ACCOUNTING, REGULATORY & TAX NEWSLETTER

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The Institute of Chartered Accountants of India (ICAI)

Expert Advisory Committee (EAC) issues an opinion on 'Depreciation for separate unit of refinery on the basis of an estimate of its own useful life'

Opinion issued by EAC expressed hereinafter is from the perspective of accounting requirements contained in the Companies (Accounting Standards) Rules, 2006 and without considering the application of Accounting Standards amended by MCA vide Notification dated March 30, 2016, which should be applied for the accounting periods commencing on or after the date of such Notification.

The query raised relates to the additional plant and machinery installed for upgradation of the existing asset. Useful life of additional plant is expiring (say, 2025) after useful life of existing asset expires (say, 2020). Querist is of the opinion that additional plant should be depreciated to the remaining life of the existing asset (i.e. by 2020) and not to be depreciated after the life of the existing asset (i.e. by 2025). Therefore, the current useful life (i.e. 2025) considered by the company has resulted in understatement of depreciation and amortization expenses with corresponding overstatement of profit as well as tangible asset.

EAC opines that where an addition or extension to an existing asset retains a separate identity and is capable of being used after the existing asset is disposed of, depreciation should be provided independently on the basis of an estimate of its own useful life.

EAC is of the view that where the component has a lower useful life, when compared to the useful life of an asset, the same is to be considered for the purpose of depreciation, but if the component has a higher useful life, the company has the choice of using either higher or lower useful life. Higher useful life is used only when management intends to use the component even after the expiry of the main asset.

Ind AS Transition Facilitation Group (ITFG) Clarification Bulletin 7

ICAI has issued following clarifications on 30th March 2017 related to the applicability and /or implementation of Ind AS under the Companies (Indian Accounting Standards) Rules, 2015:

- Exemption under Paragraph D13AA of Ind AS 101, First time adoption of Ind-AS, related to accounting for exchange differences arising from translation of long-term foreign currency monetary items cannot be availed for the exchange gain/loss on balance amount of loan drawn after the transition date.
- Company incorporated in India is statutorily required to present its financial statements in INR regardless of its functional currency which can be different from INR. Further auditors of such company are also required to give audit report on financial statements prepared in INR only.
- Company which has already availed an exemption under Paragraph D7AA of Ind AS 101, First time adoption of Ind-AS, related to deemed cost exemption for its property, plant and equipment, cannot reverse the impact of exchange gain/loss on foreign currency borrowings opted under Paragraph 46/46A of AS 11, *The Effects of Changes in Foreign Exchange Rates*.
- Exemption under Paragraph D13AA of Ind AS 101, First time adoption of Ind-AS, related to accounting for exchange differences arising from translation of long-term foreign currency monetary items cannot be availed for long term forward exchange contracts which meet the definition of 'Derivatives' under Ind AS 109, Financial Instruments.
- Classification of land from the government on a long- term lease basis which spans 99 years and above as operating or finance lease requires exercise of judgment based on evaluation of facts and circumstances in each case, while considering the indicators provided in Ind AS 17, *Leases*.
- Company is required to accrue dividend/ Interest on financial instruments classified as liability even if it is declared after the end of the reporting period in accordance with its classification as per Ind AS 109, *Financial Instruments*.
- When non-depreciable asset is measured using the revaluation model, then an entity is required to measure the deferred tax considering the tax consequences of recovering the carrying amount through sale. Creation of deferred tax is not required for a freehold land to be sold through slump sale as the tax base of the land will be the same as the carrying amount of the land, as indexation benefit is not available in case of slump sale (as per Income Tax Act, 1961) and hence there will not be any temporary difference.
- When investment in debentures of a subsidiary does not meet the definition of equity from issuer's perspective (i.e. a liability of the subsidiary), issuer classifies it as a financial asset and account it for under Ind AS 109, Financial Instrument. Such investments are not within the scope of Ind AS 110, Consolidated Financial Statements, and hence will not be covered under Ind AS 27, Separate Financial Statements, and therefore, should be accounted as financial asset under Ind AS 109, Financial Instruments.
- Exemption provided under Paragraph 7AA of Ind AS 38, Intangible Assets, read with Paragraph D22 of Ind AS 101, First-time Adoption of Ind-AS, can be availed in respect of intangible assets arising from service concession arrangements in respect of toll roads recognized in the financial statements before the beginning of first Ind AS reporting period. Exemption cannot be availed for the intangible asset which is in progress and is not recognized before 1st April, 2016.

REGULATORY UPDATES

SECURITIES EXCHANGE BOARD OF INDIA (SEBI) AMENDMENTS

Review of advertisement guidelines for Mutual Funds

On 15th March 2017, SEBI has made following amendments to SEBI circular dated 22nd August 2011:

A. In performance advertisements of Mutual Fund schemes:

- Performance to be advertised in terms of CAGR for the past 1 year, 3 years, 5 years and since inception.
- Point-to-point returns on a standard investment of INR 10,000 in addition to CAGR of the scheme.
- Information based on period computed from the last day of month-end preceding the date of advertisement.
- Whether performance so disclosed, is of regular or direct plan of the Mutual Fund scheme along-with a footnote mentioning that different plans have a different expense structure.
- Footnote that Mutual Fund scheme has not been managed by the same fund manager for the full period of the information being published.

  In performance of other schemes managed by the fund manager:

- Performance along with their respective scheme's benchmark, in terms of CAGR for a period of 1 year, 3 years and 5 years.
- In case the number of schemes managed by a fund manager is more than six, then the AMC may disclose the total number of schemes managed by that fund manager along with the performance data of top 3 and bottom 3 schemes.
- Footnote that Mutual Fund scheme has not been managed by the same fund manager for the full period of the information being published.
- For advertisement published in internet-enabled media, providing an exact website link to such summarized information of performance of other schemes.
- Disclosure of performance of other schemes in the format prescribed in the circular.

This amendment is applicable for advertisements issued from 1st April 2017 onwards.

B. Celebrity endorsements of Mutual Funds at industry level subject to the following conditions:

- Celebrity endorsements should not promote a scheme of a particular Mutual Fund or be used as a branding exercise of a Mutual Fund house / AMC.
- Expenses towards such celebrity endorsements should be limited to the amounts that are aggregated by Mutual Funds at industry level for the purpose of conducting investor education and awareness initiatives.
- Prior approval of SEBI for issuance of any endorsement of Mutual Funds as a financial product.

This amendment is applicable with immediate effect i.e. 15th March 2017.

MINISTRY OF CORPORATE AFFAIRS ('MCA') AMENDMENTS

The Companies (Indian Accounting Standards) (Amendment) Rules, 2017

On 17th March 2017, MCA has notified amendments to Companies (Indian Accounting Standards) Rules, 2015 to keep Ind AS consistent with the amendments made to International Financial Reporting Standards (IFRS) in order to maintain convergence. The amendment relates to Ind AS 7, *Statement of Cash Flows*, and Ind AS 102, *Share-based Payment*. Key amendments are as follows:

Ind AS 7, *Statement of Cash Flows*

Additional disclosures to be made for changes in liabilities arising from financing activities to improve information provided to users of financial statements, on account of:

- Non-cash changes (i.e. changes in fair values), changes resulting from acquisitions and disposals of subsidiaries/businesses and the effect of foreign exchange differences; and
- Cash flows, such as drawdowns and repayment of borrowings.

When an entity first applies the amendment, it is not required to provide comparative information for preceding periods.

Ind AS 102, *Share-based Payment*

The amendments relate to:

- Measurement of cash-settled share-based payments;
- Classification of share-based payments settled net of tax withholdings; and
- Accounting for a modification of a share-based payment from cash-settled to equity-settled.

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The amendments apply to awards that are not settled as at the date of first application or to modifications that happen after the date of first application, without restatement of prior periods. The amendments can be applied retrospectively, provided that this is possible without hindsight and that the retrospective treatment is applied to all of the amendments.

The amended rules shall come into force on the 1st April 2017.

Amendment to the Companies (Audit and Auditors) Rules, 2014 and Schedule III of Companies Act, 2013

MCA has notified amendments to Division I & Division II of Schedule III of the Companies Act, 2013 w.e.f. 30th March 2017, under the heading "General instructions for preparation of Balance Sheet". The above amendment requires every company to disclose the details of Specified Bank Notes (SBN) held and transacted during the period from 8th November, 2016 to 30th December, 2016 in the following format:

	SBNs	Other denomination notes	Total
Closing cash in hand as on 08.11.2016			
(+) Permitted receipts			
(-) Permitted payments			
(-) Amount deposited in Banks			
Closing cash in hand as on 30.12.2016			

MCA has notified amendments to the Companies (Audit and Auditors) Rules, 2014 w.e.f. On 30th March 2017. The amendment relates to insertion of clause (d) to Rule 11, Other matters to be included in auditor's report, of the Rules, which requires the auditors to comment as to whether the Company has provided requisite disclosures in the financial statements as stated above and whether they are in accordance with the books of accounts maintained by it.

The disclosure in the financial statement and the reporting by the auditors as stated above shall apply to Companies preparing their financial statements on the basis of Accounting Standards as well as Indian Accounting Standards.

Amendment to the Companies (Meetings of Board and its Powers) Rules, 2014

MCA has notified amendments to the Companies (Meetings of Board and its Powers) Rules, 2014 w.e.f 30th March, 2017. The rule relating to Contract or arrangement with a Related Party is amended. The amendment substitutes words 'exceeding ten percent' with 'amounting to ten percent or more' and 'ten per cent of turnover' with 'ten per cent or more of turnover'. The rule now reads as follows:

- sale, purchase or supply of any goods or materials, directly or through appointment of agent, exceeding ten percent or more of the turnover of the company or rupees one hundred crore, whichever is lower, as mentioned in clause (a) and clause (e) respectively of sub-section (1) of section 188;
- iselling or otherwise disposing of, or buying, property of any kind directly or through appointment of agents amounting to ten percent or more of net worth as mentioned in clause (b) and clause (e) respectively of sub-section (1) of section 188;
- leasing of property of any kind amounting to ten percent or more of the net worth or exceeding ten percent or more of turnover as mentioned in clause (c) of sub-section (1) of section 188;
- availing or rendering of any services directly or through appointment of agents amounting to ten percent or more of the net worth as mentioned in clause (d) and clause (e) of sub-section (1) of section 188.

FOREIGN EXCHANGE MANAGEMENT ACT ('FEMA') AMENDMENTS

FDI in Limited Liability Partnership ('LLP')

Vide a notification dated March 03, 2017, RBI has substituted Schedule 9 to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 relating to "FDI in LLPs".

Key amendments include, inter alia, the following:

- Qualified Foreign Investors permitted to invest in LLP
- Company having foreign investment upto 100% under the automatic route, can be converted into an LLP under automatic route
- Specific reference of LLPs not being eligible to raise External Commercial Borrowings ('ECBs') has been removed. However, consequent amendment in the master direction on ECBs is awaited.

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Foreign Investment ('FDI') is e-commerce activities

In line with the Department of Industrial Policy & Promotion guidelines, the Reserve bank of India ('RBI'), has notified on March 09, 2017, FDI in e-commerce activities as follows:

E-commerce	% FDI	Entry Route
B2B e-commerce	100%	Automatic
Market Place model	100%	Automatic

FDI is not permitted in inventory based model.

Operational flexibility for Indian subsidiaries of non-resident companies

RBI amended extant hedging guidelines vide a circular dated March 21, 2017 with a view to provide operational flexibility for booking derivative contracts to hedge the currency risk arising out of current account transactions of Indian subsidiaries of Multi-National Companies.

The transactions under this facility shall be covered under a tri-partite agreement between Indian subsidiary, Parent foreign company and Authorized Dealer.

The circular also specifies the terms and conditions to be complied with in relation to the bank account for settlement of hedge transactions, annual certificate from statutory auditor & compliance with the rules & regulations.

INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY OF INDIA (IRDAI)

Circular on un-reconciled outstanding unsettled clients money

On 6th March 2017, IRDAI has issued a circular which requires all reinsurance transactions after 1st April 2014 to be reconciled between the reinsurers/ insurers and reinsurance/composite broker in the prescribed formats. Reinsurance/composite broker are required to keep un-reconciled outstanding unsettled clients money in separate bank account. The broker should give an undertaking to work with their clients to reconcile and settle the balances by 31st May 2017.

Reinsurance/composite broker are required to confirm that there are no un-reconciled outstanding unsettled clients money on half yearly basis and are required to settle any such amount within the period specified in the agreement and in absence of any time-limit, within a period not exceeding 30 days.

File & Use procedure for minor modifications under existing products and riders offered by Life Insurers

On 7th March 2017, IRDAI has issued a circular (effective date being the same) in relation to minor modifications to the approved products offered by Life Insurers. As per the circular, following modifications to the approved products and riders will be allowed without complete procedure under File and Use:

- Changes in premium rates/charges and benefits amounts under approved products and riders on account of implementation of IRDAI (Payment of commission or remuneration or reward to Insurance Agents and Intermediaries) Regulations, 2016
- Changes in premium rates and/or benefit amounts under Non-Linked Non Par Products (including annuities) on account of change in interest rates under premium basis.
- Addition of already approved riders to approved products
- Addition of premium payment modes (frequencies)
- Addition of new distribution channel
- Addition of already approved funds to approved unit linked products
- Extension of premium table to higher/lower ages or to longer/shorter premium payment terms and policy term under approved products/riders.
- Change in minimum/maximum premium and/or benefits amounts.

The modifications mentioned above can be made only if the general norms and norms specific to above modifications, as mentioned in circular, are satisfied. The insurers can make one or more modifications as mentioned above to the approved products and riders only on the condition that the benefit structure as per the originally / modified approved version is not changed.

The existing File and Use procedure is applicable for all other modifications not covered above and for new products /riders.

Guidelines on Insurance e-commerce

On 9th March 2017, IRDAI has issued guidelines under Section 34 of the Insurance Act, 1938 and Section 14 of the IRDA Act, 1999 to promote e-commerce in insurance industry which is expected to lower the cost of transacting insurance business and bring higher efficiencies and greater reach.

Aforementioned guidelines comprise the following chapters:

- Permission for establishing Insurance Self-Network Platform(ISNP) for undertaking insurance e-commerce activities in India through an application in Form-ISNP-1.

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- Code of conduct which every applicant shall undertake to follow.
- e-commerce on ISNP which includes minimum requirements to be addressed by the applicant at all times.

The guidelines elaborate the procedures and requirements to enable the insurers to deal through e-commerce. The said guidelines shall come into force on the date of its issuance i.e. 9th March 2017 and is applicable to all applicants recognized by IRDA.

Investments in Units of "Real Estate Investment Trusts (REIT) & Infrastructure Investment Trusts (InvIT)"

On 14th March 2017, IRDAI has issued a circular under Section 14(2)(k) of IRDA Act, 1999 which now allow the Insurers to invest in Units of REITs/InvITs which conform to the following:

- The REIT / lnvlT rated not less than "AA" shall form part of Approved Investments. REIT / lnvlT rated less than AA shall form part of Other Investments.
- An insurer can invest not more than 3% of respective fund size of the insurer (or) not more than 5% of the units issued by a single REIT/lnvlT, whichever is lower.
- No investment shall be made in REIT /lnvlT where the Sponsor is under the Promoter Group of the insurer.
- Investment in Units of lnvlT will form part of "Infrastructure Investments", for the purpose of Pattern of Investments under IRDAI (Investment) Regulations.
- Investment in Units of REIT will form part of 'Investment property" as per Note 6 to the Regulation 9 of IRDAI (Investment) Regulations, 2016 read along with Master Circular Investments.

It further requires to value such investments at market value (last quoted price not later than 30 days) and at latest NAV when market quote is not available (not more than 6 months old). Compliance with the above norms is required to be confirmed by the Concurrent Auditor in his Quarterly report to the Audit Committee / Board of the Insurer.

Guidelines on Stewardship Code for Insurers in India

On 20th March 2017, IRDAI has issued the code which is in the form of a set of principles, which the insurers are required to adopt. The code broadly requires the insurers to have a policy within 6 months from the date of issue of these guidelines as regards their conduct at general meetings of the investee companies and disclosures relating thereto.

Policy in accordance with the guidelines should be approved by the Board of Directors and should be disclosed on the website with 30 days of such approval by all insurers, alongside the public disclosures. Broadly, the principles stated therein are:

- Insurers should formulate a policy on the discharge of their stewardship responsibilities and publicly disclose it.
- Insurers should have a clear policy on how they manage conflicts of interest in fulfilling their stewardship responsibilities and publicly disclose it.
- Insurers should monitor their investee companies.
- Insurers should have a clear policy on intervention in their investee companies.
- Insurers should have a clear policy for collaboration with other institutional investors, where required, to preserve the interests of the policyholders (ultimate investors), which should be disclosed.
- Insurers should have a clear policy on voting and disclosure of voting activity.
- Insurers should report periodically on their stewardship activities.

The guidelines also require all insurers to furnish a report on an annual basis as per Annexure A of the guidelines, on the status of compliance with the Stewardship Code on or before 30th June every year. The reasons for deviation or non-compliance with the Stewardship Principles should be provided in the report.

Guidelines are applicable from FY 2017-18.

Modification in premium rates due to revised Commission/ Remuneration Structure and introduction of Reward System

IRDAI (Payment of Commission or Remuneration or Reward to Insurance Agents and Insurance Intermediaries) Regulations 2016 have been issued which are applicable from 1st April, 2017. In connection with this, on 22nd March 2017, IRDAI has issued a circular which gives general insurers an option to revise the pricing of their products without having to file a modification to the product under the Product Filing Guidelines subject to the following:

- The change in the premium rates being limited to +/- 5% of the existing premium rates of products
- There being no change in any other parameter of the premium basis.

Further, the Insurers are required to submit the following documents wherever price is being revised:

- A certificate giving details of the changes made in the F&U or U&F application as the case may be, and other related and applicable documents.
- Certificate indicating system readiness.

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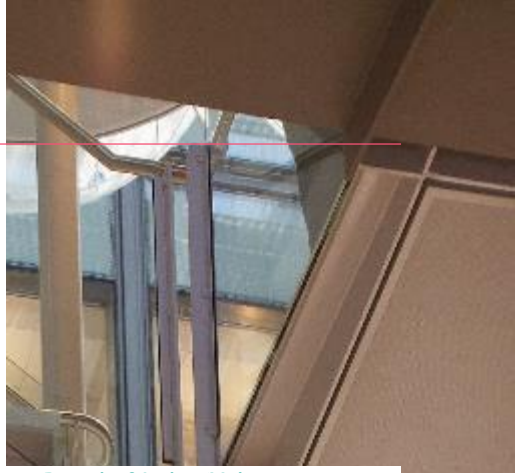

- Additional Certificate as prescribed in Annexure I of the circular.
- Two sets of F&U or U&F application and related documents as applicable.

On 24th March 2017, IRDAI clarified that above circular is mutatis mutandis applicable to insurance products offered by all Health Insurance companies also.

File & Use procedure for minor modifications under existing products and riders offered by Life Insurers

On 7th March 2017, IRDAI has issued a circular (effective date being the same) in relation to minor modifications to the approved products offered by Life Insurers. As per the circular, following modifications to the approved products and riders will be allowed without complete procedure under File and Use:

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (IBBI)

Commencement of sections of Insolvency and Bankruptcy Code, 2016

On 30th March 2017, MCA has notified the following sections of Insolvency and Bankruptcy Code, 2016:

- Section 59 – Part II, Chapter V, Voluntary liquidation of corporate persons;
- Section 209 to Section 215 (both inclusive) – Part IV, Chapter V, Information Utilities;
- Sub-section (1) of Section 216 – Part IV, Chapter V, Information Utilities; and
- Section 234 and Section 235 – Part V, Miscellaneous.

Provisions of the above sections are effective from 1st April 2017.

Insolvency and Bankruptcy Board of India('IBBI') (Information Utilities) Regulations, 2017

Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 (the 'Regulations') has been notified on 31st March 2017, to provide for a framework for registration and regulation of information utilities. The Regulations comprises of the following Chapters:

- Preliminary including definition and effective date of the Regulations.
- Registration process
- Shareholding and Governance
- Technical Standards and Bye-Laws
- Core Services
- Duties of Information Utilities
- Services to Insolvency Professionals
- Surrender or Cancellation of Registration

The Regulations are effective from 1st April 2017.

Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2016

Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2016 (the 'Regulations') has been notified on 31st March 2017, to provide the process from initiation of voluntary liquidation of a corporate person - Companies, limited liability partnerships and any other persons incorporated with limited liability - till its dissolution.

A corporate person may initiate a voluntary liquidation proceeding if majority of the directors or designated partners of the corporate person make a declaration to the effect. The regulations specify the manner and content of public announcement, receipt and verification of claims of stakeholders, reports and registers to be maintained, preserved and submitted by the liquidator, realization of assets and distribution of proceeds to stakeholders, distribution of residual assets, and finally dissolution of corporate person.

The Regulations are effective from 1st April 2017.

TAX UPDATES
Direct Tax

CIRCULARS/ NOTIFICATIONS/PRESS RELEASES

Clarifications on Income Computation and Disclosure Standards

Effective fiscal year 2016-17, the provisions of separate tax standards, Income Computation and Disclosure Standards (ICDS) are applicable to taxpayer for computation of business/professional income and income from other sources. The CBDT has issued clarifications on certain issues. Some of the key clarifications are summarised below:

- Where the provisions of ICDS have dealt with transactional issues and provided certainty, such provisions will prevail over judicial precedents that were pronounced in absence of authoritative guidance under the IT Act.
- ICDS provisions will apply to taxpayers computing income under the relevant presumptive taxation scheme.
- The provisions of ICDS shall not apply for computation of Minimum Alternate Tax, however it shall apply to computation of Alternate Minimum Tax.
- The principles relating to marked to market losses or expected losses as per ICDS I shall apply to marked to market gains or an expected profit.
- Foreign Currency Translation Reserve balance as on April 1, 2016 pertaining to exchange differences on monetary items for non-integral operations, shall be recognised in the fiscal year 2016-17 to the extent not recognised in earlier years.
- ICDS provisions will be applicable for computation of income, liable to tax on gross basis like interest, royalty, fees for technical services for non-residents.
- The borrowing cost disallowed under the specific provisions of the IT Act to be excluded for capitalization under ICDS IX.

[Circular No.10/2017 (F.No.133/23/2016TPL) Dated March 23, 2017]

Reduction or waiver of interest under Section 201

Section 201 of the Act provides for levy of interest on late deduction of tax at source. The CBDT has clarified the following class of cases in which reduction or waiver can be considered -

- books of accounts and other documents necessary for making deduction were seized during search and seizure and taxpayer was not able to deduct taxes in time in books of accounts
- where taxpayer did not withhold tax as such sum was not liable for deduction of tax based on jurisdictional High Court order and subsequently, pursuant to retrospective amendment or decision of Supreme Court or larger bench of the jurisdictional High Court, tax was held to be deductible or tax deducted was less than tax deductible

- where default relates to non-deduction or lower deduction of tax from payments to non-residents from Tax Treaty country, subject to certain conditions
- The reduction or waiver of interest shall not be ordered unless principal demand is fully paid or satisfactory arrangements for payments have been made. If waiver is ordered, refund may be given to deductor of interest already paid.

[Circular No. 11/2016 {F.NO.275/56/2016IT(B)} dated March 24, 2017]

Income-tax return filing forms for fiscal year 2016-17 notified

The CBDT has amended the Income-tax Rules, amending the applicability of tax return form to certain taxpayers. The key highlights of new forms (ITR) are as follows:

- Disclosure in respect of cash deposited in banks in excess of INR 2 lakhs during November 11, 2016 to December 30, 2016
- Quoting of Aadhar Number (or Enrolment ID)
- Simplified ITR 1 for individuals, rationalised various columns relating to heads of income and eligible deductions
- Disclosure in ITR 2, ITR 3 and ITR 4 Sugam - address of immovable property and description of assets. Additional disclosure includes interest held in the assets of a firm or association of persons as a partner or member
- New Schedule in ITR 6 for details of Receipt and payment account of company under liquidation

[Notification No. SO 1006(E) {NO. 21/2017 (F.NO.370142/5/2017TPL)} dated March 30, 2017]

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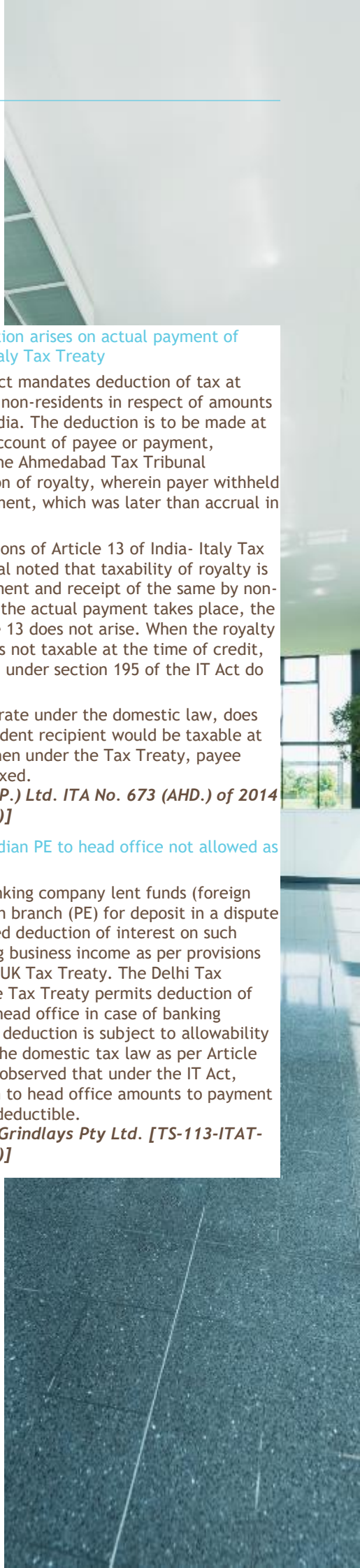
Direct Tax



JUDICIAL UPDATES

Indirect transfer of shares in internal re-organisation liable to capital gains tax

The Finance Act 2012, with retrospective effect from 1962, introduced indirect transfer provisions to tax transfer of shares of non-resident entity, deriving its value substantially from asset located in India. The Delhi Tax Tribunal dealt with a transaction undertaken in 2006 as below:

- Cairn Energy Plc (parent entity of taxpayer) transferred shares of its 9 wholly owned Indian subsidiaries engaged in business of oil and gas sector in India, to the taxpayer in exchange of issue of shares
- Share exchange agreement entered into by taxpayer with another subsidiary in Jersey, wherein shares of those Indian subsidiaries were exchanged
- Additional funds raised by Indian company through IPO
- Shares of Jersey subsidiary were transferred by taxpayer to a newly incorporated Indian company

The Tax Tribunal held that transfer of shares of Jersey subsidiary to Indian company was liable to tax in India. The important observations/findings of the Tax Tribunal are summarised below:

- Tribunal is not the right forum to challenge constitutional validity of indirect transfer provisions
- The shareholders of 9 companies situated in India (controlling oil and gas sector in India) have the property - right to manage and control the business by virtue of shareholding, therefore, income arising through or from' any property In India is taxable in India
- Rejected the argument that series of transactions is merely a business reorganization process, dis-regarded contention of taxpayer that no real income accrued, by noting substantial gain from disposal of shares recorded in financial statements with no tax implications and that re-organisation created wealth considering funds raised through IPO in India
- Cost of acquisition of shares and not fair value or cost to previous owner to be considered for computation of capital gains
- Rejected the argument of the taxpayer that income-tax law as on the date of transaction is to be considered and that retrospective amendment by Finance Act 2012 is to be ignored
- Deleted interest levied for non-payment of advance tax in the year of transaction, considering retrospective levy of tax liability, which could not have been visualized by the taxpayer at that point in time

[Cairn U K Holdings Ltd. IT Appeal Nos. 1669 (DELHI) OF 2016 (Delhi Tribunal)]

Withholding tax obligation arises on actual payment of royalty under India – Italy Tax Treaty

Section 195 of the IT Act mandates deduction of tax at source on payments to non-residents in respect of amounts chargeable to tax in India. The deduction is to be made at the time of credit to account of payee or payment, whichever is earlier. The Ahmedabad Tax Tribunal considered a transaction of royalty, wherein payer withheld tax at the time of payment, which was later than accrual in books.

Referring to the provisions of Article 13 of India- Italy Tax Treaty, the Tax Tribunal noted that taxability of royalty is dependent on the payment and receipt of the same by non-resident payee. Unless the actual payment takes place, the taxability under Article 13 does not arise. When the royalty credited by the payer is not taxable at the time of credit, withholding obligations under section 195 of the IT Act do not arise.

The adoption of lower rate under the domestic law, does not imply that non-resident recipient would be taxable at the point of accrual when under the Tax Treaty, payee could not have been taxed.

[Saira Asia Interiors (P.) Ltd. ITA No. 673 (AHD.) of 2014 (Ahmedabad Tribunal)]

Interest payment by Indian PE to head office not allowed as deduction

The taxpayer, a UK banking company lent funds (foreign currency loan) to Indian branch (PE) for deposit in a dispute case. The PE was denied deduction of interest on such borrowing in computing business income as per provisions of Article 7(7) of India-UK Tax Treaty. The Delhi Tax Tribunal noted that the Tax Treaty permits deduction of interest paid by PE to head office in case of banking company, however the deduction is subject to allowability and limitations under the domestic tax law as per Article 7(5). The Tax Tribunal observed that under the IT Act, interest paid by branch to head office amounts to payment to self and thus is not deductible.

[Standard Chartered Grindlays Pty Ltd. [TS-113-ITAT-2017] (Delhi Tribunal)]

TAX UPDATES
Transfer Pricing

JUDICIAL UPDATES

High Court Allows Payment Of Royalty On Commercial Expediency

The Bombay High Court deleted the transfer pricing adjustment of royalty payment made by the tax authorities, as the rate applied by the tax authorities was arbitrary and adhoc. The tax authorities had not carried out a mythological search and had had not determined the royalty percent by following the methods prescribed in section 92C of the IT Act.

Further, the High Court held that payment can be made to the Associated Enterprise (AE) without a formal agreement, if the payment is on commercial expediency.

[Johnson & Johnson Limited Income Tax Appeal No 1030 (MUM) OF 2014 (Mumbai High Court)]

Tax Tribunal Permits Benchmarking Based On Single Comparable, However Denies Benefit Of +/- 5 Percent

The Mumbai Tax Tribunal held that the taxpayer cannot be precluded from contesting on comparables selected by him in the transfer pricing study report, if the taxpayer gives cogent reasons for exclusion of the same. The Tax Tribunal relied on judicial precedent in case of Tata Power Solar Systems Limited (ITA NO.6657/Mum/2012) and special bench ruling in Quark Systems Private Limited (TS-448-HC-2011(P & H)-TP) and held that the aim of transfer pricing was to determine the Arm's Length Price (ALP) and if certain comparable does not stand the test of comparability, the same should be excluded and not be included simply because the taxpayer had selected it initially while preparing the transfer pricing study.

Further, the Tax Tribunal rejected the argument of the tax authorities that one comparable cannot be considered for benchmarking ALP of the tested party. The Tax Tribunal referred to Rule 10B(1)(e)(ii) of the IT Rules and noted that net profit margins realized can be benchmarked from one or more comparable uncontrolled transaction. The Tax Tribunal further clarified that when only one comparable is selected for benchmarking, the tolerance range of +/-5% shall not be available.

[JP Morgan Advisors India Private Limited Ita No. 7979 (MUM) OF 2010 (Mumbai Tax Tribunal)]

Tax Tribunal Re-characterize Delay In Share Application As Debt Considering Abnormal Delay In Allotment Of Funds

The Bangalore Tax tribunal held that share application money remitted to AE is not considered as loan or advances, if the allotment of shares is made within a reasonable period of time. However if the shares are not allotted within a reasonable time frame, the same loses its character and can be recharacterised as loan/advances. The taxpayer had remitted share application money during the year and no shares were allotted till the end of the financial year. Hence, the Tax Tribunal treated the same as an international transaction under section 92B of the IT Act and recharacterised the same as loan/advance granted to the AE. According, LIBOR rate was selected appropriate to determine the interest on the same.

[Logix Microsystems Limited IT (TP) A NO. 280 (BANG) OF 2014 (Bangalore Tax Tribunal)]

High Court Quashes Tp Assessment Framed On The Amalgamating Company

The taxpayer is the successor of Suzuki Powertrain India Limited which amalgamated with the taxpayer w.e.f. 1st April 2012 and the assessment order was framed in 3rd March 2015. The Delhi High Court quashed the assessment proceedings and concluded that since the amalgamating company was not in existence at the time of passing of the assessment order, the assessment was void-ab-initio. The High Court referred to section 170(2) of the IT Act and held that, assessment proceedings should be made on the successor company and not on the predecessor. The taxpayer had informed the revenue of the amalgamation and the revenue had the facts of the amalgamation. The High Court relied on judicial precedents in case of Micra India (P) Limited [[2015] 57 taxmann.com 163 (Delhi)/[2015] 231 Taxman 809 (Delhi)] and Dimension Apparels Private Limited (TS-610-HC-2014(DEL) and quashed the assessment proceeding.

[Maruti Suzuki India Limited Income Tax Appeal No 65 (DELHI) OF 2017 (Delhi High Court)]

Tax Tribunal Permits Adjustment On Tested Party's Pli And Eliminates Abnormal Forex-loss From Operating Cost

The Mumbai Tax Tribunal held that forex gain/loss is operating is in nature. Transfer pricing is applicable to an international transactions entered with the AE, one of whom is a non-resident. Hence, gain/loss is inherent item of cost and profit and cannot be excluded from the operating cost while computation of Profit Level Indicator (PLI).

Further, the tax Tribunal relied on Rule 10B(e)(iii) of the Rules, and held that an adjustment can be made to the price/cost/profit of the comparable company as well as the tested party to weed out any material difference for the determination of ALP.

The Tax Tribunal also held that hedging loss should be excluded from PLI calculations as it is abnormal in nature.

[Pangea3 & Legal Database Systems Private Limited Income Tax Appeal No. 2128 (Mum) Of 2014 (Mumbai Tax Tribunal)]

TAX UPDATES
Indirect Tax

STATUTORY UPDATES
CENTRAL EXCISE

Master Circular on Show Cause Notice, Adjudication and Recovery

The CBEC undertook the exercise of consolidating Ninety-Two Circulars and Instructions on Show Cause Notices and Adjudication issued from time to time so as to ensure clarity and ease of reference. Following are the brief highlights-

- The master circular is an effort to compile relevant legal and statutory provisions, circulars of the past and to rescind circulars which have lost relevance.
- Annexure-I to the circular provides list of the Eighty-Nine circulars which stand rescinded.
- Three circulars listed in Annexure-II have not been rescinded as they contain comprehensive instructions on the subject they address.
- The master circular is divided into four parts. Part I deals with Show Cause Notice related issues, Part II deals with issues related to Adjudication proceedings, Part III deals with closure of proceedings and recovery of duty and Part IV deals with miscellaneous issues.
- The provisions of the Master Circular shall have overriding effect on the CBEC's Excise Manual of Supplementary Instructions to the extent they are in conflict.

[Circular No. 1053/02/2017-CX dated 10.03.2017]

CUSTOMS

CBEC amends the Bill of Entry (Forms) Regulation, 1976

The CBEC inserts the Regulation 4(1) wherein it is prescribed that the importer or person authorized by him shall present the Bill of Entry before the end of next day following the day on which aircraft or vessel or vehicle carrying the goods arrives at a Custom Station at which such goods are to be cleared. Also the penalty has been prescribed under Regulation 4(2) for not following the procedure given in Regulation 4(1). Provided that the above regulations will not be applicable where entry inward or arrival of cargo has taken place before the date on which Finance Bill 2017 receives the assent of President i.e. before 31.03.2017.

[Notification No. 27/2017-Customs (N.T.) dated 31.03.2017]

CBEC amends the Deferred Payment of Import Duty Rules, 2016

The CBEC substituted the clause (a) to (d) of Rule 5. The amended clauses prescribed the Rules for payment of duty. Wherein it is provided that

- goods corresponding to Bill of Entry returned for payment from 1st day to 15th day of the month, the duty shall be paid by 16th day of the month;

- goods corresponding to Bill of Entry returned for payment from 16th day till the last day of the month except for the month of March shall be paid by 1st day of subsequent month;
- in case of goods corresponding to Bill of Entry returned for payment from 16th day of March till the 31st day of March, the duty shall be paid by 31st day of March.

[Notification No. 28/2017-Customs (N.T.) dated 31.03.2017]

CASE LAW HIGHLIGHTS
SERVICE TAX

High Court upheld the Show Cause Notice for determining taxability post change in law in respect of 'Dealer's incentives'

Sai Service Pvt. Ltd. is engaged in the sale of motor vehicles and spare parts thereof and is an authorised dealer for sale of cars manufactured by Maruti Udyog Ltd. (MUL). Revenue disputed that incentive offered by MUL are in the nature of discount, either in the form of cash discount or quantity discount and the same would fall under the ambit of taxable service under Finance Act. However, Commissioner passing the order in original has observed that the activities cannot be brought within the definition of the term "taxable service" as understood by the Finance Act. It is an incentive received from the MUL under taxable head of "business auxiliary" service and defined u/s 65(19) of the Finance Act. However, a fresh show cause notice was issued by Revenue with same allegations. Being aggrieved by this, assessee filed a writ petition challenging maintainability of SCN.

The Company contended that though the definition of "service" appearing u/s 65B(44) of Act has changed w.e.f. July 2012, activity remains 'sale' of goods subject to sales tax / VAT imposable by State Legislature and does not partake nature of 'service', therefore, Revenue cannot go back and re-adjudicate whether activity undertaken by assessee is a 'service'.

TAX UPDATES
Indirect Tax

High Court observed that show cause notice, though referring to earlier adjudication, has further alleged that it was necessary to probe and investigate the matter after law was amended, moreover, investigation and statements recorded revealed that various incentives were received on account of satisfactory services in various fields viz., sale / delivery of vehicles / spare parts & servicing. Stating that conclusion cannot be drawn just by reading one para of show cause notice, High Court observed that even if same were to be read, it must be with preceding paragraphs and allegations therein and one cannot overlook the fact that law has indeed undergone a change.

Accordingly, Court stated that since allegations were raised post change in law, it could not go into the factual issues and the notice will have to be adjudicated independent of the version which Revenue projects and places before the Court.

[SAI SERVICE PRIVATE LIMITED v. THE UNION OF INDIA AND ORS. - TS-74-HC-2017(BOM)-ST, MUMBAI HIGH COURT]

CENTRAL EXCISE

CESTAT directs appellants to approach Metrology Dept. for valuation of Food Processor accessories

Canbara Industries is engaged in the manufacture of household electric appliances namely, food processors, Mixer and Grinder falling under Chapter 8509 of Central Excise Tariff Act, 1985. Further, during the relevant period, they had manufactured and cleared food processors and food processors accessories by determining the value of the said products u/s 4A and 4 of Act. Revenue disputed that, the processors accessories cleared in retail packages are required to be assessed u/s 4A of Act 1944. In this regard, Revenue confirmed the demand short paid and also imposed penalties. Being aggrieved, Company approached the CESTAT.

The Company submitted that, as per under Notification No. 13/2002-CE(NT) dated March 1, 2002, it is clearly mentioned at serial No.72 the description of goods falling under Chapter 85.09 as Electro-mechanical domestic appliances with self-contained electric motors. In this regard, they contended that, what they have cleared as food processors is a self-contained electric motor having the functions of mixer grinder with additional facility of food processor along with attachments, hence subjected to MRP based assessment. But, when Kenstar food processors accessories are cleared, in a separate package, it is without any self-contained electric motor, hence, the same is subjected to assessment under Section 4 of CEA, 1944.

As per Revenue, Food Processor's advertisement discloses that same is capable of discharging 13 functional advantages such as slicer, grater, etc. and therefore, it is clear that food processor alone cannot discharge all functions, hence, dividing same into two is only to avoid assessment u/s 4A of Act.

CESTAT observed that, absent mandate under Standards of Weights and Measurement Act and Rules made thereunder to compulsorily affix MRP on food processors accessories, same cannot be subjected to assessment u/s 4A, refers to decision of Supreme Court in Jayanti Food Processing Pvt. Ltd. in this context. However, remarks that CBEC vide Circular No. 625/16/02-CX has stated that, in case of dispute between Department and assessee as to whether a particular commodity / transaction is exempted from declaring RSP or not, a clarification may be obtained from concerned Dept. (generally Metrology Dept.) of State Government.

It was also observed that, no such clarification has been obtained by Revenue or the Company, thus remands matter for deciding issue afresh after obtaining necessary opinion from Legal Metrology Dept.

[KITCHEN APPLIANCES INDIA LTD., CANBARA INDUSTRIES AND OTHERS v. C.C.E.&ST., VAPI - TS-47-CESTAT-2017-EXC, AHMEDABAD CESTAT]

CUSTOMS

Service of notice through registered post or by courier is mandatory.

The facts of the case are that the appellant bought gold into India which was seized by the Customs Authorities. The petitioner claimed that he was waiting for the luggage at the airport and even before he could take the same for declaration to the Customs Authorities at the Red Channel counter, he was questioned by the Customs Authorities. He claimed the authorities to release the gold seized because according to him no service of notice was served to him. The authorities claimed that they had served the notice within six months. But on demand of the proof, the authorities failed to show the conclusive evidence as per the Section 153.

The authorities were able to serve the notice as per Section 153(a). However, they had only affixed the notice on the Customs Notice Board and did not serve the notice through a registered post or by courier. Hence, it was held that the notice was not served as per Section 153.

High Court held that as the notice was not served within six months, the petitioner is entitled to release of the gold seized by the authorities.

[IQBAL HUSSAIN V. UNION OF INDIA AND ORS, 2017-TIOL-502-HC-DEL-CUS, DELHI HIGH COURT]

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