

Circulars/Notifications

Given below are the important Circulars and Notifications issued by the CBDT, CBEC, FEMA, SEBI, RBI during the last month for information and use of members. Readers are requested to use the citation/website or weblink to access the full text of desired circular/notification. You are requested to please submit your feedback and suggestions on the column at eboard@icai.in



(Matter on Direct Taxes has been contributed by the Direct Taxes Committee of the ICAI)

1. NOTIFICATIONS

1. Notification of Transfer Pricing Rules to incorporate “range concept”

and “use of multi-year data” to reduce litigation on transfer pricing issues-Notification No. 83/2015, dated 19.10.2015

The Income-tax Act provides for determination of income having regard to Arm's Length Price (ALP) in case of international transactions and specified domestic transactions. The provisions of the Income-tax Act were amended through the Finance (No.2) Act, 2014 to facilitate alignment of Indian transfer regime with international best practices. The manner of computation of ALP is laid down Income-tax Rules.

The amended regime will be applicable for computation of ALP of international transactions and specified domestic transactions undertaken on or after 1/04/2014.

The amended rules allow for introduction of a “range concept” for determination of ALP and “use of multiple year data” for undertaking comparability analysis in transfer pricing cases. The use of range concept, being a statistical tool, enhances the reliability of analysis undertaken for computation of ALP. The range concept will be applicable in certain cases for determining the price and will begin with the 35th percentile and end with the 65th percentile of the comparable prices. Transaction price shown by the taxpayers falling within the range will be accepted and no adjustment will be made. The use of multiple year data allows for yearly variations to be averaged out and would therefore add value to transfer pricing analysis.

The amended rules would therefore provide clarity in determination of price in transfer pricing cases and reduce disputes on transfer pricing issues.

It is a part of the Government's continuing initiative of providing a stable and certain direct tax regime.

2. Amendment of Rule 2F-Guidelines for setting up an Infrastructure Debt Fund for the purpose of exemption u/s 10(47)- Notification No. 84/2015 dated 20.10.2015

Section 10(47) provides that any income of an infrastructure debt fund, set up in accordance with the guidelines as may be prescribed, which is notified by the Central Government in the Official Gazette for the purposes of this clause, shall not be included while computing the total income of a previous year of any person.

Rule 2F deals with “Guidelines for setting up an Infrastructure Debt Fund for the purpose of exemption u/s 10(47)”, which provides for certain conditions to be fulfilled for claiming said exemption.

In exercise of the powers conferred by Section 295 read with section 10(47) of the Income-tax Act, 1961, the CBDT has through Income-tax (Seventeenth Amendment) Rules, 2015 which shall come into force from 14.05.2015 substituted Sub Rule (1) and (2) of Rule 2F.

The Substituted Rules read as follows:

- 1) The Infrastructure Debt Fund shall be set up as a Non-Banking Financial Company conforming to and satisfying the conditions provided by the Reserve Bank of India in the Infrastructure Debt Fund-Non-Banking Financial Companies (Reserve Bank) Directions, 2011, *vide* notification No. DNBS.233/CGM (US)-2011 dated the 21st November 2011 as amended *vide* Notification No. DNBR.020/CGM (CDS) -2015 dated the 14th May 2015.
- 2) The funds of the Infrastructure Debt Fund shall be invested only in Post Commencement Operation Date Infrastructure Projects which have completed at least one year of satisfactory commercial operations that are-

- i. Public Private Partnership projects and are a party to tripartite agreement with the concessionaire and the project authority for ensuring compulsory buy out and termination payment;
- ii. Non-Public Private Partnership Projects and Public Private Partnership Projects without a project authority, in sectors where there is no project authority.

3. Proviso to Rule 10CA(7)- Notification No. 86/2015 dated 29.10.2015

Section 92C (1) of the Income-tax Act, 1961 provides that the arm's length price in relation to an international transaction or specified domestic transaction shall be determined by any of the methods stated under clause (a) to clause (f) of the said sub-Section, being the most appropriate method, having regard to the nature of transaction or class of transaction or class of associated persons or functions performed by such persons or such other relevant factors as the CBDT may prescribe.

The third proviso to sub-Section (2) provides that that where more than one price is determined by the most appropriate method, the arm's length price in relation to an international transaction or specified domestic transaction undertaken on or after the 1st day of April, 2014, shall be computed in such manner as may be prescribed.

Accordingly, rule 10CA prescribes the manner of computation of arm's length price in certain cases. Sub-rule (4) of Rule 10CA provides that where the most appropriate method applied is a method other than the method referred to in clause (d) or clause (f) of section 92C(1) and the dataset constructed in accordance with sub-rule (2) consists of six or more entries, an arm's length range beginning from the thirty-fifth percentile of the dataset and ending on the sixty-fifth percentile of the dataset shall be constructed and the arm's length price shall be computed in accordance with sub-rule(5) and sub-rule (6).

Further, sub-rule (7) of Rule 10CA provides that in a case where the provisions of sub-rule (4) are not applicable, the arm's length price shall be the arithmetical mean of all the values included in the dataset. However, if the variation between the arm's length price so determined and price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed such percentage not exceeding three percent

of the latter, as may be notified by the Central Government in the Official Gazette in this behalf, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price.

Accordingly, the Central Government vide this Notification has notified that where the variation between the arm's length price determined under Section 92C and the price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed one percent of the latter in respect of wholesale trading and three percent of the latter in all other cases, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price for Assessment Year 2015-2016.

As per the Explanation provided, for the purposes of this notification, "wholesale trading" means an international transaction or specified domestic transaction of trading in goods, which fulfils the following conditions, namely:-

- i. purchase cost of finished goods is eighty percent or more of the total cost pertaining to such trading activities; and
- ii. average monthly closing inventory of such goods is ten percent or less of sales pertaining to such trading activities.

The complete text of the above Notifications can be downloaded from the link below: <http://www.incometaxindia.gov.in/Pages/communications/notifications.aspx>

II. CIRCULAR

1. Interest from Non-SLR securities of Banks-Circular No. 18 dated 2.11.2015

It has been brought to the notice of the CBDT that in the case of Banks, field officers are taking a view that, "*expenses relatable to investment in non-SLR securities need to be disallowed u/s 57(i) of the Act as interest on non-SLR securities is income from other sources.*"

Clause (id) of sub-section (1) of Section 56 of the Act provides that income by way of interest on securities shall be chargeable to income-tax under the head "Income from Other Sources", if the income is not chargeable to income-tax under the head "Profits and Gains of Business and Profession".

The matter has been examined in light of the judicial decisions on this issue. In the case of *CIT v. Nawanshahar Central Cooperative Bank Ltd.* [2007]

160 Taxman 48(SC), the Apex Court held that the investments made by a banking concern are part of the business of banking. Therefore, the income arising from such investments is attributable to the business of banking falling under the head "Profits and Gains of Business and Profession".

Even though the abovementioned decision was in the context of co-operative societies/Banks claiming deduction under Section 80P(2)(a)(i) of the Act, the principle is equally applicable to all banks/commercial banks, to which Banking Regulation Act, 1949 applies.

In the light of the Supreme Court's decision in the matter, the issue is well settled. Accordingly, the CBDT has decided that no appeals may henceforth be filed on this ground by the officers of the Department and appeals already filed, if any, on this ground before Courts/Tribunals may be withdrawn/not pressed upon. This may be brought to the notice of all concerned.

The detailed circular can be downloaded from the link below: <http://www.incometaxindia.gov.in/Pages/communications/circulars.aspx>

III. Press Releases/Instructions/Letter *etc.*

1. Taxation of income from display of rough diamonds in "Special Notified Zone"-Press Release dated 16.10.2015

A "Special Notified Zone" has been established in the Bharat Diamond Bourse. To facilitate the participation of leading diamond mining companies of the world in this zone, the matter of taxation of income arising from the activity of mere display of uncut diamonds (without sorting or sale) in the Special Notified Zone has been considered by the Government.

It has been decided that the activity of mere display of uncut diamond (without sorting or sale) inside a Special Notified Zone carried out on or after 1st April, 2015 shall not be taxable under the provisions of the Income-tax Act, 1961. Legislative amendment in this regard shall be carried out through Finance Bill 2016.

2. Revised and updated guidance for implementation of Transfer Pricing Provisions-Instruction 15/2015 dated 16.10.2015

The provisions relating to transfer pricing are contained in Sections 92 to 92F of the Income-tax Act, 1961. These provisions came into force w.e.f. Assessment Year 2002-2003 and have seen a number of amendments over the years, including the insertion of Safe Harbour and Advance Pricing Agreement

provisions and the extension of the applicability of transfer pricing provisions to Specified Domestic Transactions.

In terms of the provisions, any income arising from an international transaction or specified domestic transaction between two or more associated enterprises shall be computed having regard to the Arm's Length Price. Instruction No. 3 was issued on 20th May, 2003 to provide guidance to the Transfer Pricing Officers and the Assessing Officers to operationalise the transfer pricing provisions and to have procedural uniformity. Due to a number of legislative, procedural and structural changes carried out over the last few years, Instruction No. 3 of 2003 is being replaced with this Instruction to provide updated and adequate guidance on the transfer pricing provisions pertaining to international transactions.

This Instruction is issued under Section 119 of the Act and supercedes Instruction No.3 of 2003 with immediate effect.

3. Use of Email Based Communication for Paperless Assessment Proceedings-Letter Dated 19-10-2015

In order to improve the taxpayer services, enhance the efficiency and to usher in a paperless environment for carrying out the assessment proceedings, CBDT has decided to initiate the concept of using email for corresponding with taxpayers and sending through emails the questionnaires, notice *etc.* at the time of scrutiny proceedings and getting responses from them using the same medium on a pilot basis. This would eliminate the necessity of visiting the Income-tax offices by the taxpayers, particularly in smaller cases, involving limited issues and where taxpayer is able to provide details required by the AO without necessitating his physical presence.

Steps are being taken by CBDT to devise suitable mechanism for setting up a standardised platform for making such email based communications between the taxpayer and the Income-tax Department seamless and user friendly. To start with, it has been decided to launch a pilot project in this regard in five non-corporate charges at Delhi, Mumbai, Bengaluru, Ahmedabad & Chennai stations. Initially, 100 cases for e-hearing could be identified in each of these charges and major part of assessment processing should be conducted in electronic mode. Also, the cases covered under the aforesaid pilot project should be those which have been selected for scrutiny on the basis of AIR/CIB information or non-matching with 26AS-data. Consent of taxpayers should also be

obtained in the beginning and cases of only willing taxpayers be considered under the pilot project. The officers of the Department, through their official e-mail IDs, can interact with the taxpayers at their e-mail IDs as mentioned in the respective returns of income.

The CBDT desires that necessary steps may accordingly be taken for initiating the pilot project on top priority.

4. Setting up of Committee with a view to simplify the provisions of The Income Tax Act 1961—Press Release Dated 27.10.2015

With a view to simplify the provisions of the Income-tax Act, 1961, a Committee has been constituted with the following composition:

- (i) Justice R. V. Easwar, (Retd.), former Judge, Delhi High Court and former President, ITAT-Chairman
- (ii) Shri V. K. Bhasin, former Law Secretary-Member
- (iii) Shri Vinod Jain, Chartered Accountant- Member
- (iv) Shri Rajiv Memani, Consultant - Member
- (v) Shri Ravi Gupta, Sr. Advocate - Member
- (vi) Shri Mukesh Patel, Tax Advocate - Member

- (vii) Shri Ajay Bahl, Consultant - Member
- (viii) Shri Pradip P. Shah, Investment Adviser-Member
- (ix) Shri Arvind Modi, IRS (IT:81009) - Member
- (x) Dr. Vinay Kumar Singh, IRS (IT:95006) – Member

The Terms of Reference (ToR) of the Committee shall be as follows:

- i) To study and identify the provisions/phrases in the Act which are leading to litigation due to different interpretations;
- ii) To study and identify the provisions which are impacting the ease of doing business;
- iii) To study and identify the areas and provisions of the Act for simplification in the light of the existing jurisprudence;
- iv) To suggest alternatives and modifications to the existing provisions and areas so identified to bring about predictability and certainty in tax laws without substantial impact on the tax base and revenue collection.

The Committee shall set its own procedures for regulating its work. The Committee can also work in

Sub-Groups and the draft prepared by the Sub-Groups can then be approved by the whole Committee. The Committee will put its draft recommendations in the public domain. After stakeholder consultations, the Committee will formalise its recommendations. The Committee can give its recommendations in batches. The first batch containing as many recommendations as possible shall be submitted by 31st January, 2016.

The Term of the Committee shall be for a period of one year from the date of its constitution.

5. Finance Minister launches the “e-Sahyog” pilot project of the Income-tax Department.-Press Release Dated 27.10.2015

The Income-tax Department is committed to the ‘Digital India’ initiative of the Government of India. The Finance Minister today launched an “e-Sahyog” pilot project which furthers the Department’s commitment to work in an e-environment and reduces the need for the taxpayer to physically appear before tax authorities.

The “e-Sahyog” project launched on a pilot basis, is aimed at reducing compliance cost, especially for small taxpayers. The objective of “e-Sahyog” is to provide an online mechanism to resolve mismatches in Income-tax returns to taxpayers whose returns have not been selected for scrutiny, without visiting the Income Tax Office. Under this initiative the Department will provide an end to end e-service using SMS, e-mails to inform the taxpayers of the mismatch. The taxpayer will simply need to visit the e-filing portal and log in with their user-ID and password to view mismatch related information and submit online response on the issue. The responses submitted online by the taxpayers will be processed and if the response and other information are found satisfactory as per automated closure rules, the issue will be closed. The taxpayer can check the updated status by logging in to the e-filing portal.

The Finance Minister also inaugurated a drive to provide public service by holding “special PAN camps in remote areas”. Under this drive, special PAN camps are being held over two days at forty-three remote semi urban and rural locations across India in the first instance to facilitate obtaining of PAN by persons residing in such areas. The Finance Minister interacted with applicants and officials at seven of these camps through a video conference. More such camps will be held through the year. The camps will ease the burden of compliance for persons residing in

remote semi urban and rural areas who wish to enter into transactions of purchase or sale above rupees one lakh and will be required to quote PAN as announced in the Budget speech of 2015-16.

On this occasion, the Finance Minister stated that the objective of the Income Tax Department is to make life as easy as possible for the assessee and difficult only for those who consciously evade taxes. These digital initiatives will help in creating a positive environment.

These initiatives of the Department are expected to significantly reduce the burden of compliance on taxpayers and enhance the taxpayer satisfaction.

6. Taxation of income from off-shore Rupee Denominated Bonds-Press Release dated 29.10.2015

The Reserve Bank of India has recently permitted Indian corporates to issue rupee denominated bonds outside India.

The matter of taxation of income from such bonds under Income-tax Act, 1961 has been considered by the Government.

In so far as taxation of interest income from these INR off-shore bonds in the case of non-resident investors is concerned, it is clarified that withholding tax at the rate of 5 percent, which is in the nature of final tax, would be applicable in the same way as it is applicable for off-shore dollar denominated bonds.

Further, it has been decided that the Capital gains, arising in case of appreciation of rupee between the date of Issue and the date of redemption against the foreign currency in which the investment is made; would be exempted from capital gains tax. Legislative amendment in this regard will be proposed through the Finance Bill, 2016.

7. Agreement for avoidance of double taxation and prevention of fiscal evasion with foreign countries -Protocol amending convention between India and Turkmenistan-Press Release dated 5-11-2015

The Union Cabinet chaired by the Prime Minister Shri Narendra Modi, has given its approval for amending the Double Taxation Avoidance Convention (DTAC) signed between India and Turkmenistan in 1997 for the avoidance of double taxation and for the prevention of fiscal evasion with respect to taxes on income and on capital, through a Protocol.

The Protocol provides for internationally accepted standards for effective exchange of information on tax matters including bank information and information

without domestic tax interest. It is further provided that the information received from Turkmenistan in respect of a resident of India can be shared with other law enforcement agencies with authorisation of the Competent Authority of Turkmenistan and vice versa.

The Protocol further provides for 'Limitation of Benefits' Article as an anti-abuse provision aimed at preventing misuse of the Convention. The provisions of this Article enable use of the provisions of domestic law and measures concerning tax avoidance or evasion in the event of misuse of the Convention.

8. Strict Adherence of prescribed time limit in passing order under Section 12AA-Instruction No.16/2015 Dated 6-11-2015

Sub-Section (2) of Section 12AA of the Income-tax Act, 1961 prescribes that every order granting or refusing registration under clause (b) of sub-Section (1) of that section shall be passed before the expiry of six months from the end of the month in which the application was received under clause (a) or clause (aa) of the sub-Section (1) thereof. Thus while

processing the application under Section 12AA of the Act, the time limit of six months has to be adhered to by the Commissioner of Income Tax (Exemptions). However, it has been brought to the notice of the Board that the said time limit has not been observed in some cases.

Through this Instruction, the CBDT has directed the Commissioner of Income Tax (Exemptions) to strictly follow the aforesaid time limit of six months while passing order under Section 12AA. The CCIT (Exemptions) may monitor the adherence of prescribed time limit and initiate suitable administrative action in case any laxity in adhering to the same is noticed.

9. Constitution of Local Committees to deal with taxpayers' grievance from high pitched assessments-Instruction No.17/2015 dated 9.11.2015

The CBDT has consistently been advising the field authorities to be fair, objective and rational while framing scrutiny assessment orders. Role of supervisory authorities in this regard, has also been highlighted by the CBDT from time to time. It has,

however, been brought to the notice of the CBDT that the tendency to frame high-pitched and unreasonable assessment orders is still persisting due to which grievances are being raised by the taxpayers. Such grievances not only reflect harassment of taxpayers but also lead to generation of unproductive work for Department as well as Appellate Authorities.

In view of the above, the CBDT felt the need to lay down an institutional mechanism to quickly resolve the taxpayers' grievances arising on account of high-pitched and unreasonable additions made by the Assessing Officers. Accordingly, the CBDT has decided to constitute Local Committees to deal for handling taxpayers' grievances arising from high-pitched scrutiny assessment orders.

10. Tenure of the High Level Committee(HLC) to interact with Trade & Industry on Tax Laws Extended by one year beyond 25th November, 2015—Press release dated 12.11.2015

The tenure of the High Level Committee (HLC) constituted to interact with Trade & Industry on Tax Laws, has been extended by one year beyond 25th November, 2015.

In his Budget Speech 2014-15, the Union Finance Minister Shri Arun Jaitley had announced the setting-up of a High Level Committee (HLC) to interact with trade and industry and ascertain areas where clarity on tax laws is required. Accordingly, a High Level Committee (HLC) was constituted with the approval of the Finance Minister on 26th November, 2014 to interact with trade and industry on tax laws, headed by Dr. Ashok Lahiri, former Chief Economic Advisor (CEA), Ministry of Finance. The other two members in the Committee are Shri Sidhartha Pradhan, Retired Member, Settlement Commission (Income Tax & Wealth Tax) and Shri Gautam Ray, Retired DG(Audit) Customs and Central Excise. The tenure of the Committee which was till 25th November, 2015, is now further extended for one year as per OM dated 10th November, 2015.

The High Level Committee (HLC) will continue to interact with the trade and industry on regular basis and ascertain the areas where clarity in tax laws is required and will give recommendations to the CBDT/CBEC for issuance of appropriate clarifications by way of circulars, instructions *etc.* The CBDT/CBEC will issue the required clarifications, circulars and instructions *etc.* within a period of 2 months from the date of receipt of recommendations of the HLC.



(Matter on Indirect Taxes has been contributed by the Indirect Taxes Committee of the ICAI)

A. SERVICE TAX

1. Swachh Bharat Cess leviable from 15th November 2015

CBEC *vide* Notification No. 21/2015-Service Tax Dated 6th November, 2015 has provided that Swachh Bharat Cess (SBC) @ 0.5% would be leviable on value of all taxable services with effect from 15th November 2015. This implies that effective rate of service tax will be 14.5%.

Further, CBEC *vide* Notification No. 22/2015-Service Tax dated 6th November, 2015 has exempted all taxable services from payment of Swachh Bharat Cess in excess of 0.5% of the value of services. It has also been provided that SBC would not be applicable on non-taxable services and services which are exempt from service tax.

In order to provide a better clarity regarding SBC implementation, CBEC *vide* Notification No. 23/2015-Service Tax Dated 12th November, 2015 has provided that in cases where service tax is payable on abated value as per Notification No. 26/2012 -Service Tax, dated 20th June, 2012, Swachh Bharat Cess would also be levied on the abated value of taxable services determined in accordance with the Service Tax (Determination of Value) Rules, 2006. For example if the abatement is 60% & value of taxable services is ₹1000 then service tax payable would be ₹56.00 ($1000 \times 40\% \times 14\%$) and SBC payable would be ₹2.00 ($₹1000 \times 40\% \times 0.5\%$ or $₹400 \times 0.5\%$).

Further, CBEC *vide* Notification No. 24/2015-Service Tax Dated 12th November, 2015 has provided that in cases where service tax is payable under Reverse Charge Method as per Notification No. 30/2012-Service Tax, dated 20th June, 2012, Swachh Bharat Cess would also be payable as per the Reverse Charge provisions.

Swachh Bharat Cess would also be leviable on the persons liable for paying the service tax at alternate rates who provide services as an air travel agent, an insurer carrying on life insurance business, purchase or sale of foreign currency, lottery distributor or selling agent. In this regard, CBEC *vide* Notification No. 25/2015-Service Tax Dated 12th November, 2015 has provided that such assessee, during any calendar month or quarter, shall have the option to discharge their liability towards Swachh Bharat Cess which can be determined as follows:

Alternate Tax Rate x 0.5

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The option under once exercised, shall apply uniformly in respect of such services and shall not be changed during a financial year under any circumstances. For example, an air travel agent is liable to pay service tax @ 1.4% of the basic fare in the case of international bookings. Here, SBC payable would be @ 0.05 % $[(1.4 * 0.5) / 14]$. Thus on Basic fare of ₹5000, SBC payable would be ₹2.5 $(5000 * 0.05)$.

It is important to note that, with regards to point of taxation, no SBC liability would arise where payment has been received and invoice has been raised before 15th November 2015. When payment is received before 15th November 2015 and invoice is raised within 14 days i.e. 29th November 2015, no SBC would be required to be paid. However, SBC would be applicable when services are provided on or after 15th November 2015 and payment for the same is received after that date and invoice is not raised within 14 days i.e. invoice is issued after 29th November 2015.

SBC is not integrated in the Cenvat Credit Chain. Therefore, credit of SBC cannot be availed Further, SBC cannot be paid by utilising credit of any other duty or tax.

Also, office of the Controller General of Accounts has allotted the accounting codes for the new Minor Head 506-Swachh Bharat Cess and new Sub-heads as under:

Swachh Bharat Cess (Minor Head)	Tax Collection	Other Receipts (Interest)	Penalties	Deduct Refunds
0044-00-506	00441493	00441494	00441496	00441495

Further, CBEC has also released FAQs on Swachh Bharat Cess which are available at <http://idtc.icai.org/download/faq-sbc.pdf>.

[Notification No. 21/2015-Service Tax Dated 6th November, 2015, Notification No. 22/2015-Service Tax Dated 6th November, 2015, Notification No. 23/2015-Service Tax, Notification No. 24/2015-Service Tax & Notification No. 24/2015-Service Tax all Dated 12th November, 2015, Circular No. 188/7/2015-ST Dated the 16th November, 2015]

2. Clarification regarding utilisation of credit of Education Cess for payment of Service Tax.

CBEC *vide* Notification No. 22/2015-Central Excise (N.T.), Dated: October 29, 2015 has amended Rule 3 sub-rule 7 of CENVAT Credit Rules, 2004 to allow utilisation of the credit of Education Cess (EC) and Secondary and Higher Education Cess (SHEC):

- Paid on inputs or capital goods received in the premises of the provider of output service on or after the 1st day of June, 2015;
- Paid on capital goods received in the premises of the provider of output service in the financial year 2014-15 (50% balance of EC & SHEC paid);
- Paid on input service in respect of which the invoice, bill, challan etc. as referred to in rule 9, is received by the provider of output service on or after the 1st day of June, 2015;

for payment of service tax on any output service.

However, CBEC is yet to provide a clarification on following issues:

- a) Treatment of old unutilised/accumulated credit of EC & SHEC of Excise duty with the assessee as on 28th February 2015.
- b) Treatment of old unutilised/accumulated credit of EC & SHEC of Service Tax with the assessee as on 31st May 2015.

[Notification No. 22/2015-Central Excise (N.T.), Dated: October 29, 2015]

3. Amendment in Mega Exemption Notification 25/2012-Service Tax

CBEC *vide* Notification No. 20/2015-ST, Dated: October 21, 2015 has amended Mega Exemption Notification No. 25/2012 –ST, Dated: June 20, 2012 as follows:

- **Clause 29**
(g) Services provided by business facilitator or a business correspondent or intermediaries to business facilitator or business correspondents to a banking company with respect to a Basic Savings Bank Deposit Account covered by Pradhan Mantri Jan Dhan Yojana in the banking company's rural area branch, by way of account opening, cash deposits, cash withdrawals, obtaining e-life certificate, Aadhar seeding.

Services provided by business facilitator or a business correspondent to an insurance company in a rural area remain exempted as earlier.

Prior to this amendment any service provided by business facilitator or business correspondents (excluding intermediaries) to any banking company in rural area were exempted irrespective of the type of account and nature of activities.

- **Clause 34**
(b) Charitable activities provided by entities registered under 12AA of the Income-tax Act, 1961 to include advancement of yoga.
[Notification No. 20/2015-ST, Dated: October 21, 2015]

B. CENTRAL EXCISE

4. Guidelines for launching of Prosecution & revised monetary limits for arrest under Central Excise & Service Tax

CBEC *vide* Circular Nos. 1009/16/2015-CX dated 23.10.2015 and 1010/17/2015-CX dated 23.10.2015 has provided guidelines for launching of prosecution under the Central Excise Act, 1944 and the Finance Act, 1994. Further, CBEC has directed its officers not to exercise their powers for launching prosecution unless evasion of Central Excise duty or Service Tax, or misuse of CENVAT Credit in relation to offences specified under sub-Section (1) of Section 9 of the Central Excise Act, 1944 or sub-Section (1) of section 89 of the Finance Act, 1994 is equal to or more than ROne Crore.

However, it is important to note here that though there is no change in monetary limit (₹50 lakh) mentioned under sub-section (1) of Section 9 of the Central Excise Act, 1944 and sub-Section (1) of Section 89 of the Finance Act, 1994, these directions are issued to optimally utilise limited resources.

Further, prosecution can be launched disregarding the monetary limits in the case of a company/assessee habitually evading tax/duty or misusing Cenvat Credit facility. Habitual evaders means a company/ assessee who is evading tax/duty or misusing CENVAT Credit facility, if it has been involved in three or more cases of confirmed demand (at the first appellate level or above) of Central Excise duty or Service Tax or misuse of CENVAT Credit involving fraud, suppression of facts *etc.* in past five years from the date of the decision such that the total duty or tax evaded or total credit misused is equal to or more than ₹One Crore.

For detailed guidelines please visit: <http://www.cbec.gov.in/Excise-Circulars-Instructions>

[Circular Nos. 1009/16/2015-CX dated 23.10.2015 and 1010/17/2015-CX dated 23.10.2015]

5. Bulk Cargos exempted from sealing in packages or container

CBEC *vide Notification No. 42/2001-CX (NT)*, Dated: June 26, 2001 had provided the procedure for export under bond without payment of duty.

Now, CBEC *vide Notification No. 23/2015-Central Excise (N.T.)*, Dated: October 30, 2015 has amended the said procedures thereby exempting bulk cargo from sealing in packages or container. Further, such exemption from sealing of package or container would be granted by the Principal Chief Commissioner or Chief Commissioner of Central Excise subject to safeguards as may be specified by him in the permission, which may include:

- i. method of verification of quantity and quality of goods including testing of goods where necessary at the place of removal or dispatch and at the port of export or SEZ, where the goods are received;
- ii. no remission of duty for loss of goods within transit;
- iii. permission on case to case basis for a specified period not exceeding one year at a time and may be withdrawn in case of misuse; and
- iv. any additional safeguards as may be specified

In addition to above, CBEC has also prescribed the following procedure for allowing export without sealing in packages or container:

- i. The assessee who desires to avail facility of export of bulk cargo without sealing shall write to the Principal Chief Commissioner/Chief Commissioner of Central Excise with a copy to jurisdictional Assistant/Deputy Commissioner of Central Excise, giving details of bulk cargo to be exported with proper justification regarding difficulties faced by him in sealing of the cargo.
- ii. The Jurisdictional Assistant/Deputy Commissioner after receipt of such application from the exporter shall forward it to the Principal Commissioner/Commissioner with his comments within fifteen days of receipt of such application with due verification as needed.
- iii. The Jurisdictional Principal Commissioner/Commissioner of Central Excise forward all such application to the Principal Chief Commissioner/Chief Commissioner of Central Excise with his recommendation within three weeks of receipt of the application with report from the Assistant/Deputy Commissioner.

The jurisdictional Principal Commissioner/Commissioner of Central Excise shall also consult the Principal Commissioner/Commissioner having jurisdiction over the port of export or Development Commissioner of SEZ where the goods are received and incorporate the inputs appropriately in his recommendation.

- iv. Principal Chief Commissioner/Chief Commissioner of Central Excise shall grant or reject the request for waiver of sealing of bulk cargo within fifteen days of receipt of the application from the Principal Commissioner/Commissioner of Central Excise.
- v. The final decision taken on the application shall be communicated to the applicant in writing along with conditions and safeguards prescribed, if any.

[Notification No. 23/2015-Central Excise (N.T.), Dated: October 30, 2015; Circular No. 1011/18/2015-CX., Dated: October 30, 2015]

C. CUSTOMS

6. Use of digital signature for submission of documents

CBEC *vide Circular No. 10/2015-Customs*, dated 31.03.2015 had provided that importers registered under Accredited Client Programme (ACP) were required to mandatorily file Bills of Entry with digital signature with effect from 01.05.2015.

Now in order to increase coverage of digitally signed documents and subsequent phasing out of physical/manual submission of documents; CBEC *vide Circular No. 26/2015-Customs*, Dated: October 23, 2015 has provided that all importers/exporters using services of Customs Brokers for formalities under Customs Act, 1962, shipping lines and air lines shall file customs documents under digital signature certificates mandatorily with effect from 01.01.2016. The importers/exporters desirous of filing Bill of Entry or Shipping Bill individually will have the option of filing declarations/documents without using digital signature. Further, wherever the customs process documents are digitally signed, the Customs will not insist on the user to physically sign the said documents.

[Circular No. 26/2015- Customs, Dated: October 23, 2015]

7. Tumb village in Valsad notified for import and export of goods

CBEC *vide Notification No. 103/2015-Cus., (NT)*, Dated: November 03, 2015 has declared the following

as Customs port in State of Gujarat for the purpose mentioned against it:

S. No.	Place	Purpose
1.	xii) Village Tumb, Taluka Umbergaon, District Valsad.	Unloading of imported goods or loading of export goods

[Notification No. 103/2015-Cus., (NT), Dated: November 03, 2015]

8. Revised Guidelines for launching of prosecution and for Arrest and Bail in relation to offences punishable under Customs Act, 1962

CBEC vide Circular Nos. 27/2015-Customs & 28/2015-Cus., both Dated: October 23, 2015 has revised guidelines for prosecution in relation to offences punishable under Customs Act, 1962.

The revised guidelines mainly provide the following:

- Prosecution may be launched against any person including legal person for offences covered under Section 132, 133, 134, 135A or 136 of the Customs Act, 1962 after a careful consideration of the nature of offence, the role of the person concerned and evidence available to substantiate the guilty knowledge/*mensrea*.
- Threshold Limits:
 - ₹20 lacs or more:** For cases involving:
 - unauthorised importation in baggage/cases under Transfer of Residence Rules;
 - Outright smuggling of high value goods such as precious metal, restricted items or prohibited items notified under Section 11 of the Customs Act, 1962;
 - Outright smuggling of goods notified under Section 123 of the Customs Act, 1962 or foreign currency.
 - ₹1 Crore or more:** For cases related to:
 - Importation/exportation of trade goods (i.e. appraising cases/cases) involving wilful mis-declaration in value/description, concealment of restricted goods or goods notified under Section 11;
 - fraudulent availment of drawback or attempt to avail of drawback or any exemption from duty provided under the Customs Act 1962.

The same limits would apply for Guidelines relating to Arrest and Bail as per Circular No. 28/2015-Cus. Dated: October 23, 2015.

- Threshold Limit does not apply in following cases:
 - Habitual Violators;
 - Offences relating to items i.e. FICN, arms, ammunitions and explosives, antiques, art treasures, wild life items and endangered species of flora and fauna, irrespective of value of offending goods involved;
 - Where quantum of punishment is linked with the amount of imports duty/market price of offending goods/drawback amounts e.g. Section 135 of the Act.
- Prosecution in respect of narcotic drugs and psychotropic substances may be launched as per the provisions of the NDPS Act, 1985.
- Normally, prosecution may be launched immediately on completion of adjudication proceedings.

For detailed guidelines regarding procedure for launching, monitoring, withdrawal *etc.* of prosecution, compounding of offences, transitional provisions *etc.* please visit: <http://www.cbec.gov.in/resources/htdocs-cbec/customs/cs-circulars/cs-circulars-2015/circ27-2015cs.pdf>

[Circular Nos. 27/2015-Customs & 28/2015-Cus., both Dated: October 23, 2015]

D. CESTAT

9. CESTAT Chandigarh Bench to be Operational from 1st December 2015

President, CESTAT vide Notification No. 02 of 2015 dated: November 4, 2015 has ordered a Regional CESTAT Bench at Chandigarh which would be operational from 1st December 2015.

It may be noted that, the Regional Bench, Chandigarh will deal with all the matters arising from territories within the territorial jurisdiction of Union Territory of Chandigarh and the States of Punjab, Haryana, Himachal Pradesh and Jammu & Kashmir, all appeals already filed pertaining to said jurisdiction and such other matters as may be transferred to it by the general or special order of the President.

The CESTAT, Chandigarh will start functioning w.e.f 1st Dec, 2015 at the following address:

Customs, Excise & Service Tax Appellate Tribunal
1st-3rd Floor, SCO No. 147-148, Sector 17-C
Chandigarh-160017

[Notification No. 02 of 2015 dated: November 4, 2015]

E. VALUE ADDED TAX**KARNATAKA VAT:****10. Date for making correction in Input Tax Credit matching Module of e-UPaSS for the tax period May, 14 to May, 15 has been extended from 31.8.2015 to 31.12.15**

Karnataka Government *vide Circular No. 14/2015/16 No. CCW/CR-44/2013-14 dated 19th October, 2015* has extended the time of revision option for making corrections in Input Tax Credit Matching Module under electronic Uploading of Purchase and Sales Statements (e-UPaSS) for the Tax Period May, 2014 to May, 2015 from 31.08.2015 to 31.12.2015.

[Circular No. 14/2015/16 No. CCW/CR-44/2013-14 Dated 19th October, 2015]

ASSAM VAT:**11. Date for filing Annual Return & Audit Report extended to 31.12.2015**

Assam Government *vide Notification No. FTX.49/2014/88 Dated 12th October, 2015* has extended the date for filing Annual Return along with the filing of Audit Report for the year 2014-15 from 31.10.2015 to 31.12.2015.

[Notification No. FTX.49/2014/88 Dated 12th October, 2015]

12. Issuance of Registration Certificate on the Day of Registration or on the Next Working Day

Assam Government *vide Circular No.14/2015 No. CTS-53/2014/Pt/182 Dated 28th October, 2015* has prescribed that the Registration Certificate shall be issued on the day of Registration or on the next working day if all the documents are found to be in order. Other statutory forms/TCC will be issued on the basis of an enquiry held within 3 working days for ascertaining the genuineness of the dealer.

Further Enrolment Certificate/Registration Certificate under the Assam Profession Trades Calling & Employment Taxation Act, 1947 will be issued on the basis of turnover declared in the registration application or the status of business. Existing dealers will be granted this certificate within one month time.

Facilitation Centre in each unit office will be constituted to address all the issues relating to e-services and for smooth delivery of e-services.

[Circular No.14/2015 No. CTS-53/2014/Pt/182 Dated 28th October, 2015]

DELHI VAT:**13. Date for Filing Online Return in Form 9 extended from 31.10.2015 to 15.12.2015**

Delhi Government *vide Circular No. 28 of 2015-16 F.3(589)/Policy/VAT/2015/963-970 Dated 30th October, 2015* has extended the date of filing online return in Form 9 for the year 2014-15 from 31.10.2015 to 15.12.2015. The return in Form 9 is required to be filed by the dealers who have made inter-state sale at concessional rates against form 'C' or Form 'F' or form 'H' or claimed deduction from taxable turnover against E-I/E-II or I/J forms, etc.

[Circular No. 28 of 2015-16 F.3(589)/Policy/VAT/2015/963-970 Dated 30th October, 2015]

GOA VAT:**14. Amendment made in Definition of Sale shall come into force from 01.11.2015**

Goa Government *vide Notification No. 4/5/2005-Fin(R&C)(128)1243 Dated 26th October, 2015* has specified 01.11.2015 as date from which amended definition of sale would be effective. The amended definition of sale has been expanded to include "an agreement for carrying out the work of building, construction, manufacture, processing, fabrication, erection, installation, fitting, improvement, modification, repair or commissioning of any movable or immovable property, for cash, deferred payment or other valuable consideration" under the works contract.

[Notification No. 4/5/2005-Fin(R&C)(128)1243 Dated 26th October, 2015]

MAHARASHTRA VAT:**15. Issue of Tax Invoice, Bill or Cash Memo on Normal Paper instead of Thermal Paper**

Maharashtra Government *vide Circular NO. 15T of 2015 Dated 29th October, 2015* has prescribed that all the dealers who are liable to pay tax shall issue tax invoice, bill or cash memo on normal paper instead of thermal paper so that such bill and the matter printed thereon lasts for a period of atleast 8 year from the end of the year in which sales takes place.

[Circular No. 15T of 2015 Dated 29th October, 2015]

16. Rate of Interest to be paid by the Dealer in case of a Default

Maharashtra Government *vide Notification No. VAT. 1515/CR-81/Taxation-1 Dated 5th November, 2015*

Legal Update

has specified the following rate of interest for the purpose of section 30(1), (2) & (3) for the dealers who has failed to apply for the registration or has failed to apply within the time prescribed or where a registered dealer has failed to pay tax within the time prescribed or where the tax has remained unpaid (except for the tax on which interest has been levied for late payment of tax) up to one month after the end of the period of assessment:

Period, liable for Interest	Rate of Interest on the amount of Tax (for the month or part thereof)
Upton 1 Month	1.25%
Upton 3 Months	1.25% for 1 st Month of delay and 1.5% for delay beyond 1 Month up to 3 Months
More than 3 Months	1.25% for 1 st Month of delay, 1.5% for delay beyond 1 Month up to 3 Months and 2% for delay beyond 3 Months

[Notification No. VAT. 1515/CR-81/Taxation-1 Dated 5th November, 2015]

17. Last Date for submission of Audit Report for the Year 2014-15 is 15.01.2016

Maharashtra Government vide Trade Circular No. 17T of 2015 Dated 7th November, 2015 specifies that the last date for submission of Audit Report for the year 2014-15 is 15.01.2016. After uploading the Audit Report the dealer is required to submit a statement of submission of Audit Report duly certified with signature, stamp, seal of the dealer with date and a copy of Acknowledgement generated after uploading as duly certified with signature, stamp, seal of the dealer & auditor with date up to 25.01.2016. The above documents are to be submitted to:

In case of-	Large Tax Payer	Other Tax Payers
Mumbai	LTU Officer	704 Cell at Vikirkar Bhavan, Mazagaon, Mumbai
Rest of the State	LTU Officer	Location in charge Officer of every location

[Trade Circular No. 17T of 2015 Dated 7th November, 2015]

MADHYA PRADESH VAT:

18. Additional Tax on goods specified in schedule II

A new Section 9-AA has been inserted through an ordinance to levy an additional tax based on weight,

volume, measurement on unit on the sale of goods specified in Schedule II, other than declared goods at a rate which may be notified by the State Government.

[The Madhya Pradesh VAT (Second Amendment) Ordinance, 2015]

ANDHRA PRADESH VAT:

19. No e-Way Bill or declaration in Form 650 are required for transportation of Goods purchased by Government Departments & Consumer for their own use

Andhra Pradesh Government vide Circular No. CCTs Ref. No. AI(1)/45/2014 Dated 14th October, 2015 has prescribed that the vehicles carrying goods for the Government Departments & Consumers for their own consumption shall be allowed to pass through the check posts without e-Way Bill or declaration in Form 650, if covered by proper invoice and also a certificate/declaration from the authorised official of the Government Department/sufficient documentary evidence in support of own use about the procurement and transportation of the relevant goods.

Further, in cases, where goods are purchased by other than dealer or person for personal use, these goods vehicles may be allowed to pass through, if they are covered by proper invoices and also after conducting proper inquiries and ascertaining that the goods are obtained by buyer/consignee only for own use but not for resale or in the course of business.

[Circular No. CCTs Ref. No. AI(1)/45/2014 Dated 14th October, 2015]

UTTAR PRADESH VAT:

20. Date of filing Annual Return in Form 52, 52A and 52B extended to 31st Dec, 2015

Uttar Pradesh Government vide Circular No. 1630/ 1516045 Dated 28th October, 2015 has extended the date for filing annual return in form 52, 52A and 52B for the year 2014-15 from 31.10.2015 to 31.12.2015.

[Circular No. 1630/ 1516045 Dated 28th October, 2015]

HIMACHAL PRADESH VAT:

21. Insertion of New Rules (75B, 75C, 75D, 75E & 75F) in Himachal Pradesh Value Added Tax Rules, 2005

Himachal Pradesh Government vide Notification No. EXN-F(10)-16/2014 Dated 7th November, 2015 has

inserted Rules 75B, 75C, 75D, 75E & 75F in Himachal Pradesh Value Added Tax Rules, 2005 which are as follows:

Rule 75B: A dealer may apply for pre-assessment refund (manually or electronically through hptax.gov.in) of excess input tax credit against a bank guarantee of equal amount. Following conditions must be satisfied by the dealer for claiming the refund:

- (i) Turnover of ₹5 Crore or more in preceding year;
- (ii) All statutory forms under VAT & CST have been submitted of which the refund is being claimed;
- (iii) He is not a tax or return defaulter and has not been penalised for the past 3 years;
- (iv) Refund claim has been filed in Form VAT-XLV; and
- (v) He has verified that the tax has been paid by the seller for which input tax credit has been claimed by the dealer and if not paid by the seller, then dealer will be liable to make the tax payment along with the interest.

Rule 75C: Bank Guarantee for pre-assessment refunds may be accepted if following conditions are satisfied:

- (i) It should be equal to the amount of refund claimed,
- (ii) It must be of any branch of the bank notified as a Government Treasury. In case of Non-Resident, it may be of any branch of a bank outside the State which is notified as Government Treasury in Himachal Pradesh and
- (iii) It shall be furnished for a period of 36 months.

Rule 75D: After submitting a complete refund application and a bank guarantee, the dealer will be granted refund within 45 days of filing the application.

Rule 75E: Every case shall be assessed within 18 months of grant of pre-assessment refund.

Rule 75F: Every case shall be scrutinized and finalised within 36 months of grant of such refund. If not finalised in the said time period, then a fresh bank guarantee may be obtained. A penalty equal to twice the amount of refund shall be imposed where refund has been claimed fraudulently.

[Notification No. EXN-F(10)-16/2014 Dated 7th November, 2015]

TELANGANA VAT:

22. Mandatory usage of e-waybills by VAT Dealers from 01.12.2015.

Telangana Government *vide Circular-CCT's Ref No. Enft/D2/172/2010 Dated 9th November, 2015* has prescribed mandatory use of e-waybills for all the dealers of the Twin cities and R. R. District in place of manual waybills from 01.12.2015. Further, e-waybill may be cancelled within 2 hours of its generation on the approval of Commercial Tax Officer/Asst. Commissioner on recording the online reasons for such cancellation. If Commercial Tax Officer/Asst. Commissioner is not convinced by the reason then they should issue a show cause notice for the same.

[Circular-CCT's Ref No. Enft/D2/172/2010 Dated 9th November, 2015]

KERALA VAT:

23. Multi-level Marketing Entities—Registration, Payment of Tax at Compounded Rates.

In order to streamline the functioning of the Multi-level Marketing sector in the State of Kerala and also to ensure that the revenue due to the State exchequer is duly received, it was announced in the Kerala Budget-2015 that all multi-level marketing companies, their distributors and agents would be made liable to take out registration under the Kerala Value Added Tax Act, 2003. Accordingly following amendments were made in the relevant Sections of the Kerala Value Added Tax Act, 2003 by the Kerala Finance Act – 2015:

Section 2 (Definition): Following new definitions were inserted:

Multi-level Marketing means marketing and sale of goods of a multi-level marketing entity through direct sellers or through direct sellers and distributors, otherwise than through shops, to the consumer or consumers, generally in their houses or at their workplace or through demonstration of such goods at a particular place or by mail order sale.

Multi-level Marketing Entity means a company registered under the Companies Act 2013 or any registered partnership firm (including limited liability partnership firm) engaged in multi-level marketing.

Section 6 (Levy of Tax) The said dealers are liable to pay tax on their sale and purchase of goods whose total turnover is ₹ 10 lakh or more for the year.

Section 8 (Payment of Tax at Compounded Rates)

The said dealers may opt to pay tax at the scheduled rates applicable on the maximum retail price of such goods. This provision is not applicable on the goods sold otherwise than by way of multi-level marketing. Further if multi-level marketing entity is paying tax under compounding scheme then subsequent dealers in the chain shall not be liable to get registered and shall be exempted from payment of tax on such goods.

The detailed operational guidelines have been issued by Kerala Government vide Circular No. 26/15 C3/35960/12/CT Dated 11th November, 2015 for the functioning of Multi-level Marketing Entities/ Direct Sellers:

- (i) Conditions for Multi-level Marketing/ Permissible Direct Selling
- (ii) Appointment/Authorisation of Direct Sellers
- (iii) Activities Prohibited
- (iv) General Conditions
- (v) Maintenance of Records
- (vi) Grievance Redressal Mechanism
- (vii) Breach of Guidelines

[Circular No. 26/15 C3/35960/12/CT Dated 11th November, 2015]

ODISHA VAT:

24. Odisha Value Added Tax (Amendment) Act, 2015 shall be deemed to have come into force from 01.10.2015.

Vide Notification No. 28080FIN-CT1-TAX-0017-2013 Dated 19th October, 2015 following amendments which were made in Odisha Value Added Tax (Amendment) Act, 2015 shall be deemed to have come into force from 01.10.2015:

Section 9 (Charge to Tax & Incidence) & Section 16 (Levy of Compounded Tax Rates) The compounded tax rates will be levied on the taxable turnover of sales of every registered dealer whose annual turnover does not exceed ₹ 50 lakh which was ₹ 40 lakh earlier.

Section 10 (Liability) Every dealer is liable to pay tax if the gross total turnover exceeds taxable limit. Taxable limits are in relation to any dealer who-

	Earlier Limits	Revised Limits
(i) purchases or receives any goods from outside the State for sale within the State on his own behalf or on behalf of his principal	NIL	NIL

	Earlier Limits	Revised Limits
(ii) executes any works contract	₹ 50,000	₹ 50,000
(iii) manufactures or produces any goods for sale	₹ 1,00,000	₹ 10,00,000
(iv) carries on any business other than those referred to in clauses (i), (ii) and (iii)	₹ 5,00,000	₹ 10,00,000

Further, sub-Section 4(a) has been inserted stating that a dealer who transfers property in goods under a work contract or enters into a sub-contract either wholly or partially, then such contractor and sub-contractor are jointly and severally liable to pay tax proportionately in respect of transfer of property in goods. If the contractor or sub-contractor proves that the tax has been paid wholly either by sub-contractor or contractor, then the other will not be liable to pay the tax.

Section 11 (Levy of Tax on Sale) Earlier a dealer executing works contract may opt to pay tax under composition scheme. Now it is specifically provided that the works contract will include dealers undertaking the construction of flats, dwellings or buildings or premises and transferring them in pursuance of an agreement along with the land or interest underlying the land.

Section 20 (Input Tax Credit) A sub-Section (3a) has been inserted stating that no input tax credit will be allowed in excess of the tax amount actually paid.

Section 27 (Security) Under earlier provisions, for the purpose of proper realisation of tax payable and for enforcement of lawful conduct, registering authority may demand a reasonable security or additional security from a registered dealer or from the dealer who has applied for the registration. Now the above provision will be applicable for the registered dealer only.

Section 30 (Suspension of Registration Certificate) has been omitted.

Section 31 (Cancellation of certificate of registration) A new clause has been added to provide that registration certificate may be cancelled for 'good and sufficient reasons' on applying for

such cancellation and after causing an inquiry by registering authority and giving an opportunity of being heard to the dealer. The registration will be considered to be inoperative from the date of order of cancellation.

Section 32 (Amendment of certificate of registration)

Amendment in Registration certificate when a registered dealer-	The registering authority may*-
sells or disposes of his business or any part thereof or discontinues his business, or changes the name, style, or nature of business, or makes any addition or deletion in the class of goods dealt in or manufactured, or changes his place of business (other than principal place of business) or warehouse, or opens a new place of business	amendment shall be done electronically on the basis of the application
effects any other change in the constitution or principal place of business	amend the certificate of registration of the dealer or reject the application
changes the ownership of the business, or its basic status	issue fresh certificate of registration or reject the application

**before an application for amendment of certificate of registration is rejected, the dealer shall be given an opportunity of being heard.*

Further, where a dealer fails, without any reasonable cause, to inform the registering authority about the above changes, within the time prescribed, he shall be liable to a penalty of rupees one hundred for each day of default subject to a maximum limit of rupees ten thousand.

Section 33 (Periodical returns and payment of tax)

A sub-Section 9 has been inserted which provides that returns filed electronically shall not require any signature by the dealer or his authorised person.

Section 41 (Identification of tax payers for tax audit) After completion of tax audit, the authorised

officer shall determine the tax liability and serve a notice along with the Audit Visit Report to the dealer. If the dealer admits in writing and pays the whole amount of tax and a penalty of 25% of such tax then no assessment shall be done.

If dealer does not comply with the notice, then Audit Visit Report along with the statements recorded and documents obtained evidencing suppression of purchases or sales, or both, erroneous claims of deductions including input tax credit and evasion of tax will be submitted to the assessing authority for the purpose of investigation, assessment *etc.*

Insertion of Section 42A (Assessment in certain cases in lieu of Audit)

- The Commissioner may select dealers on the basis of large tax payment or large turnover or who has been granted provisional refund by issuing a notification for assessment in lieu of tax audit and audit assessment.
- After such selection, the assessing authority may serve a notice requiring the dealer to appear and produce books of account, documents, *etc.* within a period of not less than thirty days and after examining the material available and those produced, assess the tax due from that dealer.
- If the dealer fails to appear or fails to produce the books of account and documents then the assessing authority may proceed to complete the assessment to the best of his judgment.
- A penalty not exceeding twenty five per centum of the tax so arrived may be imposed on the dealer.
- The assessment shall be completed within a period of six months from the date of service of the notice on the dealer. If the assessment is not completed within the time specified, the Commissioner may, allow further time not exceeding six months for completion of the assessment proceeding.

Section 43 (Turnover escaping assessment)

Where the assessing authority is satisfied that the escapement is without any reasonable cause then a penalty may be levied which is equal to the amount of tax additionally assessed. The penalty of twice the tax amount assessed has been reduced.

Further, the assessment shall be completed within a period of six months from the date of service of the notice on the dealer. If for any reason the assessment is not completed within the time specified, the

Commissioner may, allow further time not exceeding six months for completion of the assessment proceeding. Even if the Commissioner feels it necessary to do so for good and sufficient reasons may allow such further time not exceeding another six months beyond the time allowed for the first time.

Section 54 (Deduction of tax at source from payment to works contractor) A proviso has been added to provide that where a dealer executing works contract, entering into further contract with sub-contractor to execute such work shall not deduct any further amount towards tax and tax deducted at source by the deducting authority shall be transferred proportionately to the sub-contractor by the principal contractor.

A sub-Section (1a) has been inserted to provide that if the Commissioner is satisfied on his own information that the deducting authority requires enrolment, he may enroll the deducting authority and assign him with an identity code.

Section 65 (Accounts to be audited in certain cases) Sub-Section (1a) which provides that a statement of closing stock in trade held at the end of the year has to be furnished by the dealer within a period of three months from the date of expiry of that year has been omitted.

Now under sub-Section (2) the penalty of Rs. 100 per day, for default in furnishing a copy of audit report with a statement of closing stock in trade held at the end of the year, will be levied only on the dealer who is liable to get his accounts audited.

Section 77 (Appeals): Following time limit has been prescribed for disposing of an appeal by appellate authority, after giving the appellant a reasonable opportunity of being heard and after causing such enquiry as he may deem necessary :

- within a period of 3 years from the date of admission of such appeal; or
- in pending cases within a period of 3 years from the date of commencement of the Odisha Value Added Tax (Amendment) Act, 2015.

Further, the assessing authority may, after giving the dealer a reasonable opportunity of being heard and after causing an enquiry, complete fresh assessment within a period of 2 years from the date of the order of setting aside the assessment and directing to make a fresh assessment, or as the case may be, in case of

pending cases, within a period of 2 years from the date of commencement of the Odisha Value Added Tax (Amendment) Act, 2015.

[Notification No. 28080FIN-CT1-TAX-0017-2013
Dated 19th October, 2015]



(Matter on FEMA has been contributed by CA Manoj Shah, Mumbai and CA Hinesh Doshi, Mumbai)

A. Annual Return on Foreign Liabilities and Assets (FLA Return) – Reporting by Limited Liability Partnerships (LLPs)

A.P. (DIR Series) Circular No. 22 dated October 21, 2015

In order to capture the statistics relating to Foreign Direct Investments (FDI), both inward and outward, by Limited Liabilities Partnerships (LLPs) in India, it has been decided that henceforth, all LLPs that have received FDI and/or made FDI abroad (i.e. overseas investment) in the previous year(s) as well as in the current year, shall submit the FLA return to the Reserve Bank of India by July 15 every year, in the format as prescribed in the A.P. (DIR Series) Circular No. 145 dated June 18, 2014. Since, LLPs do not have 21-Digit CIN (Corporate Identity Number), they are advised to enter 'A99999AA9999LLP999999' against CIN in the FLA Return.

Reserve Bank has since amended the subject Regulations accordingly through the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Seventh Amendment) Regulations, 2015 which have been notified through Notification No. FEMA.351/2015-RB dated September 30, 2015, *vide* G.S.R. No. 745(E) dated September 30, 2015.

B. No Permission/renewal of permission to LOs of foreign law firms—Supreme Court's Directions

A.P. (DIR Series) Circular No. 23 dated October 29, 2015

The Hon'ble Supreme Court *vide* its interim orders dated July 4, 2012 and September 14, 2015, passed in the case of the *Bar Council of India vs A. K. Balaji & Ors.*, has directed RBI not to grant any permission to any foreign law firm, on or after the date of the said interim order, for opening of Liaison Office (LO) in India. Hence, no foreign law firm shall be permitted to open any LO in India till further orders/notification in this regard. However, foreign law firms which have been granted permission

prior to the date of interim order for opening LOs in India may be allowed to continue provided such permission is still in force. No fresh permission/renewal of permission shall be granted by RBI/AD banks respectively till the policy is reviewed based on, among others, final disposal of the matter by the Hon'ble Supreme Court.

C. Subscription to National Pension Scheme by Non Resident Indians (NRIs)

A.P. (DIR Series) Circular No. 24 dated October 29, 2015

With a view to enabling NRIs' access to old age income security, it has now been decided, in consultation with the Government of India, to enable National Pension System (NPS) as an investment option for NRIs under FEMA, 1999. Accordingly, NRIs may subscribe to the NPS governed and administered by the Pension Fund Regulatory and Development Authority (PFRDA), provided such subscriptions are made through normal banking channels and the person is eligible to invest as per the provisions of the PFRDA Act.

The subscription amounts shall be paid by the NRIs either by inward remittance through normal banking channels or out of funds held in their NRE/FCNR/NRO account. There shall be no restriction on repatriation of the annuity/accumulated savings.

Reserve Bank has since amended the subject Regulations accordingly through the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Ninth Amendment) Regulations, 2015 which have been notified *vide* Notification No. FEMA.353/2015-RB dated October 6, 2015, vide G.S.R. No. 759 (E) dated October 6, 2015.

D. Switching from Barter Trade to Normal Trade at the Indo-Myanmar Border

A.P. (DIR Series) Circular No. 26 dated November 05, 2015

In terms of A.P. (DIR Series) Circular No. 17 dated October 16, 2000 it had been stipulated that border trade between India and Myanmar may be settled through Barter system thereby facilitating exchange of locally produced commodities along the Indo-Myanmar border. Further, Regulation 3 and 5 of Notification No. FEMA 14/2000-RB dated May 3, 2000 the trade transactions with Myanmar may be settled in any permitted currency in addition to the Asian Clearing Union Mechanism. Further, such

transactions were not captured in the banking system or reflected in the trade statistics.

However, over a period of time trade basket has diversified and adequate banking presence is in place to support normal trade with Myanmar. It has therefore been decided in consultation with Government of India to do away with the barter system of trade at Indo-Myanmar border and completely switch over to normal trade with effect from December 1, 2015. Accordingly instructions contained in A.P. (DIR Series) Circular No. 17 dated October 16, 2000 stands withdrawn.

E. Filing of bulk SOFTEX – further liberalisation

A.P. (DIR Series) Circular No. 27, dated November 05, 2015

A Software exporter having annual turnover of at least ₹1,000 crore or who files at least 600 SOFTEX forms annually on an all India basis, is eligible to declare all the off-site software exports in bulk in the form of a statement in excel format, to the competent authority for certification on monthly basis.

It has been decided to extend this facility to all software exporters. Accordingly, all software exporters can now file single as well as bulk SOFTEX form in excel format to the competent authority for certification. The SOFTEX form is given at Annex I of the circular. Since the SOFTEX data from STPI/SEZ is being transmitted in electronic format to RBI, the exporters are required to submit the SOFTEX form induplicate as per the revised procedure. STPI/SEZ will retain one copy and hand over the duplicate copy to the exporters after due certification.

As hitherto, the software exporters can generate SOFTEX form number(single as well as bulk) for use in off-site software exports from the website www.rbi.org.in. In order to generate the SOFTEX number/s, the applicant exporter has to fill-in the online form (Path www.rbi.org.in–Forms-FEMA Forms-Printing EDF/SOFTEX Form No.). The specimen of the online form and the advice are given at Annex II of the circular.

(Note: Earlier filing of bulk SOFTEX was only available to exporters having annual turnover of at least ₹1,000 crore or filing at least 600 SOFTEX forms. RBI by this circular has now extended the facility of bulk filing of SOFTEX to all exporters)

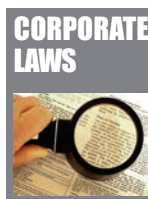
F. Relaxation of facilities for residents for hedging of foreign currency borrowings.

A.P. (DIR Series) Circular No. 28, dated November 05, 2015

Under the existing guidelines, residents having a long term foreign currency liability in terms of Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, FEMA 3/2000-RB, dated May 3, 2000, as amended from time to time and rules, regulations and directions issued thereunder, are permitted to hedge exchange rate and/or interest rate risk exposure thereof by undertaking a foreign currency-INR swap to move from a foreign currency liability to a rupee liability with an AD Cat-I bank subject to the operational guidelines, terms and conditions as mentioned in the above circular.

With a view to facilitating hedging of long term foreign currency borrowings by residents, it has been decided to permit them to enter in to FCY-INR swaps with Multilateral or International Financial Institutions (MFI/IFI) in which Government of India is a shareholding member subject to the following terms and conditions:

- i. Such swap transactions shall be undertaken by the MFI/IFI concerned on a back-to-back basis with an AD Category-I bank in India.
- ii. AD Category-I banks shall face, for the purpose of the swap, only those Multilateral Financial Institutions (MFIs) and International Financial Institutions (IFIs) in which Government of India is a shareholding member.
- iii. The FCY-INR swaps shall have a minimum tenor of three years. All other operational guidelines, terms and conditions relating to FCY-INR swaps as laid down in A.P. (DIR Series) Circular No. 32 dated December 28, 2010, as amended from time to time, shall apply, mutatis mutandis.
- iv. In the event of a default by the resident borrower on its swap obligations, the MFI/IFI concerned shall bring in foreign currency funds to meet its corresponding liabilities to the counterparty AD Cat-I bank in India.
- v. AD Category-I bank shall report the FCY-INR swaps transactions entered into with the MFIs/IFIs on a back-to-back basis to CCIL reporting platform, including details of the foreign currency borrower, in terms of Reserve Bank **circular no. FMD.MSRG.No. 94/02.05.002/2013-14 dated December 4, 2013** on the reporting platform for OTC Foreign Exchange and Interest Rate Derivatives.



(Matter on Corporate Laws has been contributed by CA. Rahul Joglekar)

SEBI(www.sebi.gov.in)
SEBI circular no. CIR/CDMRD/
DEICE/01/2015 dated 16th November

2015- Annual System Audit, Business Continuity Plan(BCP) and Disaster Recovery (DR)

SEBI is of the view that while technological developments and innovations bring efficiency to the markets, they may also pose certain risks to the stability and integrity of the markets, if not identified and managed effectively. Further, any events of disaster will disrupt trading systems adversely, thereby impacting the market integrity and the confidence of investors. Exchanges should therefore have robust Business Continuity Plan (BCP) and Disaster Recovery (DR) to ensure continuity of operations. Therefore detailed guidelines for Annual Systems Audit and BCP/DR have been issued by SEBI vide the aforesaid circular. For a complete text of the circular, please refer the link: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1447679358432.pdf

RBI(www.rbi.org.in)
RBI circular no. DGBA.GAD.No. 1636/31.12.010/2015-
16 dated 10th November 2015-Payment of agency
commission—Certification of claims by external
auditors

RBI has directed that the format for certification of agency commission claims by external auditors (Chartered Accountants) has been slightly amended and the revised format is specified in the circular. For a complete text of the circular, please refer the link: <https://rbi.org.in/Scripts/NotificationUser.aspx?Id=10115&Mode=0>

RBI circular no. DNBR.CC.PD.No. 070/03.10.01/2015-
16 dated 29th October 2015-Early Recognition of
Financial Distress, Prompt Steps for Resolution
and Fair Recovery for Lenders: Framework for
Revitalising Distressed Assets in the Economy-Review
of the Guidelines on Joint Lenders' Forum (JLF) and
Corrective Action Plan (CAP)

RBI has decided to amend the aforesaid framework applicable to NBFCs on the lines of the modifications made to the same as applicable to Banks. For a complete text of the circular, please refer the link: <https://rbi.org.in/Scripts/NotificationUser.aspx?Id=10091&Mode=0> ■