Vol.1

TBA

eTax Samachar

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From the Editorial Board

Dear Members,

We take great pleasure in presenting before you the 1st eNewsletter into your email Inbox.

This eNewletter has been a result of inputs from all our Editorial Board Members and active support and encouragement received from the Seniors and others in Profession.

Please feel free to drop an email for suggestions, opinion and reviews of your this eNewsletter.

As always, we seek active participation from you, our Members, and invite articles / write-ups on any topic of professional and general interest.

Thanks and we are keeping our fingers crossed for a Dynamic and Pragmatic Budget' 15.

Yours in Association
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Association Activities

Seminar Committee Activities

1. A Seminar on "Companies Act, 2013" was organised jointly with the North Eastern Chapter of EIRC of the Institute of Company Secretaries of India, Guwahati on 9th August 2014.

Glimpses

2. A lecture meet was organised wherein Acharya Sri G R Sharma ji deliberated on "How to reduce tension and balance family life with professional life" on 4th December 2014. Past Presidents were also felicitated on the occasion.

Glimpses

State Taxation Committee Activities

1. On 04.08.2014, A Budget meeting was called by the Honourable Chief Minister, Shri. Tarun Gogoi. A mail was received in this regard. Chairman of the State Taxation Committee, Shri Vinod Kumar Lohia alongwith Shri N. R. Purohit and CA. Manoj Nahata attended the meeting a submitted a budget proposal and placed our concerns before the house. This was the first budget meeting of the Chief Minister which was attended by TBA.

2. On 02.09.2014, Chairman of the State Taxation Committee, Shri Vinod Kumar Lohia tried to meet the then Principal Secretary (Finance), Shri. Pawan Borthakur, at his office but due to his non availability a request letter for extension of date for filing of Audit Report under Assam VAT was filed with his Personal Assistant. A copy of the same was later submitted to The Commissioner of Taxes, Assam.

3. On 10.10.2014, two Memorandums were submitted to the Additional Chief Secretary, Assam, Finance, Shri. H. S. Das, regarding Extension of Date for filing of Audit report and Performance of the server at Sales Tax Department including problems related to e-payments. CA. Sajjan Jajodia, Shri. Sanjay Sureka and Shri. Bharat Purohit accompanied the Chairman of the State Taxation Committee, Shri. Vinod Kumar Lohia. A copy of the same were also submitted to The Commissioner of Taxes, Assam.

4. On 18.10.2014, again a representation was submitted to the Commissioner of Taxes, Assam, Dr. J. B. Ekka for extension of date for filing of Audit Report. CA. Sajjan Jajodia, CA. Anup More, CA. Bikash Agarwal accompanied the Chairman of the State Taxation Committee, Shri Vinod Kumar Lohia. The Commissioner of Taxes assured the delegation that he would do his best. The delegation also met Shri Rakesh Agarwal, Deputy Commissioner of Taxes, Assam for the same purpose and were give a patience hearing.

5. On 20.11.2014, the Committee felicitated the incoming Commissioner of Taxes, Assam Shri Ravi Kota with *Fulam Gamochha* and a bouquet. With the Chairman of the Committee, Shri. N R Purohit, CA. Anup More, Shri. Sanjay Sureka, CA. Rajesh Poddar, Shri. Pramod Agarwal, Shri. Bharat Purohit, Shri. Pawan Agarwal and Shri. Gyan Chand Jain were present. The delegation submitted him a Profile of TBA, Members' Directory 2014 and Members' Tele Guide 2014. The Committee observes that the Commissioner of Taxes was very punctual and co-operative.

Team TBA calling upon the Commissioner of Taxes, Assam, Shri Ravi Kota.

Seen in the Pictures : The Commissioner of Taxes, Assam, Shri. Ravi Kota, Shri. N. R. Purohit, Shri. Vinod Kumar Lohia, CA. Anup More, Shri. Sanjay Sureka, CA. Rajesh Poddar, Shri Pramod Agarwal, Shri. Bharat Purohit, Shri. Pawan Agarwal and Shri. Gyan Chand Jain.

6. On 27.11.2014, the Chairman of the Committee alongwith President CA. Ashok Agarwal, CA. Sajjan Jajodia, CA. Rajesh Poddar, Ms. Nitu Hawelia and Ms. Medha Lila Gope met the incoming Principal Secretary (Finance), Assam, Shri. Sameer Khare and felicitated him with *Fulam Gamochha* and a bouquet.

Team TBA Meeting the Principal Secretary (Finance), Assam, Shri. Sameer Khare

Seen in the Pictures : Principal Secretary (Finance), Assam, Shri. Sameer Khare CA. Ashok Kr. Agarwal, CA. Sajjan Jajodia, Shri. Vinod Kumar Lohia, CA. Rajesh Poddar, Ms. Nitu Hawelia and Ms. Medha Lila Gope.

Internal Meetings

The Committee met twice during the period on 08.10.2014 and 19.11.2014 and various issues were discussed in length. Members practicing in State Taxation participated in the meetings in good numbers. 12 and 13 members respectively were present in the Meetings.

Recreation Committee

The Recreation Committee organised **Diwali Meet** at Hotel Nandan on 18th October 2014.

TBA **Annual Picnic 2015** was organised on 11th January 2015 at the Brahamputra Jungle Resort, Sonapur, Guwahati.

Membership Development Committee

During the period till 31st January 2015 the undernoted Members were enrolled as Members of the Association :-

CA. Mohit Sankhla enrolled on 11.10.2014. Membership No. 392.
CA. Purab Agarwalla enrolled on 11.10.2014. Membership No. 393.
CA. Abhijit Dey enrolled on 11.10.2014. Membership No. 394.
Shri. Kishor Jain enrolled on 11.10.2014. Membership No. 395.
Shri. Pawan Kumar Agarwal enrolled on 11.10.2014. Membership No. 396.

We welcome all the new Members and seek active participation in all the activities of the Association.

Independence Day & Republic Day Celebrations

The 68th Independence Day was celebrated on 15th August 2014 by the Association with recital of the National Anthem and hoisting of the National Flag.

Also the 66th Republic Day was celebrated on 26th January 2015 by the Association with recital of the National Anthem and hoisting of the National Flag.

--*END*--

Article

The Companies Act, 2013-Filing of Agreement(s) & Resolution(s)

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&
- CA. Sumit Binani, MBA-IIMCal, FCA,FCS,ACMA
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Section 117 of the Companies Act, 2013 (hereinafter referred to as the Act) deals with filing of certain agreements and resolutions as mentioned in sub-section 3, in the manner prescribed and within the time limit specified.

The provisions of section 117 are required to be read with section 179(3), 180(1)(a) & (c), 304 and 403 of the Act along with Rule 24 of Companies (Management and Administration) Rules, 2014 and Rule 8 of Companies (Meetings of Board and its Powers) Rules, 2014.

All required filings shall have to be made to the Registrar in Form MGT-14 within 30 days of the event date.

Which resolution and agreement is required to be filed with ROC?

The matter in respect of which resolutions and agreements are required to be filed with the ROC is listed in table below.

Which other documents are required to be filed along with the resolutions and agreements listed below?

In terms of section 117(1) of the Act, explanatory statement under section 102, if any, annexed to the notice calling the meeting in which the resolution is proposed is also required to be filed.

What is the time limit within which the above documents are required to be filed?

- Within 30 days of passing the resolution or making the agreement, as the case may be with normal filing fee (Section 117(1)
- Within 270 days after the expiry of aforesaid 30 days by which it should have been filed with additional filing fee as prescribed in table of fees (first proviso to Section 403)
- After the aforesaid 270 days together with normal and additional fee along with penalty or punishment prescribed for failure and default in filing within the above prescribed time limit. (second proviso to section 403)

What is the penalty or punishment provided in the Act for such failure or default?

In terms of section 117(2) of the Act, If a company fails to file the resolution or the agreement specified in list below before the expiry of the period specified under section 403 with additional fee (refer previous question):

(a) the company shall be punishable with fine, not less than Rs.5,00,000 but which may extend to Rs.25,00,000 and

(b) every officer of the company who is in default, including liquidator of the company, if any, shall be punishable with fine, not less than Rs.1,00,000 but which may extend to Rs.5,00,000

Whether copy of resolution/ agreement listed below which causes any effect of altering the AoA, required to be annexed to every copy of AoA?

Yes. In terms of proviso to section 117(1) of the Act, copy of every resolution/ agreement listed in table below, which has the effect of altering the articles shall have to be embodied in or annexed to every copy of the articles issued after passing of the resolution or making of the agreement.

Table is as given hereunder:

Sl. no.	Subject Matter of Resolution/Agreement	Meeting	Provision Reference
1	All special resolutions	GM	117(3)(a)
2	Resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions#	GM	117(3)(b)

3	Any resolution of the BOD relating to the appointment, re-appointment or renewal of the appointment, or variation of the terms of appointment, of a managing director	BM	117(3)(c)
4	Any agreement executed by a company relating to the appointment, re-appointment or renewal of the appointment, or variation of the terms of appointment, of a managing director	Agreement executed by the company	117(3)(c)
5	Resolutions which have been agreed to by any class of members but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by a specified majority or otherwise in some particular manner; and all resolutions which effectively bind such class of members though not agreed to by all those members	Class Meeting	117(3)(d)
6	Agreements which have been agreed to by any class of members but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by a specified majority or otherwise in some particular manner; and all agreements which effectively bind such class of members though not agreed to by all those members	Class Meeting	117(3)(d)
7	Resolution passed by a company according consent to the exercise by its Board of Directors, the power to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings	GM	117(3)(e), 180(1)(a)
8	Resolution passed by a company according consent to the exercise by its Board of Directors, the power to borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital and free reserves, apart from temporary loans obtained from the company's bankers in the ordinary course of business	GM	117(3)(e), 180(1)(c)
9	Resolutions requiring a company to be wound up voluntarily	GM/BM	117(3)(f), 304

10	Resolutions passed at the meeting of the Board (not by circular resolution) a. to make calls on shareholders in respect of money unpaid on their shares b. to authorise buy-back of securities under section 68; c. to issue securities, including debentures, whether in or outside India; d. to borrow monies (excluding day to day operations);* (In our opinion, the delegation of any of the said power also needs to be filed) e. to invest the funds of the company; (In our opinion, the delegation of any of the said power also needs to be filed) f. to grant loans or give guarantee or provide security in respect of loans; (In our opinion, the delegation of any of the said power also needs to be filed) g. to approve financial statement and the Board's report; h. to diversify the business of the company; i. to approve amalgamation, merger or reconstruction; j. to takeover a company or acquire controlling or substantial stake in another k. any other matter as may be prescribed (given hereunder)	BM	117(3)(g), 179(3)(a) to (j) Explanation I & II to Section 179(3)
	Any other matter is as under: By way of Board resolution only (not by circular resolution) ➢ to make political contributions; ➢ to appoint or remove KMP; ➢ to take note of appointment(s) or removal(s) of one level below the KMP; ➢ to appoint internal auditors; ➢ to appoint secretarial auditor; ➢ to take note of the disclosure of director's interest and shareholding; ➢ to buy, sell non-trade investments held by the company constituting 5% or more of the paid up share capital & free reserves of the investee company ➢ to invite or accept or renew public deposits and related matters;	BM	117(3)(g), 179(3)(k), Rule 8 of Companies (Meetings of Board and its Powers) Rules, 2014

	➢ to review or change the terms and conditions of public deposit; ➢ to approve quarterly, half yearly and annual financial statements or financial results as the case may be.		

Unanimous assent of all the members without resolution on matters which can be passed only by SR

*Nothing in clause (*d*) shall apply to borrowings by a banking company from other banking companies or from the Reserve Bank of India, the State Bank of India or any other banks established by or under any Act.

*In respect of dealings between a company and its bankers, the exercise by the company of the power specified in clause (*d*) shall mean the arrangement made by the company with its bankers for the borrowing of money by way of overdraft or cash credit or otherwise and not the actual day-to-day operation on overdraft, cash credit or other accounts by means of which the arrangement so made is actually availed of.

--*END*--

Article

Service Tax and Demurrage

- CA. Ankit Kanodia, B.Com. (Hons.), ACA, CS.
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"Once on demurrage, always on demurrage"

It is a well known maxim developed by the shipping industry meaning once Charterers have used up their laytime and the vessel is on demurrage, all time used will fall for their account, whatever the apparent cause*.*

Demurrage in common parlance is known as a charge payable to the owner of a chartered ship on failure to load or discharge the ship within the *time agreed (laytime).*

Generally speaking "demurrage" charges are in the nature of penalty for delay in loading/unloading cargo from the vessel than the contractual laytime allowed. It is not a charge for providing transportation service. Hence, by no means, can it be regarded as rendering of service, there being no service element involved.

Even CBEC in the Circular No. 121/3/2010-ST dated 26th April, 2010 clarified that 'detention charges' are'penal rent' for retaining the containers beyond the pre-determined period.Therefore, the amount collected as 'detention charges' is not chargeable to service tax. Though demurrage and detention cover completely different situations, both are similar and penal in nature.Hence applying ratio of Board's circular in the pre-negative list scenario, demurrage charges were not eligible to service tax.

However, with the introduction of Negative List in 2012, Board took a U-turn by including "demurrage" in the service tax valuation rules.

As per Rule 6 of the Service Tax (Determination of Value) Rules, 2006 ***"the amount realised as demurrage or by any other name whatever called for the provision of a service beyond the period originally contracted or in any other manner relatable to the provision of service"*** should beadded to the value of taxable services subject to the section 67 of the Finance Act, 1994 as amended to date.

With this amendment coming into force w.e.f. 01.07.2012 vide Notification No. 24/2012-ST dated 06.06.2012 any sort of amount paid for demurrage or in relation to the same would have to be added to the gross value for the purpose of service tax.

As already specified, demurrage by no means can be regarded as payment for rendering of service.Then, of course, question arises, how the same can be included in value of taxable service.

In the new regime, the same can be squarely covered under clause (e) of Sec 66E-Declared Service. As per section 66E(e), 'agreeing to an obligation to refrain from an act or to tolerate an act or a situation, or to do an act,' has been declared as a service. In the given case demurrage payment can be regarded as payment to ship – owner for tolerating charterer's act of delay in loading or unloading of vessel.

Once, it has been established, next we need to analyse in what scenarios can service tax be leviable on "demurrage". Given the nature of ship demurrage, in order to determine whether service tax is leviable on demurrage payments, reference has to be made to Place of Provision of Services rules, 2012.

Let us examine demurrage payments at loadport/disport in different situations and service tax impact thereon.

Scenario A: Not a Service

*Company X in India has imported goods on **CIF Basis** from Company Y in Australia.*

In the given case, since, Y has to arrange for transportation, any demurrage incurred whether at the load port/disport is payable by Y to the vessel owner. Demurrage incurred at disport on account of X will be recovered by Y from X as per contractual rate agreed. Hence, in the given case, demurrage payment by X to Y is nothing but re-imbursement of cost to Y. Therefore, no service tax will be leviable on such re-imbursements as the same has been paid by X to Y not for any service perse but as a reimbursement. Hence the same would not be exigible to service tax.

Scenario B : Import of Service

Company X in India has imported goods on ***FOB Basis*** *from Company Y in Australia*

In the given scenario, since X has to arrange for transportation, any demurrage incurred whether at loadport/disport is payable by X to the vessel owner. Demurrage at loadport on account of Y will be recovered by X as per contractual rate agreed. Thus, payment to vessel owner by X is this case is payment for demurrage which is leviable to service tax.

- If the vessel owner is located in India, service tax will be payable by the vessel owner.

- If vessel owner is located outside India, it would amount to import of service. It is pertinent to note here that for import of service, tax has to be paid under reverse charge by the service recipient under Notification No. 30/2012-ST dated 20.06.2012.Hence, service tax will be paid by X under reverse charge.

With the advent of Negative List based service tax regime, Place of Provision of Service Rules, 2012 determines the situation of import of service. The import of services will be when the services are rendered by a person having establishment in a non-taxable territory. In the above example if the vessel owner/service provider is located outside India, then it amounts to import of service by X

Some are of the view that demurrage can be treated as bundled service, it being naturally bundled in the ordinary course of business along with transportation service. Applying that argument, since, ocean freight on importation is exempt from service tax, any demurrage in relation to such importation will also be exempt from service tax.

In the absence, of any clarification on the issue by CBEC, the position will remain ambiguous and litigations are bound to arise.

--*END*--

Article # What To Expect From Upcoming Finance Budget 2015. - CA. Soniya Agarwal soniya0454@yahoo.com	

BJP Government first budget under the leadership of Shri Narendra Modi making it the most crucial one. General Expectation of people from budget is favourable tax rates, more reliefs, deductions, easy tax Compliance etc. Every year in the month of February Finance Minister presents budget in parliament and each tax payer have their own list of expectation from the budget.

<u>List Of Probable Expectation From Budget</u>

1. **Enhancement in income tax exemption limit:** How could individual save much in rising inflation?? One way is to increase income tax slab which will either provide incentive to people to save more or this would place more disposable income and spending power in the hands of a common man.

2. **Raising of Exemption limits for various Allowances provided to Salaried Individual :** For long Children Education Allowance Exemption Amount is only Rs. 100/- per month upto a maximum of 2 children this should see a change of up to a minimum of Rs 1,500. , Transport allowance is exempt upto Rs. 800/- per month and needs to be revised upwards to at least Rs 4,000 per month, given the rising commuting costs and Rs 15,000 to Rs 50,000 for medical reimbursements/allowances.

3. **80C deduction limit should be Increased :** 80c deduction limit of Rs 1,50,000/- limit already includes lots of items like Tuition fees , fixed deposits , Invest in ELSS / ULIP / Mutual fund/PPF/NSC , principal repayment of housing loan , Life Insurance Premium etc. If finance minister increases the maximum permissible investment limit under section 80 C, individuals would invest more in various tax saving instruments and claim deduction to save income tax. Flow of Premium in Life Insurance Sector will improve; tax saving funds should be the biggest beneficiary of such an increase like ELSS. Raghuram Rajan rightly said "benefits of this instrument have

been lost over time as the limit was anchored at Rs 1 lakh for a long time."

4. **Interest On Home Loans:** An enhancement in the limits of the deduction on Interest for Home Loans on self occupied property from the existing limit of Rs 1.5 lakhs to Rs 3 lakhs will have an impact on the revival of the real estate market.

5. **Implementation Of GST :** GST or the Goods and Services Tax is an indirect tax that brings together most of the taxes that are imposed on all goods and services under a single banner. This is in contrast to the current system, where taxes are levied separately on goods and services. The GST, however, is a comprehensive form of tax based on a uniform rate of tax for both goods and services. However, the GST is payable only at the final point of consumption. The new tax regime seeks to ensure seamless transfer of goods and services across the country by removing the cascading effect of several state and central levies. The Bill, which is likely to be taken up for discussion in the Budget session, is vital for the roll out of GST as it empowers the Centre to tax beyond the factory gate while allowing states to tax services as well, hitherto in the Centre's domain. For its passage, the Bill needs two-thirds majority in both the Houses and ratification by 50 per cent states' legislatures. It's about time the government helps businesses become efficient.

6. **Priority Sector :**
   A. **Agriculture:** Modernization/up gradation of agriculture to make agriculture a viable proposition, in similar line to FDI making positive Impact on the other sectors of the Economy like industry or services. There is need to strengthen the agricultural research system to meet the future challenges of a growing population. This year's budget is expected to include incentives for investments in sectors such as fertilisers, cold chains and agricultural supply chains, Increase in spending related to irrigation projects, allowing further usage of hybrid seeds.

   B. **Defence:** Increase foreign direct investment from 26 % to 49 % – with this reform, French aircraft giant Airbus is likely to tie up with the Tata's to manufacture transport planes for the defence sector. Need of Fund Allocation for defence strengthening. We need Fighter Aircraft, Medium Role Combat Aircraft in particular; we need Artillery Guns to replace the ageing bofors; we need munitions; we need urgent infusion of Naval Craft in several categories and so on and so forth.

   C. **Education:** Allocation of fund for digitization in both government and government aided schools, as also in private schools. With increased usage of e-books, taxation of e-books and other forms electronic content should be reviewed earnestly. Copyright infringement, piracy and plagiarism of content should be dealt with seriously so that authors and publishers are incentivised to produce high-quality and original work for learners. A reduction in VAT/custom duty on paper which unduly increase price of books shall certainly be a welcome step in 2015.

D. **Health:** The Government must look at providing incentives for doctors who work in rural areas and strengthen the emergency services at the primary health centre level. Removal of service tax on 'Medical Insurance'. Upgrade districts hospitals to medical colleges or super- specialty hospitals. Removal of import duty on equipment, specially diagnostic and scanning equipment which will allow new technology to enter India. Increase in tax holiday period for setting up a hospital

7. **Tax Administration Reform Commission (TARC):** As part of bringing in more credibility among tax payers and to streamline income tax procedures, the government has set up a Tax Administration Reform Commission (TARC). It would be good if suggestions given by TARC are considered in the budget like further empowering Ombudsman, educating tax officers on complex tax matters etc. The most significant change is the Recommendations of the **Tax Administration Reform Commission (TARC)**, set up by the government to bring in more credibility amongst tax payers and streamlining income tax procedures. Key amongst these is the focus on improving tax payer experience with measures like setting up of a dedicated organisation, specialized and intensive training to be provided to the officers and staff of tax administration, an allocation of 10 per cent of the tax administration budget on tax payer services, providing pre-filled tax returns to all individuals who would have the option to accept or modify the details.
The Central Board of Direct Taxes (CBDT) had recently issued Standard Operating Procedures (SOPs) which would guide the tax authorities in better handling of TDS related issues and to address various features in the re-engineered processes in TDS administration.

--*END*--

Miscellanea

***Tech Tip* : Find your idealwork-life balance.** With so many distractions and possibilities in your digital life, it's easy to get scattered. "RescueTime" helps you understand your daily habits so you can focus and be more productive. Log on to **https://www.rescuetime.com.**

Quote : Punctuality is not just about being on time; it's basically about respecting our own commitments.

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