to tax is based on the principle of no man can profit out of itself. Therefore the test to be satisfied before an association can be classified as a mutual concern are complete identity between the members i.e. contributors and the participants, the action of the mutual concern must be in furtherance of its objectives and there must be no scope of profiteering by the contributors from a fund. These tests have in fact been reiterated in Bangalore Club vs. CIT 350 ITR 509 (SC).

### ➤ **Amaya Infrastructure Pvt. Ltd vs. ITO (Bombay High Court)**

**Section 147 : If the assessee responds to Notices u/ss. 142(1)/143(2), it means that he has submitted to the AO's jurisdiction and is estopped for filing a Writ Petition to challenge the same. The fact that the jurisdiction is challenged while participating in the proceedings is irrelevant.**

The petitioners have filed detailed information called for by the Assessing Officer (AO) u/s. 142(1) & u/s. 143(2) of the Act and thus participated in the assessment proceedings. This having been done, it is not open for the petitioners to now contend that this Court should exercise its extraordinary jurisdiction and prohibit the authorities from proceeding further with the impugned notice.

This is particularly so as the question of jurisdiction has been raised by the petitioners before the AO during the assessment proceedings under the Act. In the present facts, the petitioners have participated in the proceedings before the AO. The objections to the reasons recorded by the AO in support of the impugned notice during the assessment proceedings is to point out to him the reassessment proceedings are bad as the requirement of Sections 147 & 148 of the Act are not satisfied.

It would be completely different scenario where the petitioners have not participated in the proceedings before the AO & object to exercise of jurisdiction by the AO at the very threshold and not while participating in the reassessment proceedings. In such cases, it is not a case of a party seeking identical relief by two parallel modes. The orders



passed by the AO are subject to effective, efficacious alternative remedy under the Act.

➤ **CIT vs. S. Ganesh (Bombay High Court)**

Inability of the assessee, an Advocate, to reconcile the professional receipts with the TDS certificates and to give a detailed party-wise breakup of fees receipts does not mean that the difference can be assessed as undisclosed income.

The assessee was engaged as an Advocate to argue the matters by what is popularly known as Advocates on record or instructing Advocates method, meaning thereby the client does not engage the assessee directly but a professional or the Advocate engaged by the client requests the assessee to argue the case. The brief is then taken as the counsel brief. That being the practice, the assessee gave an explanation that the breakup as desired cannot be given and with regard to all payments. It is pointed out that at times, assessee receives fees directly from the clients or from the instructing Advocates or Chartered Accountants if such professionals have collected the amounts from the clients. Under these circumstances, the breakup as desired cannot be placed on record.

➤ **Galatea Ltd. vs. Deputy Commissioner of Income-tax [2016] 67 taxmann.com 190 (Mumbai - Trib.) dated 24th February, 2016**

**Facts of the case**

The assessee was a company incorporated under the laws of Israel and was tax resident of Israel. It had no business connection in India, nor did it have any P.E. in India.

The assessee sold to its customers machines and operating software in India. The invoice involved consideration separately for the machine and operating software hence some customers deducted TDS from the payment, treating the same as 'Royalty' under Article 12(3) of the Israel tax treaty.

However, the assessee was of the view that the aforesaid payments made by the customers did not constitute 'Royalty', under the Israel tax treaty and the tax was wrongly withheld by the customers, accordingly, it filed its return of income for the

impugned assessment year at nil and claimed refund of the tax withheld/deducted by its customers.

The Assessing Officer treated the same as taxable in the hands of the assessee in India considering the provision of Section 9(1) (vi) of the Act.

The DRP upheld the action of the Assessing Officer without giving any relief to assessee. So the assessee appealed to the Mumbai Tribunal.

**Issue**

Whether the sale of operating software is considered as Royalty under Article 12(3) of the Israel tax treaty and the tax deducted was justified?

**Held**

ITAT considered that the undisputed facts are that none of the customers have purchased only machine or only software. The machine sold by the assessee could not be made operational or functional in the absence of operating software along with the application software. The software supplied by the assessee to end user was for integration with the machine supplied by the assessee and that this software had no other independent use as such, except to enable such machine to function. The software supplied by the assessee was meant only and exclusively for the purpose of making the said machine functional.

Thus, it has to be treated as transaction of sale of machine in the hands of the assessee and the amount bifurcated for software cannot be treated differently as consideration in the nature of 'Royalty' as envisaged under Section 9(1) (vi) and since the assessee has no P.E. in India, as per admitted facts on record, the amount of profit arising on receipt of sale consideration of machine would not be liable to be taxed in its hands in India.

**Exide Industries Ltd. Kolkata vs. Dcit Circle-1 [2016-Tii-48-Itat-Kol-Intl] dated 2nd March, 2016**

**Facts of the case**

The assessee is engaged in the business of manufacturing and trading of storage batteries and accessories thereof. During the concerned year, the assessee had paid royalty and consultancy fees to a Japanese entity in respect of which tax was not deducted and deposited as per the provisions of section 195. Such fact was disclosed in Clause 17(i)



of the tax audit report as well. The said sum was debited in the P/L A/c and claimed as deduction while computing income from business.

According to the assessee in respect of the payment in question, there was no liability to deduct TDS and therefore no disallowance u/s. 40(a)(i) could be made. By applying the principle of non-discrimination as per Article 24 of the India-Japan DTAA, there could be no disallowance u/s. 40(a)(i).

The AO rejected the claim of the assessee by simply stating that Indo-Japan DTAA was in force since 7/3/1989 and the assessee all across offered similar amount of royalty and technical service to tax. Since this treaty was effective since March 1989, there was no occasion to claim allowability of royalty/technical service by make a new interpretation of the said treaty. Further, nowhere it was specifically mentioned in the tax treaty that such fees was allowable irrespective of tax being deducted or not.

On appeal, the CIT(A) held that as per the Section 40(a)(i), if the tax was not deducted on the amount of technical services or royalty payable to a non-resident, the same had to be disallowed. Hence the CIT(A) confirmed the view taken by the AO. Aggrieved by the decision of the orders passed by the CIT(A), the assessee filed an appeal with the Tribunal.

#### Issue

Whether royalty payments to non-residents can be disallowed in the hands of assessee u/s. 40(a)(i) in view of Article 24 of the Indo-Japan DTAA, when the similar payments made to residents is not disallowed in the hands of the assessee for non-deduction of TDS?

#### Held

At the time of hearing it was brought to the notice of the Tribunal that the same issue has already been decided in assessee's own case, wherein it was held that the stand of the assessee was that since disallowance on account of non-deduction of tax at source from payments of similar nature made to a resident was liable to be made under Income-tax Act, the disallowance u/s. 40(a)(ia) on account of non-deduction of tax from similar payments made

to a non-resident could not be made as it would result in discrimination.

The Tribunal has observed therein that since royalty payments to residents could not be disallowed for non-deduction of taxes, similar payments made to non-residents could not be disallowed in the hands of the assessee u/s. 40(a)(i) as per provision of Article 24 of Indo-Japan DTAA, it deleted the disallowance made by the AO. Therefore, it directed that disallowance u/s. 40(a)(ia) be deleted.

## INDIRECT TAX

### Service Tax



#### ➤ Notification No. 26/2016-ST dated 20th May, 2016,

Central Government, has amended Entry No. 48 of Notification No. 25/2012-ST dated 20th June, 2012 by inserting Explanation whereby the exemption to services provided by Government or a local authority to a business entity with a turnover up to ` 10 Lakh in the preceding financial year is not applicable to following services:

Services by Department of posts by way of speed post, express parcel post, life insurance & agency service provided to a person other than Government [section 66D (a)(i)];

Services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport [section 66D (a)(ii)];

Transport of goods or passengers [section 66D (a)(iii)];

#### ➤ Notification No. 28/2016-ST dated 26th May, 2016,

Central Government, has exempted those taxable services from levy of KKC which are exempt from



service tax by a notification/order issued u/s. 93 (1) / (2) of the Finance Act, 1994 or otherwise not leviable to Service Tax u/s. 66B of the Finance Act, 1994.

It is further provided that in respect of services for which abatement is granted under Notification No. 26/2012-ST dated 20th June, 2012, KKC shall be leviable on that portion of value of taxable services on which service tax is payable. Similarly, the value of taxable services for the purposes of KKC shall be the value as determined in accordance with the Service Tax (Determination of Value) Rules, 2006.

➤ **Notification No. 31/2016-ST dated 26th May, 2016,**

Central Government, has inserted Rule 6(7E) in Service Tax Rules, 1994 whereby Air Travel Agents [Rule 6(7)], Insurer carrying on Life Insurance Business [Rule 6(7A)], Foreign Exchange Brokers & Money Changers [Rule 6(7B)] & Lottery Distributor or Selling Agents [Rule 6(7C)] shall have the option to pay such amount as determined by multiplying total service tax liability calculated under respective rule by effective rate of KKC (presently 0.5%) and dividing the product by rate of service tax (presently 14%), during any calendar month or quarter, as the case may be, towards the discharge of his liability for KKC instead of paying KKC at the rate of 0.5% of value of taxable services. The option once exercised, shall apply uniformly in respect of such services and shall not be changed during a financial year under any circumstances.

## Central Excise



➤ **TRU clarification on levy of excise duty on readymade garments and made up articles of textiles as brought into force vide Union Budget 2016-17**

Representation from Trade has been received regarding the scope of the levy of excise duty on readymade garments and textile made articles bearing a brand name or sold under a brand name wherein the issue arose for taxability of goods sold by a retail store which merely affixes the retail sale price on the readymade garments and made up articles of textiles being purchased by it from the open market.

It has been clarified by the Circular that, present levy is not on all readymade garments and made-ups, and is restricted only to readymade garments and made-up articles of textiles bearing a brand name or sold under a brand name and having retail sale price (RSP) of '1,000 or above. Furthermore, it has also been provided that affixing a brand name on the product, labelling or relabelling of its containers or repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer, shall amount to manufacture.

"Brand name" means a brand name, whether registered or not, that is to say, a name or mark, such as a symbol, monogram, label, signature or invented words or any writing which is used in relation to a product, for the purpose of indicating, or so as to indicate, a connection in the course of trade between the product and some person using such name or mark with or without any indication of the identity of that person.

The retailer shall not be liable to pay excise duty if, (i) the RSP of such readymade garments or made-up articles of textiles is less than ' 1,000, or (ii) the aggregate value of clearances for home consumption by such person is less than '1.5 crore in a year (provided aggregate value of clearances during the previous financial year was less than ' 4 crore).

Further, merely because the outlets (shop) of a retailer, from where readymade garments or made ups articles are sold, has a name, say M/s. XYZ and Sons, the readymade garments or made ups sold from such outlet (shop) cannot be held as branded readymade garments or made-ups and become liable to excise duty. Thus, deemed manufacture provision under Central Excise shall be applicable only if such retailer affixes a brand name on the product and affixes a label bearing a brand name on the package having RSP of ' 1,000 or above.



➤ **Exemption to capital goods and inputs captively consumed within the factory of production extended to special economic zone units**

All capital goods and specified inputs when captively consumed within the factory of production are exempted vide Notification No. 67/95 – CE, dated 16th March, 1995. Now, the said exemption is being extended to goods cleared to a unit in Special Economic Zone.

➤ **Exemption to goods manufactured by Job worker for its removal to special economic zone units**

Specified goods manufactured by job worker which is used in the manufacture of final products or cleared as such from the factory or supplier of raw materials or semi-finished goods are exempted vide Notification No. 214/86 - C.E. dated 25th March, 1986. Now, clearances made by job worker to a unit in special economic zone have also been exempted.

## Customs

### Customs duty



➤ **Notification No. 44/2016-Customs, New Delhi, the 29th July, 2016 S.O. 2566(E)**

Duty Drawback provisions are made to grant rebate of duty or tax chargeable on any imported / excisable materials and input services used in the manufacture of export goods. The duties and taxes neutralized under the scheme are (i) Customs and Union Excise Duties in respect of inputs and (ii) Service Tax in respect of input services. Duty Drawback is of two types: (i) All Industry Rate and (ii) Brand Rate. The legal framework is provided under Sections 75 and 76 of the Customs Act, 1962 and the Customs and Central Excise Duties and Service Tax Drawback Rules, 1995 (Drawback Rules, 1995) issued under the provisions of Section 75 of the Customs Act,

1962, Section 37 of the Central Excise Act, 1944 and Section 93 A read with section 94 of the Finance Act, 1994 the Finance Act, 1994.

Consequent to introduction of Goods and Service Tax (GST) with effect from 01.07.2017, necessary changes have been made to make Drawback provisions are in consonance with the GST provisions. The input tax incidence of taxes covered in GST regime are neutralized through the refund mechanism provided under GST Laws. As far as drawback is concerned, Drawback Rules, 1995 are now replaced by a new set of rules called ‘Customs and Central Excise Duties Drawback Rules, 2017’ which came into effect from 1st October, 2017. The definition of drawback as per Rule 2(a) of DBK Rules, 2017 provides for drawback of Customs and Central Excise Duties excluding Integrated Tax and compensation Cess leviable under sub-section (7) and (9) of Section 3 of the Customs Tariff Act, 1975 chargeable on any imported materials or excisable materials used in the production or manufacture of goods exported. References to Service Tax and input services have been omitted. As a result the drawback is limited to incidence of duties of Customs on inputs used and Central Excise Duties on specified petroleum products used for generation of captive power for manufacture of processing of export goods.

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 52/2003-Customs, dated the 31st March, 2003, published in the Gazette of India, Extraordinary, vide number G.S.R. 274 (E), dated the 31st March, 2003 herein after referred to as the said notification, namely:-

2. In the said notification, in the opening paragraph, (i) in condition (2), for the words “in Customs bond and subject to such other condition”, the words “subject to such conditions” shall be substituted;



(ii) in condition (4b), the words “and following the procedure of in-bond movement of goods” shall be omitted;

(iii) condition (5) shall be omitted;

(iv) in condition (6), in clause (xiii), for the words and figures “Baggage Rules, 1998”, the words and figures “Baggage Rules, 2016” shall be substituted;

(v) in condition (11), for the words “shall be installed outside the bonded premises for this purpose”, the words “shall be installed outside the premises of the unit” shall be substituted; and

(vi) in condition (13), in clause (iv) for the words “outside the bonded premises”, the words “outside the premises of the unit” shall be substituted.

3. In the said notification in paragraph 2, in the proviso, for the words “outside the bonded premises”, the words “outside the premises of the unit” shall be substituted.

4. In the said notification in paragraph 4, the words “or to debond”, “or debonding”, “debonding or” and “, as the case may be” wherever they occur shall be omitted.

5. In the said notification, in paragraph 6, for clause (vii), the following clause shall be substituted, namely:-

“(vii) the unit shall be required to have a premises for secure storage of goods procured duty free under this notification and the final products manufactured or produced therefrom and the details of the premises shall be declared to the said officer.”.

6. In the said notification, in paragraph 7, the words “out of the bonded premises to the granite quarries”, the words “out of the premises of the unit to the granite quarries” shall be substituted.

7. This notification shall come into force with effect from 13th August, 2016.

## CORPORATE LAWS



## COMPANY LAW

### ▶ Summary of Companies Incorporation Third Amendment Rules, 2016

Ministry of Corporate affairs has issued a Notification on 27.07.2016 and notified Companies (Incorporation) Third Amendment Rules, 2016 to amend Companies (Incorporation) Rules, 2014. Summary of Major Changes carried out by notification dated 27.07.2016 are as follows:-

- ❖ Now **particulars of subscribers** and witness to the **MoA** and **AoA** of the company can be **type written**, so long as the subscriber and the witness as the case may be appends his or her signature or thumb impression, as the case may be.
- ❖ In the principal rules, Form No. **INC-10** (Form for verification of signature of subscribers) shall be omitted.
- ❖ Now Rule 3(2) is substituted as follows “A natural person shall not be member of more than a One Person Company at any point of time and the said person shall not be a nominee of more than a One Person Company”.

**Interpretation:** Now it is clear that a person who is a member of an OPC can become nominee in another OPC at the same time.

Further Sub Rule 3 provides that if such a natural person being member in OPC in accordance with this rule becomes a member in another such Company by virtue of his being a nominee in that OPC, such person shall meet the eligibility criteria specified in sub rule (2) within a period of 180 days.

- ❖ In case the subscriber is already **holding a valid DIN**, and the particulars provided therein have been updated as on the date of application, and the declaration to this effect is given in the application, the **proof of identity and residence** need not be attached.”
- ❖ Every company which has a website for conducting online business or otherwise, shall disclose/publish its name, address of its registered office, the Corporate Identity Number, Telephone number, fax number if any, email and the name of the person



who may be contacted in case of any queries or grievances on the landing/home page of the said website.

- ❖ As per Rule 29, “The change of name shall not be allowed to a company which has not filed annual returns or financial statements due for filing with the Registrar or which has failed to pay or repay matured deposits or debentures or interest thereon: Now change of name shall be allowed upon filing necessary documents or payment or repayment of matured deposits or debentures or interest thereon as the case may be.
- ❖ Now, a registered NBFC will require to also file a copy of ‘No Objection Certificate’ from the RBI of India for shifting of registered office from one State or Union territory to another State.
- ❖ Procedure of conversion of unlimited liability company into a limited liability company by shares or guarantee is provided by inserting a new Rule 7.
- ❖ Form No. INC-11 (Certificate of Incorporation) and Form No. INC-27 (Conversion of public company into private company or private company into public company and Conversion of Unlimited Liability Company into a Company Limited by shares or guarantee) has been substituted by new forms.

#### ➤ **Features and steps involved in incorporating One Person Company**

One person company (OPC) is an entity which consists of only with one person and is considered as a private company for all legal purposes. This concept was introduced in India through the Companies’ Act 2013.

The OPC has only one share holder who is citizen of India. The shareholder can nominate another person to take over in case of death or incapacity. This will be done with the consent of the other person. The nominee should also be an Indian citizen.

#### **Director:**

The company can have a minimum of one director who can also be the sole share holder. A maximum of 15 directors are allowed.

#### **Terms and conditions to follow while starting an OPC:**

A person cannot start more than one OPC or become a nominee in more than one such organization.

A minor cannot be a member or nominee of the one person company or cannot hold any share with beneficial interest.

A one person company cannot be incorporated or converted into a company under section 8 of the act. An OPC cannot convert voluntarily into any other type of organization until the expiry of two years starting from the date of incorporation of the company. This condition has an exception; if the share capital of the company crosses INR 50 lakh or the annual turnover of that particular year crosses INR 2 crore then the company has to file ROC for conversion in to a private company within a period of 6 months after exceeding the threshold limits. Form INC-5 has to be filled for this conversion.

#### **Incorporating a OPC**

Obtain Digital Signature Certificate (DSC) for the proposed director. And also obtain digital identification number (DIN).

#### **Digital signature certificate (DSC)**

It is the digital equivalent of physical certificates. It is issued by the office of controller of certifying authorities (CCA) to Certifying Authorities (CA). CA issues DSC to end user.

#### **Director Identification number (DIN)**

It is an unique identification number issued by the ministry of Corporate Affairs for an existing director or a person who has applied for being the director of a company

#### **Name reservation**

To check the availability of name of the company, form INC-1 should be filled. The proposed name will end with private limited.

#### **Incorporation**

Within 60 days of name approval, form INC-2 should be filled for the incorporation of OPC. If the promoter is not the sole director of the OPC form DIR-12 has to be filled along with this.

If the company address is not specified in INC-2, within next 30 days, INC-22 has to be filled.

Incorporation of OPC with single integrated incorporation form INC-29 is allowed for this INC-1 is not a pre-requisite.



**Mandatory attachments to e-form INC-2**

Memorandum of association

Articles of Association

Along with this the residential proof, identity proof, PAN, consent and signature of the member and nominee. Utility bills (electricity, telephone, gas etc)

**Memorandum of Association (MOA)**

MOA contains the fundamental provision of the company and their objectives.

**Articles of Association (AOA)**

AOA contains rules and regulations of the internal management of the company. It is a contract defining the relationship between company and its members, along with rights and duties.

After name approval by ROC, MOA and AOA have to be drafted. The subscriber has to fill all the details regarding the name, address and occupation in their own handwriting and sign the subscription pages of AOA and MOA.

**Payment of fees and stamp duty**

After all the documents, the register has to make ROC fee payment and stamp duty electronically based on the authorized capital of the company.

**Verification**

After the submission of all the forms and payment of fees, ROC will verify and scrutinize the documents and will suggest changes in case of any discrepancy or errors.

Certificate:

After all the forms are duly approved by the ROC the digitally signed "certificate of incorporation" is issued in electronic form with the digital signature of ROC registrar. The company can begin operation post receiving the certificate.

**Formalities after incorporation**

According to the companies act 2013 following provisions have to be followed post the incorporation:

To apply for shop act license, PAN TAN

Open current bank account

Pay subscription money with current bank account

Issue share certificate to subscriber by company.

File e-form INC-21 for the certificate of commencement of business with registrar of companies within 180 days from the date of incorporation.

**Membership change**

In case of death or incapacity of the member of OPC form INC- 4 should be filled for the change of ownership. The detail of the new owner has to be filled in this form.

**OPC into private company**

If after the completion of 2 years the OPC organization willing to convert into private company has to fill form INC-6.

**Private company into OPC**

A private company willing to convert itself into OPC also has to fill form INC-6. However the company should not have share capital of more than INR 50 lakh and annual turnover more than INR 2 crore at the time of conversion.

**POLICY WATCH****➤ Certain sections of Aadhaar Act, 2016 notified**

The government notified certain sections of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 on July 12, 2016. Under the Act, these sections relate to the establishment of the Unique Identification Authority of India, its composition, functions, appointment of the Chairperson and other members, etc. (sections 11 to 20, 22, 23 and 48 to 59 have come into force). The provision of the Act that allows the use of an Aadhaar number by any person/agency to establish the identity of an individual has also come into effect.

In another notification, the government established the Unique Identification Authority of India. The



Authority can now exercise its functions as provided under the Act. The Authority will be responsible for assigning Aadhaar numbers to individuals.

The Unique Identification Authority of India (Terms and Conditions of Service of Chairperson and Members) Rules, 2016 have also been notified.<sup>9</sup> Key features of the Rules include:

**Selection Committee:** A search-cum-selection Committee, chaired by the Cabinet Secretary, will appoint the Chairperson and the part-time members of the Authority.

**Declaration of financial and other interests:** The Chairperson of the Authority and every member will be required to declare their details of previous employment and financial and other assets.

➤ **SIT on black money makes fifth round of recommendations**

The Special Investigation Team (SIT) on black money released its fifth round of recommendations on July 14, 2016. The SIT was set up in May 2014 to make recommendations on issues relating to black money. This round of recommendations addresses the limiting of cash transactions to curb black money.

Key recommendations of the SIT include:

**Cash transactions:** A large amount of unaccounted wealth is stored and used in the form of cash. To limit this unaccounted wealth, the SIT has recommended that cash transactions above Rs 3 lakh should be banned. A law should be enacted to make such transactions illegal and punishable.

**Cash holding:** The amount of cash an individual or a firm can hold should be limited to Rs 15 lakh. However, exceptions to this requirement can be made with the permission of Commissioner of Income Tax.

➤ **Cabinet approves Transgender Persons (Protection of Rights) Bill, 2016**

The Union Cabinet approved the introduction of the Transgender Persons (Protection of Rights) Bill, 2016 on July 20, 2016. The Bill seeks to provide rights and other social and economic benefits to transgender persons.<sup>34</sup>

A private member Bill related to rights of transgender persons was passed by Rajya Sabha in April 2015, and is currently pending in Parliament.<sup>35</sup> For more details on a draft Bill and the private member's Bill, see the Monthly Policy Reviews of January 2016 and April 2015.

The Citizenship Act, 1955 provides various ways in which citizenship may be acquired. It provides for citizenship by birth, descent, registration, naturalisation, etc. In addition, it regulates registration of Overseas Citizen of India Cardholders (OCIs), and their rights. An OCI is a foreign citizen, who is entitled to some benefits such as a multiple-entry, multi-purpose life-long visa to visit India.

Key features of the Bill include:

**Eligibility for citizenship:** The Act prohibits illegal migrants from acquiring Indian citizenship. Illegal migrants are those foreigners in India who do not have valid passport or travel documents. The Bill provides that, with the central government's approval, the following groups of persons will not be treated as illegal migrants: Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan.

**Cancellation of OCI registration:** The Act provides that the central government may cancel registration of OCIs on certain grounds. These include: (i) if the OCI has registered through fraud, and (ii) within five years of registration, has been sentenced to imprisonment for two years or more. The Bill adds one more ground for cancelling registration, that is, if the OCI has violated any law in force in the country.

The Union Cabinet also approved certain facilities for Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan staying on long term visa in India on July 13, 2016.<sup>37</sup> A long term visa allows a person to stay in India for over 180 days. The approved facilities include: (i) opening of a bank account, (ii) permission to purchase property, (iii) provision of driving license, PAN card and Aadhaar number, etc.



## INDUSTRY WATCH & CORPORATE HIGHLIGHT



### ➤ RBI constitutes inter-regulatory working group on financial technology and digital banking

The Reserve Bank of India (RBI) constituted an inter-regulatory working group on July 14, 2016.<sup>15</sup> The working group will study the regulatory issues related to financial technology and digital banking in India. It will submit its report within six months of its first meeting.

The group has 13 members and is to be chaired by Mr. Sudarshan Sen (Executive Director, RBI). The members include representatives from: (i) Securities and Exchange Board of India, (ii) Insurance and Regulatory Development Authority of India, and (iii) Pension Fund Regulatory and Development Authority. The group also has representatives from banks and credit rating organisations.

The terms of reference of the group include:

- ❖ Undertaking a study of developments in financial technology, and new products and technologies adopted by markets and the financial sector;
- ❖ Assessing opportunities and risks associated with digitisation of the financial sector;
- ❖ Assessing implications and challenges of non-financial entities taking up functions such as payments;
- ❖ Carrying out a cross-country comparison of successful instances of regulatory responses to disruptions; and
- ❖ Determining the regulatory responses for enhancing financial technology and digital

banking, while managing the challenges associated with it.

### ➤ Cabinet approves increase in foreign investment limit in stock exchanges

The Union Cabinet gave its approval to increase the limit on foreign investment (FDI) in stock exchanges, on July 27, 2016.<sup>10</sup> This limit will be increased from 5% to 15%. That is, an individual foreign investor (such as a banking or an insurance company) will now be allowed to hold up to 15% of the shares of Indian stock exchanges (such as Bombay Stock Exchange).

The Cabinet also gave its approval to allow foreign investors to subscribe to shares during the initial public offer (IPO) of the Stock Exchange. Currently, these investors can purchase shares of the Exchange in a secondary sale, but are allowed to take part in the IPO.

### ➤ Committee to examine the feasibility of a new commencement date of financial years constituted

The Ministry of Finance constituted a Committee (Chair: Dr. Shankar Acharya) on July 6, 2016 to examine the desirability and feasibility of adopting a new commencement date of financial years.<sup>17</sup> The Committee is expected to submit its report on December 31, 2016.

Terms of reference of the Committee include:

- ❖ Examining the appropriate timing for the commencement of the financial year, taking into consideration: (i) taxation systems and procedures, (ii) agriculture and other working seasons, (iii) impact on business, and (iv) convenience of legislatures for transacting budget work; and
- ❖ If the Committee recommends a change in financial year, it may also recommend: (i) appropriate time of change, (ii) transitional period for the change, and (iii) change in taxation and other laws accordingly.



## Statutory compliance calendar for the month of JULY 2016

Due Date	Statutory Compliance Under Act	Particulars	Governing Authority
 WHEN			
6/07/2016	Service tax	Last date for payment of Service Tax in case of companies for the month June 2016	Central Board of Excise and Custom
	Central excise	Monthly-payment of Central Excise Duties for the previous month –For non SUI units	Central Board of Excise and Custom
7/07/2016	Challan 281	Payment of TDS/TCS deducted/collected in June,2016	Central Board of Direct Tax.
	Form No.15G,15H, 27C	Submission of Forms received in June to IT Commissioner	Central Board of Direct Tax.
10/07/2016	ER-1 AND ER-2	Return for Non SSI assesseees for June , Return for EOUs for June	Central Board of Excise and Custom
	ER-6	Return by units paying duty > 1 crore (CENVAT + PLA) for June	Central Board of Excise and Custom
15/07/2016	DVAT-20	Deposit of DVAT TDS for June for monthly tax payers	DELHI VALUE ADDED TAX
	TCS -27EQ	Quarterly statement of TCS deposited for the quarter ending 30 June, 2016	Central Board of Direct Tax.
15/07/2016	ECR	E-Payment of PF for June (Cheques to be cleared by 20th)	PROVIDENT FUND
21/07/2017	DVAT AND CENTRAL	Deposit of VAT & CST for the quarter ended June,2016	DELHI VALUE ADDED TAX
21/07/2017	ESIC	Payment of ESI Liability for June	ESIC
22/07/2016	DVAT-43	Issue of DVAT certificate for deduction made in June	DELHI VALUE ADDED TAX
25/07/2016	DVAT-16	File DVAT/CST Return online for Quarter ended June,2016	DELHI VALUE ADDED TAX
28/07/2017	DVAT-23	Furnish Application for refund in form DVAT-23 online	DELHI VALUE ADDED TAX
30/07/2016	TCS FORM-16	Quarterly TCS certificate (in respect of tax collected by any person) for the quarter ending June 30, 2016.	Central Board of Direct Tax.
31/07/2016	24Q & 26Q	Submission of Quarterly statement of TDS deposited for the quarter ending June 30, 2016	Central Board of Direct Tax.
	ITR FORM	Return of income for the AY 2016-17 for all Individuals, firms and other Non Corporate assesseees not subjected to audit..	Central Board of Direct Tax.
	TDS ON PROPERTY	Due date for deposit of tax deducted at source under Section 194-IA for purchase of property for the month of June, 2016	Central Board of Direct Tax.
	FORM 10	Submission of Form no. 10 to be furnished to accumulate income for future application under section 10(21) or 11(2) (if the assessee is required to submit return of income on or before July 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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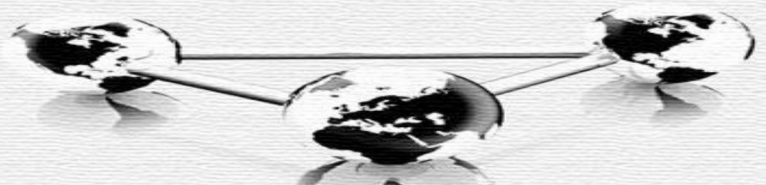
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