Tax & Corporate law Bulletin

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MAY 2016

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From the Editor's Desk...

Dear Reader,

Greetings for the season,

Amendments to Mega Exemption; Clarifications on levy of Service Tax on the services provided by Government or a local authority to business entities; External Commercial Borrowings (ECBs) – Revised Framework; Insolvency and Bankruptcy Code, 2016 and read many more…..

We eagerly await your feedback on the bulletin.

Yours truly,

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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 194c, read with section 194j, of the income-tax act, 1961 - deduction of tax at source - contractors/sub-contractors, payments to - tax deduction at source (TDS) on payments by broadcasters or television channels to production houses for production of content or programme for telecasting**

CIRCULAR NO. 4/2016 [F. NO. 275/07/2016-IT(B)], DATED 29/2/2016

It has been noted that disputes have arisen on the issue as to whether payments made by the broadcaster/telecaster to production houses for production of content/programme are payments under a 'work contract' or a contract for 'professional or technical services' and, therefore, liable for TDS u/s 194C or u/s 194J of the Income-tax Act, 1961 (the Act).While applying the relevant provision of TDS on a contract for content production, a distinction is required to be made between

(i) a payment for production of content/programme as per the specifications of the broadcaster/telecaster and (ii) a payment for acquisition ofbroadcasting/telecasting rights of the content already produced by the production house. In the first situation where the content is produced as per the specifications provided by the broadcaster/telecaster and the copyright of the content/programme also gets transferred to the telecaster/broadcaster, it is hereby clarified that such contract is covered by the definition of the term 'work' in section 194C of the Act and, therefore, subject to TDS under that section.

However, in a case where the telecaster/broadcaster acquires only the telecasting/broadcasting rights of the content already produced by the production house, there is no contract for 'carrying out any work', as required in sub-section (1) of section 194C. Therefore, such payments are not liable for TDS under section 194C. However, payments of this nature may be liable for TDS under other sections under Chapter XVII-C of the Act.

- **Section 45, read with section 28(i), of the income-tax act, 1961 - capital gasection 45, read with section 28(i), of the income-tax act, 1961 - capital gains, chargeable as - issue of taxability of surplus on sale of shares and securities - capital gains or business income - instructions in order to reduce litigation**

CIRCULAR NO. 6/2016 [F. NO. 225/12/2016-ITA-II], DATED 29/2/2016

While recognizing that no universal principal in absolute terms can be laid down to decide the character of income from sale of shares and securities (i.e. whether the same is in the nature of capital gain or business income), CBDT realizing that major part of shares/securities transactions takes place in respect of the listed ones and with a view to reduce litigation and uncertainty in the matter, further instructs that the Assessing Officers in holding whether the surplus generated from sale of listed shares or other securities would be treated as Capital Gain or Business Income, shall take into account the following—

(a) Where the assessee itself, irrespective of the period of holding the listed shares and securities, opts to treat them as stock-in-trade, the income arising from transfer of such shares/securities would be treated as its business income,

(b) In respect of listed shares and securities held for a period of more than 12 months immediately preceding the date of its transfer, if the assessee desires to treat the income arising from the transfer thereof as Capital Gain, the same shall not be put to dispute by the Assessing Officer. However, this stand, once taken by the assessee in a particular Assessment Year, shall remain applicable in subsequent Assessment Years also and the taxpayers shall not be allowed to adopt a different/contrary stand in this regard in subsequent years;

(c) In all other cases, the nature of transaction (i.e. whether the same is in the nature of capital gain or business income) shall continue to be decided keeping in view the aforesaid Circulars issued by the CBDT.

It is, however, clarified that the above shall not apply in respect of such transactions in shares/securities where the genuineness of the transaction itself is questionable, such as bogus claims of Long Term Capital Gain/Short Term Capital Loss or any other sham transactions.

- **Section 220 of the income-tax act, 1961 - collection and recovery of tax - when tax payable and when assessee deemed in default - amendment of instruction no.1914, dated 21-3-1996 to provide for guidelines for stay of demand at first appeal stage**

OFFICE MEMORANDUM [F. NO. 404/72/93-ITCC], DATED 29/2/2016

Instruction No. 1914 dated 21-3-1996 contains guidelines issued by the Board regarding procedure to be followed for recovery of outstanding demand, including procedure for grant of stay of demand. In order to streamline the process of grant of stay and standardize the quantum of lump sum payment required to be made by the assessee as a pre-condition for stay of demand disputed before CIT (A), the following modified guidelines are being issued in partial modification of Instruction No. 1914:

- In a case where the outstanding demand is disputed before CIT (A), the assessing officer shall grant stay of demand till disposal of first appeal on payment of 15% of the disputed demand, unless the case falls in the category discussed in para (B) hereunder.
- In a situation where,
  The assessing officer is of the view that the nature of addition resulting in the disputed demand is such that payment of a lump sum amount higher than 15% is warranted (e.g. in a case where addition on the same issue has been confirmed by appellate authorities in earlier years or the decision of the Supreme Court or jurisdictional High Court is in favour of Revenue or addition is based on credible evidence collected in a search or survey operation, etc.) or,

  The assessing officer is of the view that the nature of addition resulting in the disputed demand is such that payment of a lump sum amount lower than 15% is warranted (e.g. in a case where addition on the same issue has been deleted by appellate authorities in earlier years or the decision of the Supreme Court or jurisdictional High Court is in favour of the assessee, etc.), the assessing officer shall refer the matter to the administrative Pr. CIT/CIT, who after considering all relevant facts shall decide the quantum/proportion of demand to be paid by the assessee as lump sum payment for granting a stay of the balance demand. C) In a case where stay of demand is granted by the assessing officer on payment of 15% of the disputed demand and the assessee is still aggrieved, he may approach the jurisdictional administrative Pr. CIT/CIT for a review of the decision of the assessing officer.
- The assessing officer shall dispose of a stay petition within 2 weeks of filing of the petition. If a reference has been made to Pr. CIT/CIT under para 4 (B) above or a review petition has been filed by the assessee under para 4 (C) above, the same shall also be disposed of by the Pr. CIT/CIT within 2 weeks of the assessing officer making such reference or the assessee filing such review, as the case may be.
- In granting stay, the Assessing Officer may impose such conditions as he may think fit. He may, inter alia,-
  - Require an undertaking from the assessee that he will cooperate in the early disposal of appeal failing which the stay order will be cancelled;
  - Reserve the right to review the order passed after expiry of reasonable period (say 6 months) or if the assessee has not co-operated in the early disposal of appeal, or where a subsequent pronouncement by a higher appellate authority or court alters the above situations;
  - Reserve the right to adjust refunds arising, if any, against the demand, to the extent of the amount required for granting stay and subject to the provisions of section 245.

- **Income-tax (third amendment) rules, 2016 – substitution of rule 45 and form no. 35**

NOTIFICATION NO. SO 637(E) [NO. 11/2016 (F. NO. 149/150/2015-TPL)], DATED 1/3/2016

In the Income-tax Rules, 1962 (herein after referred to as the said rules), for rule 45, the following rule shall be substituted, namely: “45. Form of appeal to Commissioner (Appeals).— (1) An appeal to the Commissioner (Appeals) shall be made in Form No. 35.

(2)Form No. 35 shall be furnished in the following manner, namely:—

(a)in the case of a person who is required to furnish return of income electronically under sub-rule(3) of rule 12,—

(i)by furnishing the form electronically under digital signature, if the return of income is furnished under digital signature;
(ii)by furnishing the form electronically through electronic verification code in a case not covered under sub-clause (i);
(b)in a case where the assessee has the option to furnish the return of income in paper form, by furnishing the form electronically in accordance with clause (a) of sub- rule(2) or in paper form.
(3)The form of appeal referred to in sub-rule (1), shall be verified by the person who is authorised to verify the return of income under section 140 of the Act, as applicable to the assessee.
(4)Any document accompanying Form No. 35 shall be furnished in the manner in which the said form is furnished.The rules notify the amended Form 35. Section 139 of the Income-Tax Act, 1961 - return of income - release of e-filing of income tax returns press release, dated 4/4/2016
In pursuance of the Notification of the Income Tax Returns (ITR) for AY 2016-17 on March 31st, 2016, Central Board of Direct Taxes announces the release of electronic filing of ITRs 1 and 4S on its website https://incometaxindiaefiling.gov.in. Other ITRs will be e-enabled shortly.

RECENT JUDGEMENTS

- **GE Capital Business Process Management Serves Pvt. Ltd. vs. ACIT (ITAT Delhi)**

License fee for use of application software with limited right to use, is revenue expenditure U/s 37

ITAT Delhi held in the case of GE Capital Business Process Management Serves Pvt. Ltd. vs. ACIT that M/s GECC (USA), to whom payment has been made, itself has received the right to use the software internally including its group entities for its business and it does not have any right to commercially exploit the software.

The assessee is vested with limited right to use the licensed program during the period of license agreement. The agreement nowhere provides any exclusive right to the assessee. Further, the right to use the vision plus software, being an application software which is routine in nature and used for accounting purposes, does not have any effect of providing enduring benefit and the payment made to GECC (USA) is only the license fees and not the price for acquisition of capital asset.

The assessee did not acquire any ownership on the software and after termination of license agreement, all the rights and title remained with GECC (USA). Hence the license fee etc. paid by the assessee to M/s GECC (USA) is revenue expenditure deductible U/s 37.

- **ACIT vs. RupamImpex (ITAT Ahmedabad)**

Section 154 Assessing Officer cannot refuse rectification of mistake attributed to assessee

It was held that the Income Tax proceedings are not adversarial proceedings. As to who is responsible for the mistake is not material for the purpose of proceedings U/s 154; what is material is that there is a mistake- a mistake which is clear, glaring and which is incapable of two views being taken. The fact that mistake has occurred is beyond doubt. The fact that it is attributed to the error of the assessee does not obliterate the fact of mistake or legal remedies for a mistake having crept in. It is only elementary that the income liable to be taxed has to be worked out in accordance with the law as in force. It is not open to the Revenue authorities to take advantage of mistakes committed by the assessee. Tax cannot be levied on an assessee at a higher amount or at a higher rate merely because the assessee, under a mistaken belief or due to an error, offered the income for taxation at that amount or that rate. It can only be levied when it is authorized by the law, as is the mandate of Article 265 of the Constitution of India. A sense of fairplay by the field officers towards the taxpayers is not an act of benevolence but it is call of duty in socially accountable governance.

- **Mangalam Drugs & Organics Ltd vs. DCIT (ITAT Mumbai)**

Section 271(1)(c): Penalty cannot be levied on all issues in a "wholesale" manner

The AO has to give findings for each issue separately. He has to apply mind meticulously and carefully for each issue separately and establish precisely whether there was concealment of income or furnishing of inaccurate particulars of income. The Assessee cannot be fastened with the liability of penalty without there being a clear or specific charge. Fixing a charge in a vague and casual manner is not permitted under the law. Fixing twin charges is also not permitted under the law

It is further noted, from the perusal of penalty Order, that the penalty has been levied, on all the additions/disallowances, in a 'whole sale' manner. The AO has not given his findings, for levying the penalty, for each issue separately, with respect to the satisfaction of the AO for each of the issue respectively, nor has he given a finding for each issue separately as to whether there was a concealment of income or furnishing of inaccurate particulars of income. The AO has held in the penalty order that various disallowance made by the AO have been confirmed by the Ld CIT(A) and therefore, it is automatically established that the assessee has concealed its income and furnished inaccurate particulars, which has led into concealment of income within the meaning of section 271(1)(c) of the Act. This approach of the AO for levy of penalty is not correct as per law. Penal provisions are quite harsh, these can make the assessee liable for prosecution, as well. Therefore, the AO is obliged, under the law, to make application of his mind meticulously and carefully for each issue separately and to show and establish precisely and specifically whether there was concealment of income or there was furnishing of inaccurate particulars of income on the part of the assessee, at the stage of filing of return of income. The Assessee cannot be fastened with the liability of penalty without there being a clear or specific charge. Fixing a charge in a vague and casual manner is not permitted under the law. Fixing the twin charges is also not permitted under the law. We drive support from the judgment of Hon'ble Gujrat High Court in the case of New Sorathia Engineering Co vs CIT 282 ITR 642 (Guj).

- **Golden Tobacco Limited vs. DCIT (ITAT Mumbai)**

Section 147: Reopening of assessment is not permissible in the absence of "fresh tangible material"

In the present case, it was noticed by the Tribunal that the case of the assese is that there was no fresh tangible material in the possession of AO at the time of recording of impugned reasons. A perusal of the 'Reasons' recorded by the AO in this case reveals that at the time of recording of these 'Reasons' the AO had examined original assessment records only and no fresh material had come in the possession of the AO. In response to our specific query also, Ld DR could not point out any fresh material available with the AO at the time of reopening of the case of the assessee. Thus, assertion of the assessee that there was no fresh material with AO for reopening of this case, remained uncontroverted.

INDIRECT TAX

Service Tax

- **Amendments to Mega Exemption**

Central Government, vide Notification No. 22/2016-ST dated 13th April, 2016, has made following amendments to Mega Exemption Notification No. 25/2012-ST dated 20th June, 2012:

Presently, Entry No. 39 grants exemption to services rendered by Governmental Authority by way of any activity in relation to any function entrusted to a municipality under article 243W of the Constitution of India. The said entry is amended to extend the

exemption to services rendered by Government or Local Authority.

Entry No. 54 is inserted to grant exemption to services provided by Government or a local authority [other than services covered under clauses (i), (ii) or (iii) of Section 66D (a)] to another Government or local authority.

Entry No. 55 is inserted to grant exemption to services provided by Government or a local authority by way of issuance of passport, visa, driving licence, birth certificate or death certificate.

Entry No. 56 is inserted to grant exemption to services provided by Government or a local authority [other than services covered under clauses (i), (ii) or (iii) of Section 66D (a)] where the gross amount charged for such services does not exceed Rs. 5,000/-.

In case of "continuous supply of service", the exemption shall apply only where the gross amount charged for such service does not exceed Rs. 5,000/- in a financial year.

Entry No. 57 is inserted to grant exemption to services provided by Government or a local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Government or the local authority under such contract.

Entry No. 58 is inserted to grant exemption to services provided by Government or a local authority by way of-

(a)registration required under any law for the time being in force;

(b)testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, required under any law for the time being in force;

Entry No. 59 is inserted to grant exemption to services provided by Government or a local authority by way of assignment of right to use natural resources to an individual farmer for the purposes of agriculture.

Entry No. 60 is inserted to grant exemption to services by Government, a local authority or a governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution.

Entry No. 61 is inserted to grant exemption to services provided by Government or a local authority by way of assignment of right to use any natural resource where such right to use was assigned by the Government or the local authority before the 1st April, 2016.

This exemption shall apply only to service tax payable on one time charge payable, in full upfront or in installments, for assignment of right to use such natural resource.

Entry No. 62 is inserted to grant exemption to services provided by Government or a local authority by way of allowing a business entity to operate as a telecom service provider or use radio frequency spectrum during the financial year 2015-16 on payment of licence fee or spectrum user charges, as the case may be.

Entry No. 63 is inserted to grant exemption to services provided by Government by way of deputing officers after office hours or on holidays for inspection or container stuffing or such other duties in relation to import export cargo on payment of Merchant Overtime charges (MOT).

- **Clarifications on levy of Service Tax on the services provided by Government or a local authority to business entities**

CBEC, vide Circular No. 192/02/2016-ST dated 13th April, 2016, has issued following clarifications on levy of Service Tax on the services provided by Government or a local authority to business entities-

Taxes, cesses or duties levied are not consideration for any particular service as such and hence not leviable to Service Tax. These taxes, cesses or duties include Excise Duty, Customs Duty, Service Tax, State VAT, CST, Income Tax, Wealth Tax, Stamp Duty, Taxes on Professions, Trades, Callings or Employment, Octroi, Entertainment Tax, Luxury Tax and Property Tax.

Fines and penalty chargeable by Government or a local authority imposed for violation of a statute, bye-laws, rules or regulations are not leviable to Service Tax.

Any activity undertaken by Government or a local authority against a consideration constitutes a service and the amount charged for performing such activities is liable to Service Tax. It is immaterial whether such activities are undertaken as a statutory or mandatory requirement under the law and irrespective of whether the amount charged for such service is laid down in a statute or not. As long as the payment is made (or fee charged) for getting a service in return (i.e., as a quid pro quo for the service received), it has to be regarded as a consideration for that service and taxable

irrespective of by what name such payment is called. Service Tax is leviable on any payment, in lieu of any permission or license granted by the Government or a local authority.
Circular No. 89/7/2006-Service Tax dated 18-12-2006 & and Reference Code 999.01/23.8.07 in Circular No. 96/7/2007-ST dated 23.8.2007 issued in the pre-negative list regime are no longer applicable.
Regulation of land-use, construction of buildings and other services listed in the 12th Schedule to the Constitution which have been entrusted to Municipalities under Article 243W of the Constitution, provided by Government or a local authority have also been exempted.
The exemption under Entry No. 61 shall apply only to Service Tax payable on one time charge, payable in full upfront or in installments, for assignment of right to use any natural resource and not to any periodic payment required to be made by the assignee, such as Spectrum User Charges, license fee in respect of spectrum, or monthly payments with respect to the coal extracted from the coal mine or royalty payable on extracted coal which shall be taxable.
This circular also clarifies on taxability of various services rendered by government & local authority, point of taxation of such service. Valuation of such service etc.

Central Excise

- **Amendment to Rule 6(3) of Cenvat Credit Rules, 2004**

All the manufacturers, manufacturing taxable as well as exempted goods or service providers providing taxable as well as exempted services have been proided an option to avail full CENVAT credit in repsect of common inputs/services provided an amount equal to 6% of value of exempted goods or 7% of exempted services has been paid. However, such 6%/7% requird to be paid is subject to a maximum of total credit available at the end of the period.
Now, with effect from 1st April, 2016, this option has been amended to provide that maximum limit applicable for payment shalzl be restricted to sum total of opening balance of cenvat credit of input and input services available at the beginning of the period and the credit of input and input services taken during the relevant period.
Due to this amendment, more amount will have to be paid under this option as compared to the past.

- **Amendment to Rule 7B of Cenvat Credit Rules, 2004**

Rule 7B of Cenvat Credit Rules, 2004 provides for distribution of credit on inputs by warehouse of manufacturer. The factory premises of manufacturer are allowed to take credit on inputs received coupled with invoice from its warehouse. Now, the warehouse of manufacturer is allowed to take credit on inputs bought, on the basis of documents specified under Rule 9.

- **Amendment to Rule 4 of Cenvat Credit Rules, 2004**

Rule 4 of Cenvat Credit Rules governs conditions for allowing of Cenvat Credit. Cenvat credit on inputs and input services are restricted to be availed within 12 months from the date of invoice etc. Now, time limit for availment of Cenvat credit is not applicable for services provided by Government, local authority or any other person by way of assignment of right to use natural resources. Also, conditions enumerated for cenvat credit on assignment of rights are amended as follow:
Cenvat credit of service tax paid in a financial year on charges (one-time upfront or in instalments) payable for the assignment of rights to use any natural resource by the Government, local authority or any other person, shall be spread evenly over a period of three years.
In case, aforesaid rights are re-assigned to another person for a consideration then balance Cenvat credit on rights procured is available in the financial year of re-assignment, subject to a maximum limit for balance of cenvat credit available shall be equivalent to service tax payable on the consideration charged for further assignment.

- **Clarification on excisability of re-refined or waste oil**

The circular provides clarification in respect of the excisability of re-refined waste oil or used lubricating oil which is collected for processing from the transformers, service station of vehicles etc. The board has examined the process, classification and characteristic of manufacture for the product. The emphasis was made to chapter note 4 of chapter 27 which provides for deeming fiction on manufacture of lubricating oils and lubricating preparations

falling under tariff ID 2710 and observed that other goods falling under tariff ID 2710 are not covered by the chapter note. The carrying out of one of the process listed in the above chapter note would amount to manufacture and Central Excise duty would be applicable. It has been clarified in the circular that, the above issue involved was interpretational in nature and demand raised if, any pursuant to this circular, should be raised for normal period of limitation only and SSI benefit, where admissible must be extended.

CORPORATE LAWS

FEMA

➢ Diamond Dollar Account (DDA) – Reporting Mechanism

Hitherto AD Category-I banks were required to submit quarterly and fortnightly reports /statements giving specified details in respect of the DDA to Reserve Bank of India.

With a view to liberalize the procedure, Reserve Bank of India (RBI) has now decided to dispense with the aforesaid reports/statements with immediate effect. However AD banks are required to maintain the requisite database at their own end and make available the same as and when called upon by the RBI.

Necessary amendments have been incorporated in the Foreign Exchange Management (Foreign currency Accounts by a Person Resident in India) Regulations 2015 notified vide Notification No. FEMA 10 (R) /2015-RB dated January 21, 2016. The Master Direction No 16 on Export of Goods and Services and Master Direction No 18 on Reporting under Foreign Exchange Management Act, 1999 are being updated to reflect the changes.

➢ External Commercial Borrowings (ECBs) – Revised Framework

Taking into account prevailing external funding sources, particularly for long term lending and the critical needs of infrastructure sector of the country, the RBI has reviewed the extant ECB guidelines in consultation with the Government of India and has made various changes in the ECB framework for Companies in infrastructure sector, Non-Banking Financial Companies - Infrastructure Finance Companies, NBFCs-Asset Finance Companies, Holding Companies and Core Investment Companies; and Exploration, Mining and Refinery" sectors.

COMPANY LAW

➢ Companies (Indian Accounting Standards) (Amendment) Rules, 2016

MCA has amended the Indian Accounting Standards Rules to provide for a compliance framework for NBFCs, Banking Companies and Insurance Companies in India. Compliance with Indian Accounting Standards for NBFCs is also being brought out in a phased manner. Applicability of these standards to individual entities within a group and also for the consolidated financial statements has been separately prescribed. Various amendments with respect to opening balance sheet, accounting for service concession agreements and other clarificatory amendments have also been issued.

MCA has amended the aforesaid Rules to provide for certain amendments to few accounting standards. The amendments have been brought in to bring the existing accounting standards in line with international practices and the requirements of the Companies Act 2013. The standards that have been amended are – AS-2 Valuation of Inventories, AS-4 Contingencies and Events Occurring after the Balance Sheet Date, AS-13 Accounting for Investments, AS-14 Accounting for Amalgamations, AS-21 Consolidated Financial Statements and AS-29 Provisions, Contingent Liabilities and Contingent Assets. AS-6 pertaining

to Depreciation has been merged with AS-10 on Fixed Assets and the new AS-10 has been renamed as Property, Plant and Equipment.

- **Amendment to Schedule III of Companies Act 2013**

MCA has amended Schedule III of the Companies Act 2013 to incorporate the instructions pertaining to preparation of Balance Sheet and Statement of Profit and Loss in case of companies whose financial statements are drawn up in compliance of Companies (Indian Accounting Standards) Rules, 2015. Certain changes in the line items of the Balance Sheet and Statement of Profit and Loss have also been prescribed. Separate format for Statement for changes in equity has also been provided.

- **Companies (Auditor's Report) Order, 2016**

MCA has issued the aforesaid order in supersession of the Companies (Auditor's Report) Order, 2015 for the auditors to report under Sec.143(11) of the Companies Act 2013. The applicability thresholds of CARO for private companies have been relaxed. The new CARO has certain additional reporting requirements for holding of title of fixed assets, compliances in respect of related party transactions etc.

- **Clarification regarding applicability of Indian Accounting Standards to disclosures in offer documents under SEBI (ICDR) Regulations, 2009**

MCA had notified the Companies (Indian Accounting Standards) Rules, 2015 on February 16, 2015 providing for a revised roadmap on implementation of Indian Accounting Standards which stipulates implementation of Ind AS in a phased manner beginning from accounting period 2016-17. In line with the said notification, SEBI has also clarified about the disclosure of financial information in accordance with Ind AS in the offer documents in a phased manner.

POLICY WATCH

- **Insolvency and Bankruptcy Code, 2016 passed by Pliament**

The Insolvency and Bankruptcy Code, 2016 was passed by Parliament on May 11, 2016.3 The Code was introduced in December 2015 and referred to a Joint Committee of Parliament (Chair: Mr. Bhupender Yadav). The Committee submitted its recommendations and proposed a modified Code in April 2016. While the basic framework remains the same, the Committee made some suggestions to the Code, which included adding provisions relating to cross- border insolvency. The version of the Code which was submitted by the Joint Committee was passed by Parliament.

The Code provides a 180-day time-bound insolvency resolution process for companies, partnerships and individuals. It repeals two Acts and amends 11 laws, including the Companies Act, 2013.

Key features of the Code include:

Insolvency Resolution Process: The resolution process may be initiated by the debtor or creditors upon a default in repayment. The process will have to becompleted within 180 days, which may be extended up to 270 days in certain circumstances. During the process, the creditors will decide to either restructure the company's debt, or sell its assets to recover their outstanding dues. The proceeds from the sale of assets will be distributed in an order of priority.

Insolvency Professionals: The resolution process will be managed by licensed insolvency professionals. These professionals will take over the operations of the company during the process. The professionals will be members of insolvency professional agencies, which will conduct

examinations to enrol them, and enforce a code of conduct.

Information Utilities: The information utilities will collect and store financial information related to a debtor. This information may be used as evidence during the resolution process.

Insolvency and Bankruptcy Board: The Insolvency and Bankruptcy Board will be established as a regulator. It will oversee the functioning of insolvency professionals and agencies, and information utilities.

The Code received Presidential assent on May 28, 2016.

- **Standing Committee submits report on effects of tobacco curing on environment and health**

The Standing Committee on Science and Technology, Environment and Forests submitted its report on the 'Effects of Tobacco Curing on Environment and Health' on May 10, 2016.9 Tobacco curing refers to the process of drying tobacco leaves to reduce their chlorophyll content, making them fit for consumption.

Key observations and recommendations of the Committee include:

Effects on health: India is the third largest producer of tobacco, employing 38 million people in the tobacco industry. The Committee noted that the financial benefits from the tobacco industry are negligible as compared to losses suffered in terms of deaths, and expenditure on treatment of various tobacco-related diseases. It recommended that cultivation of tobacco must be discouraged by providing farmers with incentives to shift to other crops. Further, human consumption of tobacco should be reduced, and alternative uses of tobacco may be researched upon.

Effects on environment: The Committee noted that tobacco cultivation and curing is resulting in the felling of trees. It is also contributing to climate change because cutting and burning of wood for tobacco curing releases large quantities of carbon dioxide into the atmosphere. The Committee recommended that anEnvironmental Impact Assessment of tobacco cultivation should be undertaken to understand the harmful effects of the same on the environment. Further, better technologies must be adopted for tobacco curing, and fuel consumption for the same may be minimised.

INDUSTRY WATCH& CORPORATEHIGHLIGHT

- **CAG submits audit report on Railways finances for 2014-15**

The Comptroller and Auditor General of India submitted its audit report on Railways finances for the year 2014-15 on April 29, 2016.28 Key observations and recommendations include:

During 2014-15, total revenue receipts increased by 12.43%, which was below the CAGR of 13.99% during the period 2010-

Freight earnings grew by 12.66% in 2014-15, lower than the CAGR of 14.32% during 2010-14. Passenger earnings grew by 15.49% in 2014-15, higher than the CAGR of 12.30% during 2010-14.

Railways could not meet the operational cost of running passenger and other coaching services in 2014-15. 97.2% of the profit from freight traffic was utilized to compensate the losses incurred on passenger and other coaching services. The report recommended that the Ministry of Railways should revisit passenger and other coaching tariffs to recover the cost of operations.

Railways introduces new works on an 'out of turn' basis outside the regular budget cycle through the supplementary demands for grants. These new works are assigned on safety and operational efficiency considerations. The audit observed that Railways could not take advantage of the time gained by introducing these works before the regular budget cycle. The audit reviewed 443 works that were taken up through supplementary demands for grants. Of those, about 254 could not be completed even after one to five years of their approval by Parliament.

It recommended that the Ministry should strengthen the process of budgetary estimation. This would ensure that the supplementary demands for grants do not remain unutilised or fall short of the requirement. Defects in the budgeting system should be analysed and measures taken to avoid recurrence in future.

The Ministry should also strengthen its mechanism of selecting projects, and the monitoring of such projects at every stage. Monitoring may be done at the time ofpreparation of detailed estimate, tendering process, etc.

- **Ministry of Road Transport and Highways sets up a Committee to frame policy for taxi operators**

The Ministry of Road Transport and Highways constituted a three member Committee to prepare a policy framework for taxi and other transport operators on May 10, 2016.30 The Committee will be headed by the Secretary, Ministry of Road Transport and Highways.

Other members will be the Joint Secretary, Ministry of Road Transport and Highways, and the Delhi Transport Commissioner.

In December 2015, the Supreme Court had ordered that the registration of all private diesel cars in Delhi, with capacity above 2,000 cc, will stand banned till March 31, 2016.31 Further, it ordered that all taxis in Delhi (including the mobile based aggregator ones), should move to compressed natural gas (CNG) by April 30, 2016.32 According to news reports, on May 10, 2016, the Court revised its order allowing diesel taxis with existing all India permits, to ply in the National Capital Region till their permit expires.33,34 (A copy of the court order is not available.)

The Committee will look into these issues and come up with appropriate policy recommendations to address the same in a time bound manner.

- **Supreme Court strikes down TRAI's amendment mandating service providers to compensate consumers for call drops**

The Supreme Court struck down an amendment to the Telecom Consumers Protection Regulations, 2012, which was issued by the Telecom Regulatory Authority of India (TRAI), on May 11, 2016.56 The amendment, issued in October 2015, mandated mobile service providers to provide compensation to consumers for call drops. Call drops represent the service provider's inability to maintain a call once it has been correctly established. Therefore, these are calls dropped or interrupted prior to their normal completion by the user.

The Supreme Court examined whether the amendment was arbitrary and unreasonable, and in violation of Article 14 and Article 19(1)(g) of the Constitution. Article 14 guarantees right to equality, and Article 19(1)(g) guarantees freedom to practise any profession.

The Court held that the amendment wasarbitrary and unreasonable, and in violation of Articles 14 and 19(1)(g). It observed that cause for call drops could be twofold: owing to the fault of the consumer or owing to the fault of the service provider. However, the amendment made the service provider pay for all call drops, irrespective of whether it was at fault. Further, the Court noted that while TRAI permitted an average of 2% of call drops per month, the amendment was penalising service providers who complied with thisstandard.

- **The National Capital Goods Policy, 2016 approved by Cabinet**

The Union Cabinet approved the National Capital Goods Policy, 2016 on May 25, 2016.24 Earlier, a draft Policy had been circulated by the Ministry of Commerce and Industry in October 2015. The Policy contains recommendations and policy actions to address challenges facedby the capital goods sector in thecountry.

Capital goods consist of plant machinery, equipment, and other accessories required forthe manufacturing and production of goods or provision ofservices.

The Policy objectives include:

(i)increasing the total production of the capital goods sector,

(ii)increasing domestic employment in the sector,

(iii)increasing the domestic market share, and the share of exports in total production,

(iv)improving skill availability and use of technology, and

(v) promoting small and medium enterprises.

Statuary compliance calendar for the month of may 2016

Due Date	Statuary Compliance Under Act	Particulars	Governing Authority
WHEN		Rules & Regulations	
6/05/2017	GAR-7	E- Payment of Service Tax of April by Companies	Central Board of Excise and Custom
7/05/2016	Challan 281	Payment of TDS & TCS for month of April 2016.	Central Board of Direct Tax.
	Dvat 43	Issue of TDS certificates for the tax deducted at source - 7 days from the date of deposit of TDS	DELHI VALUE ADDED TAX
	F.No. 15G, 15H, 27C	Submission of forms received in May '2016 to IT Commissioner.	Central Board of Direct Tax
	ECB-2 Return	Submission of Return for ECB Loan taken from Outside India.	RESERVE BANK OF INDIA
10/05/2016	ER-1	Return for Non SSI assessees for April 2016	Central Board of Excise and Custom
	ER-2	Return for EOUs for April 2016.	Central Board of Excise and Custom
15/05/2016	DVAT-20	Deposit of DVAT TDS for April 2016.	DELHI VALUE ADDED TAX
	E Challan Cum Return	E-Payment of PF for April 2016.	PROVDENT FUND
	27EQ/26Q/24Q/27Q	Quarterly Statement of TDS/TCS for the Quarter ending March 2016.	Central Board of Direct Tax
16/05/2016	CR-II	Return for the Financial Year 2015-16 to be filled	DELHI VALUE ADDED TAX
30/05/2016	Form No.27D/Form 16A	Issue of TDS Certificate(Other than Salary) for the quarter ending March 2016	Central Board of Direct Tax
31/05/2016	Form 16 with Form 12BA	Issue TDS Certificate (Salary) for the quarter ending March 2016.	Central Board of Direct Tax

Glossary

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

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- Succession Planning.
- Strategic Decision Appraisal
- Risk, Uncertainty and Change Management Services
- Strategic Decision Implementation – National and Global Platform
- Wealth Management Services.

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- Statutory Audit including Tax Audit &VAT Audit
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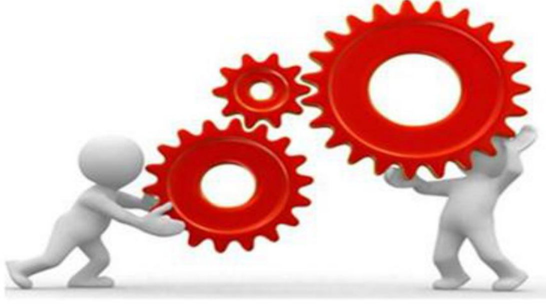

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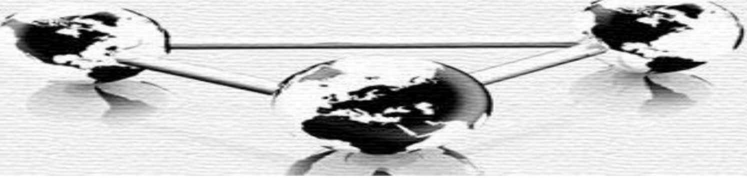

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