

Circulars/Notifications

Given below are the important Circulars and Notifications issued by the CBDT, CBEC, FEMA, MCA, 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 ebboard@icai.in



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

I. NOTIFICATIONS

1. Prescribed Authority for expenditure on scientific research - the Income-tax (10th Amendment) Rules, 2016 - Notification No 29/2016, dated 28-04-2016

In exercise of the powers conferred by section 35, read with section 295, the CBDT has notified the Income-tax (10th Amendment) Rules, 2016 which shall come into force on the 1st day of July, 2016.

(a) Section 35(2AA) provides for weighted deduction @ 200% of any sum paid to National Laboratory or a University or an Indian Institute of Technology for scientific research program approved by prescribed authority.

Rule 6(7) provides for the conditions for approval of the scientific research program. Clause (b) thereunder requires the prescribed authority to submit its report to the Director General (Income-tax Exemptions) in the prescribed form within the prescribed time. Now, the report can be submitted to Principal Chief Commissioner of Income-tax or Chief Commissioner of Income-tax or Principal Director General of Income-tax or Director General of Income-tax having jurisdiction over the sponsor.

(b) Section 35(2AB) provides for weighted deduction @ 200% of expenditure incurred in a company engaged in the business of bio technology or manufacture or production of any article or thing on in house research and development facility as approved by prescribed authority.

Rule 6(7A) provides for the conditions to be fulfilled for approval of expenditure incurred on in-house research and development facility by a company under section 35(2AB). Clause (b) of this rule provides that the prescribed authority shall submit its report in relation to the approval of the in-house research and development facility in Form No. 3CL to the Director General (Income-tax Exemptions) within 60 days of its granting approval.

Clause (b) has been substituted to provide that the prescribed authority shall furnish electronically its report,—

- (i) in relation to the approval of in-house research and development facility in Part A of Form No. 3CL;
- (ii) quantifying the expenditure incurred on in-house research and development facility by the company during the previous year and eligible for weighted deduction under section 35(2AB) in Part B of Form No. 3CL.

Further, a new sub-clause (ba) has been inserted to provide that the report in Form No. 3CL referred to in Rule (6)(7A)(b) shall be furnished electronically by the prescribed authority to the Principal Chief Commissioner of Income-tax or Chief Commissioner of Income-tax or Principal Director General of Income-tax or Director General of Income-tax having jurisdiction over such company within one hundred and twenty days,—

- (i) of the grant of the approval, in a case referred to in sub-clause (i) of clause (b);
- (ii) of the submission of the audit report, in a case referred to in sub-clause (ii) of clause (b)

Further, Clause (c) of Rule 6(7A) requires a copy of the audited accounts for each approved facility to be furnished to Secretary, Department of Science and Industrial Research by 31st October of each succeeding year.

This clause has been amended to provide that a report of audit in Form No. 3CLA shall be furnished electronically to the Secretary, Department of Scientific and Industrial Research on or before the due date specified in Explanation 2 to section 139(1) for furnishing the return of income, for each succeeding year.

(c) A new sub-rule (8) has been inserted in Rule 6 to provide that the Principal Director General of Income-tax (Systems) shall specify the procedures, formats and standards for ensuring secure capture and transmission of data, and shall also be responsible for the day-to-day administration in relation to furnishing the information in the manner so specified.

(d) Consequential changes have been made in Form No 3CK (Application form for entering into an agreement with the Department of Scientific and Industrial Research for cooperation in in-house Research and Development facility and for audit of the accounts maintained for that facility).

Further, Annexure I has been inserted after Part C to provide for furnishing of information required thereunder separately in respect of each research and development facility approved by the prescribed authority under section 35(2AB).

Also, Annexure II has been inserted to provide for furnishing the details of expenditure incurred on research and development facility/centre approved by the prescribed authority under section 35(2AB).

(e) Form No 3CL has been substituted. It now contains the report to be submitted by the prescribed authority to the income-tax authority specified under section 35(2AB).

Further, new Form No 3CLA has been inserted. It contains the report from an accountant to be furnished under section 35(2AB) relating to in-house scientific research and development facility.

Also, item 6 has been inserted in Form No 3CM containing the order of approval of in-house Research and Development facility under section 35(2AB) to require the registration number, date and validity of recognition granted by the Department of Science and Industrial Research to the in-house research and development centre of the company.

2. Furnishing of evidence of claims by employee for deduction of tax under section 192 & Time and mode of payment of TDS and TCS to Government account - the Income-tax (11th Amendment) Rules, 2016 - Notification No 30/2016, dated 29-04-2016

(a) New Rule 26C has been inserted in the Income-tax Rules, 1962, with effect from 1st June, 2016, to require furnishing of evidence of the following claims by an employee to the person responsible for making payment under section 192(1) in Form No.12BB for the purpose of estimating his income or computing the tax deduction of tax at source:

S. No.	Nature of Claim	Evidence or particulars
1.	House Rent Allowance	Name, address and PAN of the landlord(s) where the aggregate rent paid during the previous year exceeds ₹ 1 lakh.

S. No.	Nature of Claim	Evidence or particulars
2.	Leave Travel Concession or Assistance	Evidence of expenditure
3.	Deduction of interest under the head "Income from house property"	Name, address and PAN of the lender
4.	Deduction under Chapter VI-A	Evidence of investment or expenditure.

(b) Increase in time limit for payment of TDS under section 194-IA to Government Account [Rule 30(2A)]:

Rule 30(2A) has been amended to increase the time limit for payment of tax deduction under section 194-IA to Government account from 7 days to 30 days from the end of the month in which deduction is made.

(c) Common due date for filing of statement of TDS under section 200(3) in case of Government deductors and other deductors [Rule 31A(2)]:

Rule 31A requires every person responsible for deduction of tax under Chapter XVII-B to deliver, or cause to be delivered, quarterly statements to the Director General of Income-tax (Systems) or the person authorised by him within the due date for each quarter specified in Rule 31A(2). Rule 31A(2) prescribed differential due dates for Government deductors and other deductors. In order to ensure equity and give more time for other deductors, common due dates are now prescribed thereunder for Government deductors and other deductors. Accordingly, quarterly statements of TDS have to be furnished by the due dates specified in column (3) against the corresponding quarter:

Sl. No.	Date of ending of the quarter of the financial year	Due date
1.	30 th June	31 st July of the financial year
2.	30 th September	31 st October of the financial year
3.	31 st December	31 st January of the financial year
4.	31 st March	31 st May of the financial year immediately following the financial year in which the deduction is made.

(d) **Mode of payment in the case of an office of the Government, where tax has been paid to the credit of the Central Government without production of a challan [Rules 30 & 37C]:**

Rule 30(4) and 37CA(3) have been amended to remove the time limit of 10 days specified thereunder for submission of Form No.24G in respect of tax deducted/collected by deductors/collectors (in the case of an office of the Government, where tax has been paid to the credit of the Central Government without the production of a challan) and reported to the agency authorised by the Director General of Income-tax (Systems). In effect, in the case of an office of the Government, where tax has been paid to the credit of the Central Government, without production of challan, Rule 30(4) and 37CA(3) now simply require submission of statement in Form 24G to the agency authorised by the Principal Director General of Income-tax (Systems) in respect of tax deducted/collected by the deductors/collectors and reported to him.

Time limit for submission of statement in Form 24G in such cases [New sub-rule (4A) of Rule 30 & Sub-rule (3A) of Rule 37CA]:

	Month to which the statement relates	Time limit
(i)	In a case where the statement relates to the month of March	On or before 30 th April
(ii)	In any other case	On or before 15 days from the end of the relevant month

Manner of submission of statement in Form 24G [New sub-rule (4B) of Rule 30 & sub-rule (3B) of Rule 37CA]:

- (i) Electronically under digital signature; or
- (ii) Electronically along with the verification of the statement in Form 27A or verified through an electronic process in accordance with the procedures, formats and standards specified under Rule 30(5).

Intimation of book identification number to deductors [New sub-rule (4C) of Rule 30]:

The Pay and Accounts Officer or the Treasury Officer

or the Cheque Drawing and Disbursing Officer or any other person by whatever name called to whom the deductor reports the tax so deducted has to intimate the book identification number generated by the agency to each of the deductors in respect of whom the sum deducted has been credited.

Specification of procedures, formats and standards for the purpose of furnishing and verification of the statements [New sub-rule (5) of Rule 30 & sub-rule (4) of Rule 37CA]:

The procedures, formats and standards shall be specified by the Principal Director General of Income-tax (Systems) for the purposes of furnishing and verification of the statements. He shall also be responsible for the day-to-day administration in relation to the furnishing of the information and verification of the statements.

3. Procedure for online submission of statement of deduction of tax under section 200(3) and statement of collection of tax under proviso to section 206C(3) read with Rule 31A(5) and 31AA(5) respectively - Notification No.6/2016, dated 4-5-2016

The provisions relating to the statement of deduction of tax under section 200(3) and the statement of collection of tax under proviso to section 206C(3) are prescribed under Rule 31A and Rule 31AA respectively. As per 31A(5) and rule 31AA(5), the Director General of Income-tax (Systems) shall specify the procedures, formats and standards for the purposes of furnishing and verification of the statements and shall be responsible for the day to day administration in relation to furnishing and verification of the statements in the manner so specified.

In exercise of power conferred by rule 31A(5) and rule 31AA(5), the Principal Director General of Income-tax (Systems) has laid down the following procedures of registration in the e-filing portal, the manner of the preparation of the statements and submission of the statements as follows:

The deductors/collectors will have the option of online filing of e-TDS/TCS returns through e-filing portal or submission at TIN Facilitation Centres. Procedure for filing e-TDS/TCS statement online through e-filing portal is as under:

- a. **Registration:** The deductor/collector should hold valid TAN and is required to be registered in the e-filing website (<https://incometaxindiaefiling.gov.in/>) as "Tax Deductor & Collector" to file the "e-TDS/e-TCS Return".

- b. **Preparation:** The Return Preparation Utility (RPU) to prepare the TDS/TCS Statement and File Validation Utility (FVU) to validate the Statements can be downloaded from the tin-nsdl website (<https://www.tin-nsdl.com/>). The statement is required to be uploaded as a zip file and submitted using a Digital Signature Certificate. The signature file for the zipped file will be generated using the DSC Management Utility (available under 'Downloads' in the e-Filing website <https://incometaxindiaefiling.gov.in/>).
- c. **Submission:** The deductor/collector is required to login to the e-filing website using TAN and go to TDS -> Upload TDS. The deductor/collector is required to upload the "Zip" file along with the signature file (generated as explained in para (b) above). Once uploaded, the status of the statement shall be shown as "Uploaded". The uploaded file shall be processed and validated at the e-filing portal. Upon validation the status shall be either "Accepted" or "Rejected" which will reflect within 24 hours from the time of upload. The status of uploaded file will be visible at TDS -> View Filed TDS. In case the submitted file is "Rejected", the reason for rejection shall be displayed.

4. Procedure for submission of declaration by a person claiming receipt of certain incomes without deduction of tax in Form 15G/15H under section 197A(1)/(1A) read with Rule 29C - Notification No.7/2016, dated 4-5-2016

As per rule 29C(1) (Declaration by person claiming receipt of certain incomes without deduction of tax), a declaration under section 197A(1)/(1A) shall be in Form No. 15G and declaration section 197A(1C) shall be in Form No. 15H.

As per rule 29C(3), the person responsible for paying any income of the nature referred to in section 197A(1)/(1A)/(1C), shall allot a unique identification number to each declaration received by him in Form No. 15G and Form No. 15H respectively during every quarter of the financial year in accordance with the procedures, formats and standards specified by the Principal Director General of Income-tax (Systems) under rule 29C(7).

As per rule 29C(4), the person referred to in rule 29C(3) herein shall furnish the particulars of declaration received by him during any quarter of the financial year along with the unique identification

number allotted by him under rule 29C(3) in the statement of deduction of tax of the said quarter in accordance with the provisions of rule 31A(4) (vii). As per rule 29C(7), the Principal Director General of Income-tax (Systems) shall specify the procedures, formats and standards for the purposes of furnishing and verification of the declaration, allotment of unique identification number and furnishing or making available the declaration to the income tax authority and shall be responsible for the day-to-day administration in relation to the furnishing of the particulars of declaration in accordance with the provisions of rule 29C(4).

In exercise of the powers delegated by the CBDT under rule 29C(7), the Principal Director General of Income-tax (Systems) has laid down the following procedures:

- a. **Registration:** The deductor/collector is required to register by logging in to the e-filing website (<https://incometaxindiaefiling.gov.in/>) of the Income Tax Department. To file the "Statement of Form 15G/15H", deductor should hold a valid TAN. Following path is to be used for the registration process:
Register yourself→Tax Deductor & Collector
- b. **Preparation:** The prescribed schema for Form 15G/15H and utility to prepare XML file can be downloaded from the e-filing website home page under forms (other than ITR) tab. The Form 15G/15H utility can be used to prepare the xml zip file. The declaration is required to be submitted using a Digital Signature Certificate. The signature file for the zipped file can be generated using the DSC Management Utility (available under Downloads in the e-Filing website <https://incometaxindiaefiling.gov.in/>)
- c. **Submission:** The designated person is required to login to the e-filing website using TAN and go to e-File→Upload Form 15G/15H. The designated person is required to upload the "Zip" file along with the signature file (generated as explained in para (b) above). Once uploaded, the status of the statement shall be shown as "Uploaded". The uploaded file shall be processed and validated at the e-filing portal (list of validations are given in the user manual). Upon validation, the status shall be either "Accepted" or "Rejected which will

reflect within 24 hours from the time of upload. The status of uploaded file will be visible at My account→View Form 15G/15H. In case the submitted file is "Rejected", the reason for rejection shall be displayed and the corrected statement can be uploaded again.

5. Procedure for submission of Form 15CC by an authorised dealer in respect of remittances under section 195(6) read with Rule 37BB - Notification No. 8/2016, dated 4-5-2016.

Under section 195(6), person responsible for paying to a non-resident, not being a company, or to a foreign company, any sum, whether or not chargeable under the provisions of this Act, is required to furnish the information relating to payment of such sum, in such form and manner, as may be prescribed.

As per rule 37BB(7), the authorised dealers are required to furnish a quarterly statement for each quarter of the financial year in Form No.15CC to the Principal Director General of Income-tax (Systems) or the person authorised by the Principal Director General of Income-tax (Systems) electronically under digital signature within fifteen days from the end of the quarter of the financial year to which such statement relates in accordance with the procedures, formats and standards specified by the Principal Director General of Income-tax (Systems) under rule 37BB(8).

In exercise of the powers delegated by the CBDT under Rule 37BB(8), the Principal Director General of Income-tax (Systems) has laid down the procedure for submission of Form 15CC as follows:

- a) **Generation of ITDREIN:** The reporting entity is required to get registered with the Income Tax Department by logging in to the e-filing website with the login ID used for the purpose of filing the Income-tax Return of the reporting entity. In case if the reporting entity is not registered for filing Income-tax Return, it may get ITDREIN by logging in with its TAN. A link to register reporting entity has been provided under "My Account>Manage ITDREIN". The reporting entity is required to apply for different ITDREIN for different reporting entity categories. Once ITDREIN is generated, the reporting entity will receive a confirmation e-mail on the registered e-mail ID and SMS at registered mobile number. There will be no option to de-activate ITDREIN, once ITDREIN is created.

- b) **Submission of details of authorised person:** The reporting financial institution will then be required to submit the details of authorised person (who will file Form 15CC). Once the details of authorised person are entered by the reporting entity, the authorised person will need to confirm through activation link on e-mail by entering the OTP sent on the mobile of the authorised person and generate the password.
- c) **Submission of Form 15CC:** Once the authorised person of the reporting entity gets registered successfully, it is required to submit Form 15CC. The authorised person is then required to login to the e-filing website with the ITDREIN, PAN and password. The prescribed schema for the report under Form 15CC and a utility to prepare XML file can be downloaded from the e-filing website home page under forms (other than ITR) tab. The authorised person will be required to submit the PAN of the reporting entity, period for which report is to be submitted and the reporting entity category for which the report is to be submitted. The authorised person will then be provided the option to upload the Form 15CC. The form is required to be submitted using a Digital Signature Certificate of the authorised person.

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

II. CIRCULARS

1. Commencement of limitation for penalty proceedings under sections 271D and 271E of the Income-tax Act, 1961 –Circular No. 09/2016, Dated 26-04-2016

There are conflicting interpretations of various High Courts on the issue whether the limitation for imposition of penalty under sections 271D and 271E commences at the level of the Assessing Officer (below the rank of Joint Commissioner of Income-tax) or at level of the Range authority i.e., the Joint Commissioner of Income-tax/Additional Commissioner of Income-tax.

Some High Courts have held that the limitation commences at the level of the authority competent to impose the penalty i.e., Range Head, while others have held that even though the Assessing Officer is

not competent to impose the penalty, the limitation commences at the level of the Assessing Officer, where the Assessing Officer has issued show cause notice or referred to the initiation of proceedings in assessment order.

The CBDT is of the view that for the sake of clarity and uniformity, the conflict needs to be resolved by way of a "Departmental View".

The Kerala High Court, in *Grihalaxmi Vision v. Addl. CIT*, observed that the question to be considered is whether proceedings for levy of penalty are initiated with the passing of the order of assessment by the Assessing Officer or whether such proceedings have commenced with the issuance of the notice by the Joint Commissioner. From the statutory provisions, it is clear that the competent authority to levy penalty is the Joint Commissioner. Therefore, only the Joint Commissioner can initiate proceedings for levy of penalty. Such initiation of proceedings could not have been done by the Assessing Officer. The statement in the assessment order that the proceedings under Section 271D and 271E are initiated is inconsequential. On the other hand, if the assessment order is taken as the

initiation of penalty proceedings, such initiation is by an authority who is incompetent and the proceedings thereafter would be proceedings without jurisdiction. If that be so, the initiation of the penalty proceedings is only with the issuance of the notice by the Joint Commissioner to the assessee to which he has filed his reply.

The CBDT Circular clarifies that the above judgement reflects the "Departmental View". Accordingly, the Assessing Officers (below the rank of Joint Commissioner of income-tax) have to make a reference to the Range Head, regarding any violation of the provisions of section 269SS and section 269T, as the case may be, in the course of the assessment proceedings (or any other proceedings under the Act). The Assessing Officer (below the rank of Joint Commissioner of Income-tax) shall not issue the notice in this regard. The Range Head will issue the penalty notice and shall dispose/complete the proceedings within the limitation prescribed under section 275(1)(c).

The Circular further clarifies that where any High Court decides this issue contrary to the "Departmental View", the "Departmental View"

thereon shall not be operative in the area falling in the jurisdiction of the relevant High Court. However, the CCIT concerned should immediately bring the judgment to the notice of the Central Technical Committee (CTC). The CTC shall examine the said judgment on priority to decide as to whether filing of SLP to the Supreme Court will be adequate response for the time being or some legislative amendment is called for.

2. Limitation for penalty proceedings under sections 271D and 271E of the Income-tax Act, 1961 –Circular No. 10/2016, Dated 26-04-2016

The issue whether the limitation for imposition of penalty under sections 271D and 271E, is determined under section 275(1)(a) or section 275(1)(c), has given rise to considerable litigation.

The Delhi High Court, in *CIT v. Worldwide Township Projects Ltd.*, has considered this issue and observed that it is well settled that a penalty under this provision is independent of the assessment. The action inviting imposition of penalty is granting of loans above the prescribed limit otherwise than through banking channels and as such infringement of section 269SS is not related to the income that may be assessed or finally adjudicated. In this view, section 275(1)(a) would not be applicable and the provisions of section 275(1)(c) would be attracted." The judgment has been accepted by the CBDT.

In view of the above, it is a settled position that the period of limitation of penalty proceedings under section 271D and section 271E of the Act is governed by the provisions of section 275(1)(c). Therefore, the limitation period for the imposition of penalty under these provisions would be the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later. The limitation period is not dependent on the pendency of appeal against the assessment or other order referred to in section 275(1)(a).

3. Payment of interest on refund under section 244A of excess TDS deposited under section 195 of the Income-tax Act, 1961–Circular No. 11/2016, Dated 26-04-2016

The procedure for refund of tax deducted at

source under section 195 to the person deducting the tax is set out in CBDT Circular No.7 /2007 dated 23.10.2007. Circular No.7/2007 states that no interest under section 244A is admissible on refunds to be granted in accordance with the circular or on the refunds already granted in accordance with Circular No.769 or Circular No.790 dated 20.4.2000.

The issue of eligibility for interest on refund of excess TDS to a tax deductor has been a subject matter of controversy and litigation. The Supreme Court of India, in *Tata Chemical Limited 1*, Civil Appeal No. 6301 of 2011 vide order dated 26.02.2014, held that refund due and payable to the assessee is debt-owed and payable by the Revenue. Though there is no express statutory provision for payment of interest on the refund of excess amount/tax collected by the Revenue, the Government cannot shrug off its apparent obligation to reimburse the deductors lawful monies with the accrued interest for the period of undue retention of such monies. The State having received the money without right, and having retained and used it, is bound to make the party good, just as an individual would be under like circumstances. The obligation to refund money received and retained without right implies and carries with it the right to interest."

In view of the above judgment of the Apex Court, it is settled that if a resident deductor is entitled for the refund of tax deposited under section 195, then it has to be refunded with interest under section 244A from the date of payment of such tax.

4. Verification of tax-returns for Assessment Years 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15 through EVC which are pending due to non-filing of ITR-V Form and processing of such returns–Circular No. 13/2016, Dated 09-05-2016

Under the earlier system of e-filing, income tax returns which were to be filed electronically without a digital signature, taxpayer had to take printout of ITR-V Form and send it to Centralised Processing Centre ('CPC'), Bengaluru within 120 days of transmitting the data electronically. In view of difficulties being faced by the taxpayers in the process, from time to time, relaxation for filing the ITR-V for various Assessment Years was granted so that process of filing the return could be completed. In law, consequences of non-filing the ITR-V within

the time allowed is significant as such a return is/ can be declared Non-est in law and thereafter, all the consequences for Non-Filing a tax return, as specified in the Act follow.

However, inspite of granting relaxation of time for submitting ITR-V Form on various occasions, as mentioned in para above, it's been noticed that a large number of such electronically filed returns still remain pending with the Income-tax Department for want of receipt of a valid ITR-V Form at CPC, Bengaluru from the taxpayers concerned.

The CBDT has examined the matter. With introduction of Electronic Verification Code as one of the possible mode for filing the tax return from the last financial year, the verification of tax return, especially in those cases where the taxpayer earlier had to compulsorily verify the return through submission of ITR-V, has become much more convenient. Therefore, in order to regularise the aforesaid returns which have either become Non-est or have remained pending due to non-filing/non-receipt of respective ITR-V Form, the CBDT, in exercise of powers under section 119(2) (a), in case of returns for Assessment Years 2009-10, 2010-11, 2011-12, 2012-2013, 2013-2014 and 2014-2015 which were uploaded electronically by the taxpayer within the time allowed under section 139 and which have remained incomplete due to non-submission of ITR-V Form for verification, has permitted verification of such returns also through EVC. Such verification process must be completed by 31.08.2016. As an alternative to EVC, the taxpayer is allowed to send a duly signed copy of ITR-V to the CPC, Bengaluru by such date by speed post. In such cases, the CBDT has also relaxed the time-frame for issuing the intimation as provided in second proviso to section 143(1) and directed that such returns shall be processed by 30.11.2016 and intimation of processing of such returns shall be sent to the taxpayer concerned as per the laid down procedure. In refund cases, while determining the interest, provision of section 244A(2) would apply.

In situations where the taxpayer concerned had submitted the ITR-V Form after the permitted time which was earlier being treated as Non-est/ declared Non-est and evidence of same is available with the Department, the same shall be treated as valid compliance of this order and dealt with accordingly. However, this relaxation shall not apply in those cases, where during the intervening period; Department has already taken recourse to any other

measure as specified in the Act for ensuring filing of tax return by the taxpayer concerned after declaring the return as Non-est.

It is also clarified that it is the final opportunity being provided to the taxpayers to regularise their pending income-tax returns pertaining to the Assessment Year's 2009-2010 till 2014-2015 which were filed as per provisions of section 139 but were declared Non-est/have remained pending for verification just for want of receipt of a valid ITR-V Form at CPC, Bengaluru. In case the taxpayer concerned does not get his return regularised by furnishing a valid verification (either EVC or ITR-V) till 31.08.2016, necessary consequences as provided in law for non-filing the return may follow.

In this regard, Principal DGIT(Systems) shall take all necessary measures to duly inform the taxpayers which are proposed to be covered vide this order to complete the verification process within the time being allowed. The taxpayer concerned may also ascertain whether ITR-V has been received in the CPC, Bengaluru or not by logging on the website of Income-tax Department-[http://incometaxefiling.gov.in/e-Filing/Services/ITR-V Receipt Status.html](http://incometaxefiling.gov.in/e-Filing/Services/ITR-V%20Receipt%20Status.html) by entering PAN No. and Assessment Year or e-Filing Acknowledgement Number. Alternatively, status of ITR-V could also be ascertained at the above Website under 'Click to view Returns/Forms' after logging in with registered e-Filing account. In case ITR-V has not been received within the prescribed time, status will not be displayed and further steps would be required to be taken as mentioned above.

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

III. PRESS RELEASES / INSTRUCTIONS / OFFICE MEMORANDUM

1. Release of Data by Income Tax Department-Press Release, dated 29-04-2016

Income Tax Department has released Time Series Data for Financial Year 2000-01 to 2014-15 based on internal reporting/ MIS of the Income Tax Department or figures reported by Controller General of Accounts or data published by other Government agencies along with PAN Allotment Statistics pertaining to Financial Year 2013-14 and Income Tax Return Statistics for Assessment Year 2012-13 (FY 2011-12). The same is available on the official website of the Income Tax Department www.incometaxindia.gov.in for viewing.

The data will be periodically updated to make it as current as possible.

The objective of publishing the said statistics is to encourage wider use and analysis of Income tax data by Departmental personnel as well as various stakeholders including economists, scholars, students, researchers and academicians for purposes of tax policy formulation and revenue forecasting.

2. Taxability of Income/Loss arising from Transfer of Unlisted Shares-Press Release, dated 05-05-2016

The CBDT, vide order dated 2nd May, 2016 have given direction to field formation, with a view to avoid disputes/Litigation and to maintain uniform approach that the income arising from transfer of unlisted shares, irrespective of period of holding, would be taxable under the head 'Capital Gain' except in certain circumstances where the Assessing Officer would examine the issue and take appropriate view.

This order is in continuation to the earlier circular of CBDT (circular No. 6/2016 dated 29.2.2016), wherein position of Income Tax Department regarding transfer of listed shares and securities was spelt out.

With these initiatives, it is expected that there would be much needed certainty and predictability regarding taxability of income arising from transfer of shares. Consequently, due to uniformity in approach, tax disputes and litigation on this issue would reduce substantially.

The full text of the order is available on the official website of the Income Tax Department www.incometaxindia.gov.in for viewing.

3. Protocol for amendment of the Convention for avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains between India and Mauritius-Press Release, dated 10-05-2016

The Protocol for amendment of the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains between India and Mauritius was signed by both countries on 10th May, 2016 at Port Louis, Mauritius. The key features of the Protocol are as under:

i. Source-based taxation of capital gains on shares: With this Protocol, India gets taxation rights

on capital gains arising from alienation of shares acquired on or after 1st April, 2017 in a company resident in India with effect from financial year 2017-18, while simultaneously protection to investments in shares acquired before 1st April, 2017 has also been provided. Further, in respect of such capital gains arising during the transition period from 1st April, 2017 to 31st March, 2019, the tax rate will be limited to 50% of the domestic tax rate of India, subject to the fulfillment of the conditions in the Limitation of Benefits Article. Taxation in India at full domestic tax rate will take place from financial year 2019-20 onwards.

ii. Limitation of Benefits (LOB): The benefit of 50% reduction in tax rate during the transition period from 1st April, 2017 to 31st March, 2019 shall be subject to LOB Article, whereby a resident of Mauritius (including a shell/conduit company) will not be entitled to benefits of 50% reduction in tax rate, if it fails the main purpose test and bonafide business test. A resident is deemed to be a shell/conduit company, if its total expenditure on operations in Mauritius is less than ₹2,700,000 (Mauritian Rupees 1,500,000) in the immediately preceding 12 months.

iii. Source-based taxation of interest income of banks: Interest arising in India to Mauritian resident banks will be subject to withholding tax in India at the rate of 7.5% in respect of debt claims or loans made after 31st March, 2017. However, interest income of Mauritian resident banks in respect of debt-claims existing on or before 31st March, 2017 shall be exempt from tax in India.

iv. The Protocol also provides for updation of Exchange of Information Article as per international standard, provision for assistance in collection of taxes, source-based taxation of other income, amongst other changes.

Major impact: The Protocol will tackle the long pending issues of treaty abuse and round tripping of funds attributed to the India-Mauritius treaty, curb revenue loss, prevent double non-taxation, streamline the flow of investment and stimulate the flow of exchange of information between India and Mauritius. It will improve transparency in tax matters and will help curb tax evasion and tax avoidance. At the same time, existing investments, i.e. investments made before 1.4.2017 have been grand-fathered and will not be subject to capital gains taxation in India.

4. The Income Declaration Scheme 2016 to open from 1st June 2016 - Press Release, dated 14-05-2016

The Income Declaration Scheme, 2016 incorporated as Chapter IX of the Finance Act 2016 provides an opportunity to all persons who have not declared income correctly in earlier years to come forward and declare such undisclosed income(s).

Under the Scheme, such income as declared by the eligible persons, would be taxed at the rate of 30% plus a 'Krishi Kalyan Cess' of 25% on the taxes payable and a penalty at the rate of 25% of the taxes payable, thereby totalling to 45% of the income declared under the scheme.

The scheme shall remain in force for a period of 4 months from 1st June, 2016 to 30th September, 2016 for filing of declarations and payments towards taxes, surcharge & penalty must be made latest by 30th November, 2016. Declarations can be filed online or with the jurisdictional Pr. Commissioners of Income-tax across the country.

- The scheme shall apply to undisclosed income whether in the form of investment in assets or otherwise, pertaining to Financial Year 2015-16 or earlier.
- Where the declaration is in the form of investment in assets, the Fair Market Value of such asset as on 1st June 2016 shall be deemed to be the undisclosed income under the Scheme. However, foreign assets or income to which the Black Money Act 2015 applies are not eligible for declaration under this scheme.
- Assets specified in the declaration shall be exempt from Wealth tax.
- No Scrutiny and enquiry under the Income-tax Act or the Wealth tax Act shall be undertaken in respect of such declarations.
- Immunity from prosecution under the Income-tax Act and Wealth Tax Act is also provided along with immunity from the Benami Transactions (Prohibition) Act, 1988 subject to transfer of asset to actual owner within the period specified in the Rules.
- Non-payment of total taxes, surcharge & penalty in time or declaration by misrepresentation or suppression of facts shall render the declaration void.
- The circumstances in which the Scheme shall not apply or where a person is held to be ineligible are specified in section 196 (Chapter IX) of the Finance Act, 2016.
- Non declaration of undisclosed income under the Scheme, will render such undisclosed income liable to tax in the previous year in which it is detected by the Income tax Department. Other penal consequences will also follow accordingly.

The full text of the Scheme is available on the departmental website www.incometaxindia.gov.in for viewing. The relevant rules and forms for the same are to be notified shortly.



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

A. CENTRAL EXCISE

1. Extension of Time Limit for

registration and payment of Excise duty by Jewellers

CBEC vide Circular No. 1021/9/2016-CX, Dated: March 21, 2016 provided for constitution of a Sub-Committee of the High Level Committee to Interact with Trade & Industry on Tax Laws, chaired by Dr. Ashok Lahiri to study the issues relating to the imposition of excise duty on jewellery including the issues related to compliance procedure for the excise duty, records to be maintained, operating procedures and any other issues that may be relevant..

In this regard, CBEC vide Circular No. 1025/13/2016-CX, Dated: April 22, 2016 has provided that names of the committee members with a request that all associations may submit representations before the subcommittee in writing and the all India associations would need to state their cases in person.

Further CBEC vide Circular No. 1026/14/2016-CX, Dated: April 23, 2016 has provided that now a jeweller may take central excise registration of an establishment upto 01.07.2016. However, it is to be noted that excise duty would be payable w.e.f from 1st March 2016 itself. Further, jewellers may make the payment of excise duty for the months of March, 2016; April, 2016 and May, 2016 along with the payment of excise duty for the month of June, 2016.

[Circular No. 1025/13/2016-CX, Dated: April 22, 2016 & Circular No. 1026/14/2016-CX, Dated: April 23, 2016]

2. Disposal of Call Book cases which have been decided by Courts or Board

CBEC has specified following category of cases which need to be transferred to Call book:

- i. Cases in which the department has gone in appeal to the appropriate authority,
- ii. Cases where injunction has been issued by Supreme Court/High Court/CEGAT, etc.

- iii. Cases where the board has specifically ordered the same to be kept pending and to be entered into the Call Book.
- iv. Cases referred to Settlement Commission.

In this regard, Central Government *vide Circular No. 1028/16/2016-CX, Dated: April 26, 2016* has provided that in respect of cases involving Central Excise duty, Customs duty and Service Tax the following cases will be taken out of Call Book and adjudicated where:-

- a) The issue involved has either been decided by Hon'ble Supreme Court or Hon'ble High Court and such order of the Hon'ble High Court has attained finality or,
- b) Board has issued new instruction or circular clarifying the issue involved, subsequent to issue of the order to transfer the case to the Call Book.

[Circular No. 1028/16/2016-CX, Dated: April 26, 2016]

3. Duties of Excise to include Infrastructure Cess for export purposes.

Central Government *vide Notification No. 26/2016-Central Excise (N.T), Dated: May 5, 2016* has provided that for export under bond without payment of duty (N. Nos. 42/2001-CE(NT) & 43/2001-CE(NT)), for export to countries other than Bhutan and rebate allowed therein (N. Nos. 19/2004-CE(NT) & 21/2004-CE(NT)), duties of excise would include "Infrastructure Cess leviable under clause 159(1) of the Finance Bill, 2016"

[Notification No. 26/2016- Central Excise (N.T), Dated: May 5, 2016]

B. CUSTOMS

4. Insistence on documents of registration where not required

Presently, importers were facing a problem regarding the clearance of products not specified under the Legal Metrology Act, 2009 as the Customs officers were insisting presentation of registration documents from importers on products which do not fall under the purview of the Legal Metrology Act, 2009 and rules made thereunder.

In this regard, Central Government *vide Instruction F. No. 401/69/ 2016-Cus III Dated: April 22, 2016* has advised its Custom Officers need not insist for such registration documents wherever it is not required.

[Instruction F. No. 401/69/ 2016-Cus III Dated: April 22, 2016]

5. Relaxation in Know Your Customer (KYC) norms

Central Government *vide Circular No. 7/2015-Customs, Dated: February 12, 2015* provided that only one identification/document instead of minimum 2 documents for proof of identity' and 'proof of address' would be collected from individual importer/exporter at the time of delivery/pick up of shipment in regards to fulfillment of KYC norms by authorised courier companies.

The aforesaid relaxation has given rise to a concern for authorised courier companies that many a times, *individual importer/exporter* possess proof of identity in the form of prescribed documents but the address mentioned in the document is not the address where the individual is staying. Individuals often find it difficult to produce present/current proof of address.

In this regard, Central Government *vide Circular No. 13/2016-CUS, Dated: April 26, 2016* has provided that in cases where the proof of present address is not available with the individual, the proof of identity collected at the time of delivery along with the address recorded for the delivery purpose by the courier companies would suffice for KYC verification. The courier company needs to keep a record of the address where the goods are delivered and the same would be treated as proof of address of the individual importer/exporter.

The above dispensation for proof of address would be available only in respect of individuals for import of documents, gifts/samples/low value dutiable consignments upto the maximum CIF value limit of ₹50,000/-. As regards, documents for KYC verification in case of others (other than individual), the existing instructions will remain in force.

[Circular No. 13/2016-CUS, Dated: April 26, 2016]

6. Regarding vessels carrying exclusively coastal goods

Central Government *vide Notification No. 56/2016-Customs (N.T.), Dated: April 27, 2016* has granted exemption to vessels carrying exclusively coastal goods from the following provisions of the Customs Act, 1962:

- a. Section 92: Entry of coastal goods
- b. Section 93: Coastal goods not to be loaded until bill relating thereto is passed, etc.

- c. Section 94: Clearance of coastal goods at destination
- d. Section 95: Master of a coasting vessel to carry an advice book
- e. Section 97: No coasting vessel to leave without written order
- f. Section 98(1): Sections 33, 34 and 36 to apply to coastal goods as they apply to imported goods or export goods.

Further, Central Government *vide Notification No. 57/2016-Customs (N.T.), Dated: April 27, 2016* has provided that for the vessels carrying exclusively coastal goods the following sections of the Customs Act, 1962 would apply:

- a. Section 30: Delivery of import manifest or import report
- b. Section 41: Delivery of export manifest or export report

However, it is important that the vessels carrying exclusively coastal goods must be operating from berths used by vessels carrying imported goods or export goods and a coastal manifest is delivered to the proper officer by the person-in-charge of such vessel or his agent prior to the arrival/departure of the vessel in the specified format.

Since the present procedure governing the movement of coastal goods were restrictive there was a need to relax the procedure further so as to facilitate faster movement of the coastal goods, bringing down the transaction cost and also give fillip to the developmental activities in the coastal cities. Further, the cabotage restrictions have been relaxed to encourage movement of coastal goods. Vessels like RoRo (Roll on Roll off), PCC (Pure Car Carriers), Pure Car and Truck Carriers (PCTC), LNG vessels, Over-Dimensional Cargo or Project Cargo carriers etc are covered under the new relaxed policy guidelines for a period of five years i.e. up to 1st September 2020.

In this regard, *Circular No. 14/2016-Cus, Dated: April 27, 2016* has been issued to provide the relaxed procedure and the necessary legislative relaxation effected by the issuance of Notification Nos. 56/2016 - Customs (N.T.), & 57/2016-Customs (N.T.) Dated: April 27, 2016.

Salient features of this circular are:

- a. The arrival and departure coastal manifests needs to be prepared in duplicate. The original will be submitted to the proper officer and duplicate would be retained by the Master of

the vessel or his agent. The arrival manifest is to be submitted before the arrival of the vessel and the departure manifest is to be submitted before the departure of the vessel.

- b. Vessels like RoRo (Roll on Roll off), PCC (Pure Car Carriers), Pure Car and Truck Carriers (PCTC), LNG vessels, Over-Dimensional Cargo or Project Cargo carriers etc. are covered under the new relaxed policy guidelines for a period of five years i.e. up to 1st September 2020.
- c. The revised procedure will apply to Indian vessels, Indian flag foreign vessels or foreign vessels eligible for cabotage relaxation *vide No. SR 14020/5/2009-MG/CS/-Vol. VII dated 2.9.15* issued by the Ministry of Shipping. In the case of cabotage covered foreign vessels, the relaxation will be co-terminous with the said order of the Ministry of Shipping.
- d. The container carrying coastal goods will be clearly marked with the words "For coastal Carriage Only" on all sides. There will be no examination of the coastal goods, the container will be sealed with tamper proof one time bottle seal and then the same can be loaded on to the vessel.
- e. Non-containerised cargo will also be allowed to be loaded on to the vessel provided it is clearly marked on the packing 'For Coastal Carriage Only' to make it easily identifiable.
- f. Random checks may be carried out by Preventive Officers (with prior approval of AC/JC of preventive wing) to ensure that no export goods or imported goods are inadvertently or by intention loaded onto such coastal vessels.

[Notification Nos. 56/2016 - Customs (N.T.), & 57/2016-Customs (N.T.) Dated: April 27, 2016, Circular No. 14/2016-Cus, Dated: April 27, 2016]

7. Village Sachana, Ahmedabad notified for loading/unloading of export/ imported goods

CBEC vide Notification No. 59/2016-Customs (N.T.), Dated: April 27, 2016 has declared the following as Inland Container Depot in State of Haryana for the purpose mentioned against it:

S. No.	Place	Purpose
1.	(xiii) Village Sachana, Viramgam, District Ahmedabad.	Unloading of imported goods and loading of export goods

[Notification No. 59/2016-Customs (N.T.), Dated: April 27, 2016]

C. VALUE ADDED TAX**TELANGANA VAT:****8. Mandatory raising of e-waybills by dealers of the 7 Divisions of Twin cities and R. R. District from 01.04.2016 onwards**

The Telangana Government has clarified that e-waybills, which are to be carried by the transporter of the goods vehicle are mandatory for dealers of the 7 Divisions of Twin cities and R. R. District from 01.04.2016. In other words, use of manual waybills will not be permitted henceforth. Further, any stock of physical way bills lying with dealers of 7 Divisions of Twin cities and R. R. District will be treated as invalid. Further, such dealers are also directed to upload utilisation of all manual waybill obtained till date.

[Circular-CCT's Ref No. Enft/D2/172/2010, dated 13th April, 2016]

9. Due date for payment of tax deduction in case of lease agreements

Sub-section (3E) has been inserted under Section 22 (due date for payment of tax) stating that the tax deducted by transferee on the lease consideration paid to the transferor shall be remitted to the State Government on the immediate next working day from the date of its collection.

[Act No. 10 OF 2016]

HARYANA VAT:**10. Date for filing the return of the quarter ending 31.03.2016 extended upto 31.07.2016**

The due date for filing online quarterly returns for the quarter ending 31.03.2016 has been extended from 30.04.2016 to 31.07.2016 due to the reservation agitation in the State in February, 2016. The return can be filed by the affected dealers who have lodged valid claim for compensation within the prescribed period before the appropriate authority for this purpose.

[Order dated 18th April, 2016]

MAHARASHTRA VAT:**11. Increase in the turnover limit for opting Retailers Composition Scheme & other provisions**

The sales turnover limit for the eligibility of dealer to opt for Retailers Composition Scheme has been increased from ₹50 lakhs to ₹1 crores from 01.04.2016.

A dealer who has not opted for this composition scheme earlier but desires to opt shall upload an application in Form 4A on www.mahavat.gov.in on or before 30.04.2016. Further, a retailer who had already opted for this Scheme need not apply again. Furthermore, from 01.04.2016 the Retailer Composition Dealer shall file returns as per the provisions of rule applicable to any other non-composition dealer.

[Trade Circular No. 9T of 2016 dated 22nd April, 2016]

12. Amendments made to the Maharashtra Value Added Tax Act, 2002

The following amendments proposed by Maharashtra Bill No. L. A. BILL No. XVIII of 2016 has received the assent of the Governor on 26th April 2016 and has made following modification in Maharashtra Value Added Tax Act, 2002:

Section 16: Rejection/Cancellation of Registration Certificate

- The prescribed authority may pass a rejection order without giving an opportunity of being heard but after intimating the applicant, if the registration application is:
 - not complete or
 - documents required have not been uploaded on www.mahavat.gov.in or
 - documents are inconsistent or
 - prescribed conditions are not fulfilled
 Further, if the applicant complies with all the discrepancies intimated within 30 days from the date of intimation of rejection order and if such compliance is approved by the prescribed authority then the application so rejected, shall stand restored. However, the applicant shall be eligible to rectify the discrepancies only once.
- If any person has obtained registration by fraud or by misrepresentation of facts then the Commissioner may cancel the registration certificate with effect from such date as he may deem fit after giving a reasonable opportunity of being heard to the dealer.

Section 20 (Returns & Self-assessment)

A revised return for any omission or incorrect statement may be furnished at any time before a notice of assessment is served or before the expiry of a period prescribed for furnishing the audit report i.e. within 9 months and 15 days of the end of the

year (earlier 10 Months) to which the report relates to, whichever is earlier.

Section 23 (Assessment)

Returns for the period commencing on or after 01.04.2012 and filed within the due date would be assessed on the basis of such return. Further if assessment order is not made within 4 years from the end of the year to which such returns relate then such returns shall be deemed to have been accepted.

An intimation of assessment proceeding shall be communicated to the dealer within 6 months before the date of expiry of the period of limitation for assessment. If the dealer agrees with the intimation and files the return or revised return along with full payment of tax and interest, then a confirmation order shall be passed and the assessment proceedings shall be deemed to have been closed.

Section 26 (Appeals)

An appeal can also be preferred against the order of Advance Ruling Authority.

A new **Section 28A (Determination of tax liability as per fair market price)** has been inserted by providing that during the course of any proceedings if any transaction is entered for a sale price which is below the fair market price (FMP) so as to pay less tax, then the Commissioner shall determine the tax liability as per the FMP while passing an order in such cases.

Section 31 (Deduction of tax at source)

It has been provided to transfer the credit of TDS by the contractor to the subcontractor for the TDS deducted by principal on payment made to a contractor. Further, the employer awarding the contract shall be liable to obtain registration for TDS & such TDS return shall be filed by him. No registration is required to be obtained by an employer if he is already registered under the Act. Penalty upto the amount of tax deductible may be imposed for not obtaining such registration. A further penalty of upto ₹5,000 may be imposed for failure to submit the return. The employer may also furnish a revised return on or before the expiry of a period of 9 months from the end of the year to which the return relates.

Section 55 (Advance Ruling)

This section has been substituted with the following:

- The Commissioner or the ARA shall make an advance ruling within 90 days from the date of acceptance of the application for the questions prescribed.
- Application may be withdrawn within 30 days from the date of its submission.
- No application shall be accepted where the question raised in the application:
 - is already pending before the Tribunal/ Bombay High Court/Supreme Court or
 - involves a transaction which is designed apparently for the avoidance of tax.
- The acceptance of the application shall be communicated within 30 days from the date of submission.
- The Advance Ruling (AR) shall be binding on all the officers, appellate authority or on the ARA/ Commissioner for similarly situated persons.
- The AR shall not affect the liability of the applicant or of any other person similarly situated in respects of any sale or purchase affected prior to the Advance Ruling.
- The appeal/rectification against the AR order can be filed within 30 days.

Section 70 (Power to collect statistics)

A sub-section (3) has been inserted stating that any person who fails to furnish information shall be liable to a penalty of a sum not exceeding ₹1 lakh and in case of continuing default for a period beyond 2 months then a further penalty of ₹1,000 for every day.

Section 56 (Determination of disputed questions) has been deleted.

[Maharashtra Act No. XV OF 2016]

13. Amendments made to Maharashtra Value Added Tax Rules, 2005

Following amendments have been made in the Maharashtra Value Added Tax Rules, 2005 which is effective from 01.04.2016:

Rule 8 (Application for registration of dealers liable to tax)

Any dealer liable to pay tax shall (including

voluntary registration) submit a registration application electronically on www.mahavat.gov.in in Form 101 along with Form 105 (to be submitted electronically) declaring the name of manager of business or authorised person and PAN. Hitherto only Form 101 was required to be submitted.

As such, every application for registration shall be made electronically (even where passport photo is to be affixed). Further, a proof of having current account in bank & PAN is not required to be submitted to the registering authority while making such application.

Rule 17 (Submission of Returns)

It has been provided that return forms will be available on www.mahavat.gov.in in the electronic form only i.e. no hard copies of the same can be obtained from Department.

A dealer who is holding Certificate of Entitlement under the Package Scheme of Incentives except the Power Generation Promotion Policy, 1998, and if he is liable to file return then he shall file Form 231 (normal return) in addition to the return in Form 234 (return for dealers holding certificate of entitlement).

From 01.04.2016 returns are to be submitted electronically on the website.

- i. Sub-rule (4A) has been inserted stating that for the period commencing from 01.04.2016, a monthly return is to be filed within 21 days by the registered dealers if during the previous year his-
 - tax liability had exceeded ₹10 lakhs or,
 - refund had exceeded ₹1 crore.
- ii. Other registered dealers shall file a quarterly return within 21 days.
- iii. Dealers who have not opted for the composition scheme and are not required to file Audit Report shall file the return along with other details of the entire year in Annexures appended to Form 704 (Audit Report).

Rule 17A (Electronic Filing)

Any Document submitted electronically on the www.mahavat.gov.in shall be deemed to have been submitted to the registering authority unless expressly provided for submission.

Rule 18 (Special provision for first and last return in certain cases and for dealers under the Package Scheme of Incentives)

- i. A sub-rule (1A) has been inserted stating that where a dealer who obtains registration on or after 01.04.2016 and -
 - has not applied for registration within 30 days of the prescribed limit of turnover, then for the unregistered period the dealer is required to file the return from the first day of sales liable to VAT or purchases made till the date he obtains Registration Certificate. Thereafter, for the registered period the first return will be filed from the date of effect of registration.
 - has applied for registration within the above time limit then the first return shall be for the month in which he makes sale liable to VAT or for which he can avail credit of the taxes paid on his purchases. Thereafter, he shall file the returns from the date of obtaining registration certificate.
- ii. In case of registration cancellation w.e.f. 01.04.2016, the Annexure in Form 704 is required to be filed with the other details for entire year or for the part of the year.
- iii. A sub-rule (3A) has been inserted stating that w.e.f. 01.04.2016-
 - A dealer to whom Certificate of Entitlement (excluding the Certificate of Entitlement granted under the Power Generation Promotion Policy, 1998) has been granted then he shall also file a return for the period starting from the first day of the quarter/month till the day he obtains the certificate. Further, if the dealer has executed any works contract or has transferred the right to use any goods or has part of the business under composition, then he shall file a monthly return in Form 233 in addition to Form 234.
 - The last return shall be filed for the period starting from 1st day of the month till the date on which certificate ceases. The next return will be for the period from the date on which such certificate ceases till the end of the month.
 - For the immediately succeeding year the dealer will file return according to sub-rule (4A) of Rule 17 as mentioned above.

- The above provisions shall also apply to a dealer to whom a Certificate of Entitlement has been granted by way of deferment of payment of tax.

Rule 45 (Method of Payment)

From 01.04.2016 a dealer may electronically get a copy of the acknowledgement of the payment made.

[Notification No. VAT.1516/CR-52/Taxation-1.- dated 22nd April, 2016]

14. Settlement of Arrears in Dispute

Following are the salient feature of the scheme for settlement of arrears in dispute:

- **Time limit for making application-** For statutory orders passed on or before 31.03.2012, an application in Form-I to be submitted on or before 30.09.2016.
- **Conditions-** The applicant who desires to avail of the benefit shall first withdraw the appeal, or proceeding. Further, the application shall be accompanied by copy of statutory order, stay order granted, order of withdrawal of the appeal, challans showing payment of the requisite amount & amount of undisputed arrears.
- **Procedural aspect-**
 - On receipt of the application the designated officer shall verify the contents of the said application as well as requisite proof;
 - If the application is defective then within 7 days from the receipt, a defect notice in Form-II will be issued.
 - If the applicant within 15 days has complied with the defect notice and makes the payment, if any, then a settlement order shall be passed within 30 days.
 - If the applicant fails to comply with the defects then after providing the opportunity of hearing, a rejection order may be passed within 30 days from the last date provided for compliance.
- **Settlement order can be revoked, if an applicant has obtained benefits of settlement** by suppressing material information or furnishing false information, or if any concealment of any particulars is found during search & seizure proceedings.

[Trade Circular No. 10T of 2016 dated 3rd May, 2016]

15. Amendment to the Maharashtra Value Added Tax Rules, 2002

The Maharashtra Government *vide Notification No. VAT-1516/C.R. 64/Taxation-1.- dated 29th April, 2016* has amended the following rules of Maharashtra Value Added Tax Rules, 2005; The major highlights of the changes are as follows :

Rule 11 (Cancellation of registration application)

The effective date of cancellation of registration in case of fraud & misrepresentation shall be the date Commissioner deems fit after making inquiry.

Rule 40 (Tax deduction at source)

- Every employer deducting tax at source shall file a return in e-Form 424 within 21 days from the end of the month in which tax is so remitted into the Government Treasury (tax amount to be remitted within 21 days from end of the month during for which tax is so deducted). Hitherto this return was required to be filed within 3 months of the end of the year to which the return relates.
- Clause 1(e) has been inserted to provide that the principal contractor who desires to transfer the credit to the sub-contractor shall file a return in e-Form 424A & issue a certificate in e-Form 402A to the sub-contractor for transferring such credit. Such principal contractor shall maintain a separate account in e-Form 404 A for each year containing details of credit so transferred.
- Where the Commissioner after conducting enquiry is satisfied that the contract is not a works contract, may grant the certificate in e-Form 411.

Rule 40A (Tax collection at source)

Every authority or agency issuing a tax collection certificate shall submit a return in e-FORM 423 within 21 days from the end of the month in which amount of sales tax is so collected. Earlier the return was to be filed within 3 months of the end of the year to which the return relates.

Rule 63 (Application under Advance Ruling)

This rule has been substituted with the following:

- The application for advance ruling shall be made

in e-Form 703 along with the prescribed fees (non-refundable) on the following questions, whether:

- a person, society, club or association or any firm or any branch or department of any firm, is a dealer or
- a person or dealer is required to be registered or
- any activity done to any goods amounts to manufacture or
- any transaction is a sale or purchase & if yes then what shall be the sale price or the purchase price or
- any person or dealer is liable to pay tax or if tax is payable then at what rate or
- set-off can be claimed on any particular transaction and if it can be claimed then what are the conditions and restrictions.
- The concerned officer shall submit a report to the Commissioner or the Advance Ruling Authority in e-Form 703A. Further, the communication regarding acceptance of the application shall be in Form 703B.
- The notice for giving reasonable opportunity of being heard before making rectification of order shall be in e-Form 703C. The date fixed for compliance shall not be earlier than 15 days from the date of service.
- The application for rectification of mistake shall be made in e-Form 703D.
- The notice for calling the record of any Advance Ruling issued shall be in Form 703E.

Rule 73 (Fees)

A fee of ₹2,000 (earlier ₹500) is payable while making an application under Advance Ruling.

[Notification No. VAT-1516/C.R. 64/Taxation-1.- dated 29th April, 2016]

16. Proof of permanent place of residence is required for the purpose of Registration

Due to the hurdles faced by the businessman in providing one of the documents mentioned in table below as a proof permanent place of residence (in applicant's name), the Maharashtra Government has provided relaxation by directing that any of the two documents listed under the table may be provided as a proof of place of residence.

Earlier it was mandatory to submit 1 out the following as a proof of place of residence	Now any 2 out of the following may be submitted
Latest paid electricity bill	Ration card
Co-operative Society share certificate	Valid Indian Passport
Latest Society Maintenance Bill	Driving license
Property card or latest receipt of property tax of Municipal Corporation/ Council/Gram Panchayat	Election photo identity card
Consent letter from family member (owner/co-owners of premises) along with copy of documents showing signature of consenter/s, proof of ownership of consenter/s and signature proof of consenter/s	Aadhaar Card
	Latest paid electricity bill
	Co-operative Society share certificate
	Latest Society Maintenance Bill
	Property card or latest receipt of property tax of Municipal Corporation/ Council/ Gram Panchayat
	Consent letter from family member (owner/co-owners of premises) along with copy of documents showing signature of consenter/s, proof of ownership of consenter/s and signature proof of consenter/s
	Latest copy of MTNL/ BSNL landline bill
	First page of Passbook of Saving Bank Account or Certificate showing the address of the applicant issued by the manager of any Nationalised Bank

Legal Update

Earlier it was mandatory to submit 1 out the following as a proof of place of residence	Now any 2 out of the following may be submitted
	Latest copy of bill of domestic gas connection

[Trade Circular No. 15T of 2016 dated 9th May, 2016]

17. Unique ID in the form of Tax Identification Number

The Maharashtra Government has clarified that scheme of Unique TIN is also applicable to PTRC under The Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975 and to the Maharashtra Purchase Tax on Sugarcane Act, 1962 along with other statutes like VAT, CST, Luxury Tax Acts, and Maharashtra Tax on the Entry of Goods into Local Areas Act, having format of the TIN for PTRC as '27ab0010216P' and for SCPT as '27ab0010216S' respectively, where 27 is State Census Code, 'ab' is check digit & 0010216 is serial number.

[Trade Circular No. 16T of 2016 dated 9th May, 2016]

18. Designation of Wednesday as Taxpayers' Day

The Maharashtra Government has designated Wednesday (2 pm to 5 pm) as Taxpayers' Day wherein Zonal/Divisional/Unit heads of all offices will meet the taxpayers/other stakeholders in their chambers without any prior appointment to address their grievances relating to Sales Tax expeditiously. Further, it is declared that Service Cell Meeting of all dealers and their representatives will be held on first Saturday of third month of even quarter (i.e. June, September, December and March) at all the divisional levels.

[Trade Circular No. 17T of 2016 dated 9th May, 2016]

RAJASTHAN VAT:

19. Security to be furnished in the form of cash through e-GRAS

The Rajasthan Government has made it possible for furnishing of security deposit by way of electronic payment through e-GRAS wherever it was required to be furnished in cash.

[Notification No. F. 16(115) VAT/Tax/CCT/2016-17/152 dated 22nd April, 2016]

20. Criteria for selection of cases for Post Registration Verification process

The Rajasthan Government has provided the criteria for selection of cases for enquiry to be made within 48 hours of issuance of registration certificate. The enquiry will be made if the Risk Weightage crosses the value of 110:

Sl. No.	Cases-	Points for Yes	Points for No
1.	If the dealer is a Non-Resident Dealer or if the Partner address belongs to is outside the state of Rajasthan (ignore in case of Public Limited Company)	100	0
2.	If dealer was registered earlier in VAT or he has specified the details of his closed business	50	0
3.	If more than one business running at the same business place	50	0
4.	If difference between Date of Commencement of Business and Date from which liable to registered • Upto 6 months - 10 points • More than 6 months and less than 1 year - 20 points • More than 1 year - 50 points		
5.	In case of Cash/NSC/Bank Guarantee/Surety • Cash - 50 points • NSC-50 points • Bank Guarantee - 0 point • Surety - 0 point		

Maximum Risk Weightage = 300

Minimum Risk Weightage = 10

[Notification No. F. 16(115) VAT/Tax/CCT/2016-17/159 Dated: 22nd April, 2016]

21. Cancellation of wrongly generated Declaration Form/Certificates

Assessing authorities may cancel CST declaration forms beyond 6 months from the date of generation after approval of the Deputy Commissioner (Administration) having jurisdiction. The detailed process is as follows:-

- Assessing Authority shall enter the date of application in "Cancel CST Forms" & if the cancellation is within 6 months then the system will allow such cancellation.

- A manual application for permission to cancel CST declaration Forms after 6 months shall be submitted to the Deputy Commissioner (Administration) which will be processed manually.
- If the date of cancellation application is beyond 6 months then the system shall not allow the Assessing Authority to cancel CST forms until the order number and order date of the Deputy Commissioner (Administration) has been entered allowing the dealer for submission of cancellation application of CST forms.

[Circular No. 1/2016-17 No. F.16 (97)/Tax/CCT/14-15/183-184 dated 26th April, 2016]

22. Procedure for post registration verification

The Rajasthan Government has provided the verification procedure to be followed, after granting registration which is as follows :

- The dealer will be intimated about the concerned inspecting officer through SMS and e-mail.
- The Officer shall visit the principle place of business of the dealer to verify the facts and statements (e.g. place of business mentioned, additional places of business, liable to register on a prior date, principal place is owned/rented/leased, etc.) & the registration documents uploaded with the application for registration.
- The officer conducting verification shall submit the inspection report online on RajVISTA within 48 hours (2 working days) which would be available to view by the dealer in his profile section of website.

[Clarification No. F.16 (4)/Tax/CCT/2006/276 dated 29th April, 2016]

23. Process of application for new-registration

Following is the process for filing application for new registration:

- The dealer shall apply in "New Registration Application" provided under the head "e-Registration (New TIN)" on www.rajtax.gov.in. For reference, a hand book is also provided under the head "New Registration Application".
- Upload digital photograph along with scanned copy of required documents with Application in Form VAT-01.
- Form shall be digitally signed and security deposit shall be furnished in cash by e-Payment through e-GRAS. If the application in Form

VAT-01 is not digitally signed, then signed Acknowledgement of the said Form has to be submitted within 15 days of submission of online application. Further, if the security deposit is not furnished in cash, then the dealer shall have to submit a security bond or bank guarantee or NSC.

[Circular No. 02/2016-7 F.16 (95)/Tax/CCT/14-15/201 dated 26th April, 2016]

24. Process for filing of Online Memorandum for Appeal to Appellate Authority

Following is the process to submit online Memorandum for Appeal (Form VAT-27):

- A registered dealer may file an appeal online in Form VAT-27 only after successful login on www.rajtax.gov.in (link: <http://rajtax.gov.in/vatweb/Appeal.do?dispatch-loadappealForm>). An unregistered dealer will use the link named "application for appeal by unregistered dealer" provided under e-Services.
- Where a dealer is also filing application for stay of demand recovery then he shall have to select "yes" provided in Form VAT-27 itself. Further, he may himself select location of his Appellate Authority provided in the "Appellant location" field.
- It is not mandatory to upload supporting documents along with the form of appeal. However, the documents uploaded should not exceed 5MB of size.
- After filing of the online appeal, a hard copy along with all the necessary documents has also to be submitted to the concerned appeal office. After submission, an acknowledgement shall be issued.
- An SMS will be sent to appellant & his representative on admission/ rejection of Memorandum of Appeal.
- The appellant may know the status of his appeal under the head "Track status for Appeal" provided under important activities & may also view/download the cause list provided in the field "cause list for appeal" under e-services.

[Circular No. 03/2016-17 F.16 (95)/Tax/CCT/14-15/210 dated 26th April, 2016]

25. Procedure to generate online template for Form VAT-72

It has been already provided that a dealer who claims partial or full exemption from tax payment on sale of

Legal Update

goods to another dealer in the State shall furnish a duly filled declaration in e-Form-72 obtained from the purchasing dealer. Now, the following procedure has been provided for generating the same:

- The purchasing dealer shall download the template and fill in the necessary details for generation of Form VAT-72. He shall duly sign the Form and will give it to the selling dealer.
- Selling/Purchasing dealer may claim exemption from tax payment by submitting the Form generated to his assessing authority.

[Circular No. 05/2016-17 F.16 (95)/Tax/CCT/14-15/397 dated 7th May, 2016]

CHHATTISGARH VAT:

26. Exemption from payment of tax for dealers under Electronics, IT and ITeS Investment Policy

The Chhattisgarh Government has exempted the following dealers from the entire amount of tax payment subject to restrictions and conditions specified in the below table:

Class of Dealers	Period for Exemption	Restrictions & Conditions
Dealer establishing units in the State under the Electronics, IT and ITeS Investment Policy of Chhattisgarh, 2014-19.	For a period of 5 years from the date of commencement of commercial production or up to the date of coming into force of GST in the State, whichever is earlier.	All provisions of the Electronics, IT and ITeS Investment Policy of Chhattisgarh, 2014-19.

[Notification No. F-10-14/2016/CT/V (50) dated 13th April, 2016]

ANDHRA PRADSH VAT:

27. Tenders for Government Authorities will not include the tax element until its finalisation

Government Departments/ PSUs and other Government Bodies are directed to exclude the tax element from the prices quoted by the bidders in the tenders for procurement of goods. After the tenders are finalised, the goods will be supplied at the quoted price after including the tax separately i.e. VAT rate or CST rate, as the case may be. If the supplier is registered under the APVAT then tax may be deducted while making payment of bill and remit it to the Commercial Taxes Department.

[Notification G.O.MS.No. 170 dated 26th April, 2016]

DELHI VAT:

28. Delhi 2016-17 Budget Highlights

Following are the proposals made in the Budget 2016-17:

- A Scheme called 'Bill Banwao Inaam Pao' has been proposed in the bill. Under this scheme, consumers effecting purchases can send the snapshot of retail bill/invoice to the Department through a mobile application for verification of sale/purchase transactions and compliance. Further, 1% of the entries will be shortlisted for granting awards and prize money thereby incentivising the participation of consumers.
- A unique Reward scheme has also been proposed to acknowledge and encourage market associations and trade associations. Such associations will get 10% of the revenue generated over and above the target set for the year. Besides this, top 10 performing market association will get cash reward of ₹5 lakh each. The award money will be utilised for overall improvement of the market and maintenance of public conveniences, beautification, repairs, etc.

29. Display of Registration Certificate at principal place of business

Delhi Government has directed ACs/ward incharges to ensure that all the registered dealers have prominently displayed the registration certificate at their principal place of business and a certified copy at all other places of business in Delhi. Further, the dealer shall also prominently display his TIN and ward number outside the main entrance of all places of business in Delhi.

[Circular No. 4 of 2016-17 F.3(667)/Policy/VAT/2016/200-205 dated 10th May, 2016]

GOA VAT:

30. Goa 2016-17 Budget Highlights

Following proposals have been made by Budget 2016-17:

- While preferring Second Appeal the appellant has to deposit an amount of 50% of the disputed dues but no such money is collected for filing first appeal. Therefore, it has been proposed to provide a deposit of 10% of the disputed dues in First Appeal.
- As the State moves towards the GST regime, it is proposed to notify a scheme to adjust and

refund, excess ITC, in varying proportions during the forthcoming years for settlement of disputes and refund of excess Input Tax Credit (ITC) under Goa VAT Act, 2005.

- Presently excess of ITC against tax liability is not allowed to be refunded and provided for carry forward of the excess ITC. Therefore it has been proposed to provide for refunds and expeditious disposal of refund cases upon submission of all details and documentation required.
- It has been proposed to formulate a scheme for new units or start-ups or those who are in expansion, including existing units, in order to provide incentives based upon their capital investment, employment generation and procurement of raw materials locally.

KERALA VAT:

31. Photographs need to be affixed on physical copy of Certificate

KVATIS already provides an e-platform to the dealers for registration, renewal of registration on payment of fee, e-Payment etc. Since electronic records are available evidencing renewal of registration but the dealers who needs a fresh physical copy are insisted to affix the photographs in the certificate.

[Circular NO.4/2016 C1/10178/16/CT dated 29th April, 2016]



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

A. Acceptance of deposits by Indian Companies from a person resident outside India for nomination as Director

A.P. (DIR Series) Circular No. 59 dated April 13, 2016

In terms of Regulation 3 of Notification No. FEMA 5(R)/2016-RB dated April 01, 2016 no person resident in India shall accept deposit from, or make any deposit with, a person resident outside India. Under section 160 of the Companies Act, 2013, it is provided that a person who intends to nominate himself or any other person as a director in an Indian company is required to place a deposit with the said company. In this context, it has come to the notice of the Reserve Bank that there is ambiguity whether such deposits will require any specific approval from

the Reserve Bank under Notification No. FEMA 5(R), in cases where the deposit is received from a person resident outside India.

It is hereby clarified that such deposits with Indian companies in accordance with Section 160 of Companies Act, 2013 is a current account transaction and as such does not require any approval from Reserve Bank. Further, all refunds of such deposits, arising in the event of selection of the person as director or getting more than 25% votes, shall be treated similarly.

B. Overseas Direct Investment – Submission of Annual Performance Report (APR)

A.P. (DIR Series) Circular No. 61 dated April 13, 2016

It is been observed that:

- Indian Parties (IP)/Resident Individuals (RI) are either not regular in submitting the APR or are submitting it with delay. This is not in line with Regulation 15 of the Notification, *ibid*.
- Remittance/s and other forms of financial commitment are often facilitated by the designated Authorised Dealer bank (AD bank) under automatic route even though APR in respect of all overseas JV/WOS of the IP/RI effecting such remittance/s have not been submitted. This is in contravention of Regulation 6(2)(iv) of the Notification, *ibid*.

In order to provide greater capability to track submission of APRs of AD Banks and also improve compliance level in matter of submission of APRs by the IPs/RIs, it is now advised as under:

- The online OID application has been suitably modified to enable nodal office of the AD bank to view outstanding position of all the APRs pertaining to the applicant including those of JV/WOS for which it is not the designated AD. Accordingly, AD before undertaking/facilitating any ODI related transaction on behalf of the eligible applicant, should necessarily check with its nodal office to confirm that all APRs in respect of all JV/WOS of the applicant has been submitted.
- Certification of APRs by the Statutory Auditor or Chartered Accountant need not be insisted upon in the case of Resident Individuals. Self-certification may be accepted;
- In case multiple IPs/RIs have invested in the same overseas JV/WOS, the obligation to submit APR shall lie with the IP/RI having maximum

stake in the JV/WOS. Alternatively, the IPs/ RIs holding stake in the overseas JV/WOS may mutually agree to assign the responsibility for APR submission to a designated entity which may acknowledge its obligation to submit the APR in terms of Regulation 15 (iii) of Notification, *ibid*, by furnishing an appropriate undertaking to the AD bank;

- d. An IP/RI, shall submit, to the AD bank every year, an APR in Form ODI Part II in respect of each JV/WOS outside India and other reports or documents by 31st of December each year or as may be specified by the Reserve Bank from time to time. The APR, so required to be submitted, shall be based on the latest audited annual accounts of the JV/WOS unless specifically exempted by the Reserve Bank.

Any non-compliance with the instruction relating to submission of APR shall be treated as contravention of Regulation 15 of the Notification No. FEMA 120/RB-2004 dated July 07, 2004 as amended and viewed seriously.

Master Direction No. 15/2015-16 dated January 1, 2016 and Master Direction No. 18/ 2015-16 dated January 1, 2016 are being updated to reflect the changes.

C. Overseas Direct Investment–Rationalisation and reporting of ODI Forms

A.P. (DIR Series) Circular No. 62 dated April 13, 2016

In order to capture all data pertaining to the IP undertaking ODI as well as the related transaction, it has been decided to subsume Form ODI Part II within Form ODI Part I. Thus the Form ODI will have five sections instead of six.

The rationalised and revised Form ODI (**Annex I**) will now comprise the following parts:

Part I–Application for allotment of Unique Identification Number (UIN) and reporting of Remittances/Transactions:

Section A – Details of the IP/RI.

Section B – Capital Structure and other details of JV/WOS/ SDS.

Section C - Details of Transaction/Remittance/ Financial Commitment of IP/ RI.

Section D – Declaration by the IP/ RI.

Section E – Certificate by the statutory auditors of the IP/self-certification by RI.

Part II - Annual Performance Report (APR)

Part III – Report on Disinvestment by way of

- a) Closure/Voluntary Liquidation/Winding up/ Merger/Amalgamation of overseas JV/WOS;
- b) Sale/Transfer of the shares of the overseas JV/ WOS to another eligible resident or non-resident;
- c) Closure/Voluntary Liquidation/Winding up/ Merger/Amalgamation of IP; and
- d) Buy back of shares by the overseas JV/WOS of the IP/RI.

A new reporting format has also been introduced for Venture Capital Fund (VCF)/Alternate Investment Fund (AIF), Portfolio Investment and overseas investment by Mutual Funds as per the format in **Annex II** and **Annex III** of the circular. In case of reporting purchase and repurchase of ESOPs, the AD banks may continue to report the same in the existing format (**Annex IV** of the circular).

Any post investment changes subsequent to the allotment of the UIN are required to be reported as indicated in the operational instructions on submission of Form ODI Part I (**Annex I** of the circular).

AD banks before executing any ODI transaction must obtain the Form ODI Part I from the applicant in terms of Regulation 6 (2) (vi) of the Notification, *ibid*. Further, the AD bank should report the relevant Form ODI in the online OID application and obtain UIN while executing the remittance

In case of RI undertaking ODI, certification of Form ODI Part I by statutory auditor or chartered accountant need not be insisted upon. Self-certification by the RI concerned may be accepted.

The revised ODI forms and instructions for filling up the forms will come into effect immediately.

Reserve Bank reserves the right to place the information received through the forms in the public domain.

Online Reporting of Form ODI

- a. Online OID application has been revamped to further reduce the traditional paper based filing system, to provide the AD banks fast and easy accessibility to data for reference purpose, to improve the coverage and ensure proper monitoring of the flows in a dynamic environment. Accordingly, modules in online OID application have been added, wherein all the ODI forms as mentioned in this circular may be reported.

- b. A concept of AD Maker, AD Checker and AD Authoriser has now been introduced in the online application process. The AD Maker shall initiate the transaction and submit to the AD Checker for verification of the transaction before submission to Reserve Bank. The AD Authoriser shall have the authority to ratify these ODI transaction which are pending due to various reasons, such as, delay arising on account of seeking further clarification from the IP/RI, technical difficulty in reporting the transaction in the online OID application and on account of delay in completing the due diligence process.
- c. The AD bank may identify an official in the middle management level who may be assigned the responsibility of the AD Authoriser. The Authoriser shall be entrusted with the following responsibilities:
 - i. Examining the genuineness of the reason/s behind late submission of the ODI Forms.
 - ii. Ratifying those online transactions which are reported with a delay owing to operational difficulties after recording the facts in the online OID application under the Remarks column.
- d. The Centralised Unit/Nodal Office of the AD bank should ensure online reporting of Overseas Investments in the application hosted on the website <https://oid.rbi.org.in>
- e. The AD Maker, AD Checker and AD Authoriser identified by the AD Bank may obtain a user-id for accessing the online OID application by submitting a request in the prescribed format (**Annex V** of the circular).
- f. Any non-compliance with respect to the instruction for submission of Form ODI Part I, Part II and Part III shall be treated as contravention of Regulation 6 (2) (vi), Regulation 15 and Regulation 16 respectively, of the FEMA Notification No 120/RB-2004 dated July 07, 2004 as amended. The Reserve Bank will take a serious view on non-compliance with the guidelines/instructions and initiate penal action as considered necessary.

Master Direction No. 15/2015-16 dated January 1, 2016 and Master Direction No. 18/ 2015-16 dated January 1, 2016 are being updated to reflect the changes.

For other details, revised Form ODI and all the annexures refer circular at—<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10351&Mode=0>

D. Foreign Investment in units issued by Real Estate Investment Trusts, Infrastructure Investment Trusts and Alternative Investment Funds governed by SEBI regulations

A.P. (DIR Series) Circular No. 63 dated April 21, 2016

With a view to rationalising foreign investment regime for Alternative Investment vehicles and to facilitating foreign investment in collective investment vehicles for real estate and infrastructure sectors, it has been decided, in consultation with the Government of India, to allow foreign investment in the units of Investment Vehicles registered and regulated by SEBI or any other competent authority. At present, Investment Vehicle will include the following:

- Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014;
- Infrastructure Investment Trusts (InvITs) registered and regulated under the SEBI (InvITs) Regulations, 2014;
- Alternative Investment Funds (AIFs) registered and regulated under the SEBI (AIFs) Regulations 2012.

Further, unit shall mean beneficial interest of an investor in the Investment Vehicle and shall include shares or partnership interests.

The salient features of the new investment regime are:

- i. A person resident outside India including a Registered Foreign Portfolio Investor (RFPI) and a Non-Resident Indian (NRI) may invest in units of Investment Vehicles.
- ii. The payment for the units of an Investment Vehicle shall be made by an inward remittance through the normal banking channel including by debit to an NRE or an FCNR account.
- iii. A person resident outside India who has acquired or purchased units in accordance with the regulations may sell or transfer in any manner or redeem the units as per regulations framed by SEBI or directions issued by RBI.
- iv. Downstream investment by an Investment Vehicle shall be regarded as foreign investment if either the Sponsor or the Manager or the Investment Manager is not Indian 'owned and controlled' as defined in Regulation 14 of the Principal Regulations.
- v. In case the sponsors or managers or investment managers are organised in a form other than

companies or LLPs, SEBI shall determine whether the sponsor or manager or investment manager is foreign owned and controlled.

- vi. The extent of foreign investment in the corpus of the Investment Vehicle will not be a factor to determine as to whether downstream investment of the Investment Vehicle concerned is foreign investment or not.
- vii. Downstream investment by an Investment Vehicle that is reckoned as foreign investment shall have to conform to the sectoral caps and conditions/restrictions, if any, as applicable to the company in which the downstream investment is made as per the FDI Policy or Schedule 1 of the Principal Regulations.
- viii. Downstream investment in an LLP by an Investment Vehicle that is reckoned as foreign investment has to conform to the provisions of Schedule 9 of the Principal Regulations as well as the extant FDI policy for foreign investment in LLPs.
- ix. An Alternative Investment Fund Category III with foreign investment shall make portfolio investment in only those securities or instruments in which a RFPI is allowed to invest.
- x. The Investment Vehicle receiving foreign investment shall be required to make such report and in such format to Reserve Bank of India or to SEBI as may be prescribed by them from time to time.

Further, in terms of Regulation 4(b) (iv) of Notification No. FEMA 1/2000-RB dated May 3, 2000, foreign investment in any company or partnership firm or proprietary concern or any entity, whether incorporated or not, which is engaged or proposes to engage "in real estate business, or construction of farm houses" is prohibited. However, Explanation (i) *ibid* provides that "real estate business" shall not include development of townships, construction of residential /commercial premises, roads or bridges. It is now clarified that foreign investment in units of REITs registered and regulated under the SEBI (REITs) Regulations, 2014 will not be included in "real estate business" for the purpose of these regulations.

E. Foreign Exchange Management (Remittance of Assets) Regulations, 2016

A.P. (DIR Series) Circular No. 64/2015-16[(1)/13R] dated April 28, 2016

On a review it is felt necessary to revise the

regulations issued under the Foreign Exchange Management (Remittance of Assets) Regulations, 2000, as amended from time to time. Accordingly, in consultation with the Government of India, the said regulations have been repealed and superseded by the Foreign Exchange Management (Remittance of Assets) Regulations, 2016 (Notification No. FEMA 13(R)/2016-RB dated April 1, 2016, hereinafter referred to as Remittance of Assets Regulations).

The salient features of the Remittance of Assets regulations are given as under:

- a) Remittance of capital assets in India held by a person whether resident in or outside India would require the approval of the Reserve Bank except to the extent provided in the Act or Rules or Regulations made under the Act.
- b) In terms of regulation 4(1) of the Remittance of Assets regulations, ADs may allow remittance of assets, up to USD one million per financial year, by a foreign national (not being a PIO or a citizen of Nepal or Bhutan), on submission of documentary evidence, in case:
 - i. the person has retired from employment in India;
 - ii. the person has inherited the assets from a person referred to in section 6(5) of the Act;
 - iii. the person is a non-resident widow/widower and has inherited assets from the person's deceased spouse who was an Indian citizen resident in India. In case the remittance is made in more than one instalment, the remittance of all instalments should be made through the same AD.
- c) In terms of regulation 4(1), *ibid*, ADs may allow remittance of balance amount, held by a foreign student in a bank account in India, after completion of his/her studies/training in India.
- d) In terms of regulation 4(2), *ibid*, ADs may allow NRIs and PIOs, on submission of documentary evidence, to remit up to USD one million, per financial year:
 - i. out of balances held in their Non-Resident (Ordinary) Accounts (NRO accounts)/ sale proceeds of assets/assets acquired in India by way of inheritance/legacy;
 - ii. out of assets acquired under a deed of settlement made by either of his parents or a relative as defined in Companies Act, 2013. The settlement should take effect on the death of the settler.

In case the remittance is made in more than one instalment, the remittance of all instalments should be made through the same AD. Further, where the remittance is to be made from the balances held in the NRO account, the Authorised Dealer should obtain an undertaking from the account holder stating that “the said remittance is sought to be made out of the remitter’s balances held in the account arising from his/her legitimate receivables in India and not by borrowing from any other person or a transfer from any other NRO account and if such is found to be the case, the account holder will render himself/herself liable for penal action under FEMA.”

- e) In terms of regulation 4(3), *ibid*, ADs may allow remittances by Indian companies under liquidation on directions issued by a Court in India.
- f) In terms of regulation 5, *ibid*, ADs may also allow Indian entities to remit their contribution towards the provident fund/ superannuation/ pension fund in respect of their expatriate staff resident in India but “not permanently resident” in India.
- g) In terms of regulation 6, *ibid*, ADs may permit remittance of assets on closure or remittance of winding up proceeds of branch office/ liaison office (other than project office) as per Reserve Bank’s directions from time to time.
- h) In terms of regulation 7, *ibid*, remittance of assets on hardship ground and remittances by NRIs and PIOs in excess of USD one million/ financial year would require the prior approval of the Reserve Bank.
- i) Any transaction involving remittance of assets under these regulations are subject to the applicable tax laws in India.

The new regulations have been notified vide Notification No. FEMA. 13(R)/2016-RB dated April 1, 2016 c.f. G.S.R. No.388 (E) dated April 1, 2016 and shall come into force with effect from April 1, 2016. The Master Direction No.13 has also been amended to incorporate the changes.

F. Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India)

Notification No. FEMA.363/2016-RB dated April 28, 2016

Following amendments have been made to FEMA Notification No. 20:

Regulation 2:

- A. After the existing sub-regulation (ii), a new sub-regulation shall be inserted namely:-

“(iiA) ‘Category I Alternative Investment Fund (Cat-I AIF)’ means an Alternative Investment Fund registered under the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 which raises money and invests in such funds or sectors or activities or areas in accordance with the said Regulations.”

- B. The existing sub-regulation (vb) shall be deleted.

- C. After the existing sub-regulation (x), a new sub-regulation shall be inserted namely:-

“(xA) ‘startup’ shall mean an entity, incorporated or registered in India not prior to five years, with an annual turnover not exceeding INR 25 Crores in any preceding financial year, working towards innovation, development, deployment or commercialisation of new products, processes or services driven by technology or intellectual property, Provided that such entity is not formed by splitting up, or reconstruction of a business already in existence.

For this purpose,

- i. ‘entity’ shall mean a private limited company (as defined in the Companies Act, 2013), or a registered partnership firm (registered under section 59 of the Partnership Act, 1932) or a limited liability partnership (under the Limited Liability Partnership Act, 2008).
- ii. the expression ‘turnover’ shall have the same meaning as assigned to it under the Companies Act, 2013.
- iii. An entity is considered to be working towards innovation, development, deployment or commercialisation of new products, processes or services driven by technology or intellectual property if it aims to develop and commercialise (a) a new product or service or process; or (b) a significantly improved existing product or service or process that will create or add value for customers or workflow.

Provided that it will not include the mere act of developing (a) products or services or processes which do not have potential for commercialisation; or (b) undifferentiated products or services or processes or (c) products or services or processes with no or limited incremental value for customers or workflow.

Regulation 5

In Regulation 5, the existing sub-regulation (5) shall be substituted by the following namely:-

“(5) A Foreign Venture Capital Investor registered with SEBI may make investment in the manner and subject to the terms and conditions specified in Schedule 6.”

Schedule 6

In the principal regulations, the existing Schedule 6 is also amended. Kindly refer the revised amended Schedule 6 and other amendments details at—
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10386&Mode=0>

G. Policy on foreign investment for Asset Reconstruction Companies

DIPP Press Note No. 4 (2016 Series) dated May 06, 2016

The Government of India has liberalised the foreign investment limits for Asset Reconstruction Companies. Accordingly paragraph 6.2.18.1 of the Consolidated FDI Policy Circular of 2015 is amended to read as below:

Sector/Activity	% of Equity/ FDI Cap	Entry Route
6.2.18.1.1 ‘Asset Reconstruction Company’ (ARC) means a company registered with the Reserve Bank of India under Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act)	100%	Automatic
6.2.18.1.2 Other Conditions:		
a. Persons resident outside India can invest in the capital of Asset Reconstruction Companies (ARCs) registered with Reserve Bank of India, up to 100% on the automatic route.		
b. Investment limit of a sponsor in the shareholding of an ARC will be governed by the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 as amended from time to time. Similarly, investment by institutional/non-institutional investors will also be governed by the said act, as amended from time to time.		

- c. The total shareholding of an individual FII/FPI shall be below 10% of the total paid up capital.
- d. FIIs/FPIs can invest in the Security Receipts (SRs) issued by the ARCs registered with the Reserve Bank of India. FIIs/FPIs may be allowed up to 100% of each tranche in SRs issued by ARCs subject to directions/guidelines of Reserve Bank of India.
- e. All investments would be subject to provisions of the SARFAESI Act as amended from time to time.



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

MCA (www.mca.gov.in)

MCA Circular no.04/2016 dated

27th April 2016—Clarification with

regard to Companies (Indian Accounting Standards) (Amendment) Rules, 2016

MCA has clarified that with regard to the accounting period for which the accounts would need to be prepared using the Accounting Standards, as amended through the Companies (Accounting Standards) Amendment Rules, 2016 that the amended Accounting Standards should be used for preparation of accounts for accounting periods commencing on or after the date of notification i.e. accounting period commencing from 1st April 2016. For complete text of the notification, please refer the link: http://www.mca.gov.in/Ministry/pdf/General_Circular_27042016.pdf

RBI (www.rbi.org.in)

RBI Circular no. DBS.CO.PPD.

BC.No.10/11.01.005/2015-16 dated 28th April

2016-Compliance with Jilani Committee Recommendations

RBI has advised that henceforth, the compliance to the Jilani Committee recommendations need not be reported to the ACB. However, it has also directed Banks to ensure that compliance to these recommendations are complete and sustained and these recommendations are appropriately factored in the internal inspection/audit processes of banks and duly documented in their manual/instructions. For a complete text of the circular, please refer the link: <https://rbi.org.in/Scripts/NotificationUser.aspx?Id=10370&Mode=0> ■