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Income Tax

Taxpayers' grievances: CBDT allots quota to top brass

In order to accord a high priority to issues related to taxpayer's grievances, CBDT has brought a new mechanism where top officers of the IT department have been allotted a specific quota of complaints to monitor and track, from their origin to successful resolution.

The new initiative has come after Prime Minister Narendra Modi recently held a meeting on the subject on March 23, 2016 under the Centralized Public Grievance Redress and Monitoring System portal where he expressed that "high-level monitoring of public grievances is necessary".

To follow the prime minister's instructions, a senior official said it has been ordered by the Central Board of Direct Taxes that all members of the Board and officers in the ranks of Principal Chief Commissioner and Principal Directors General will "personally examine" 10 grievances each, every week.

Similarly, all Chief Commissioners, Principal Commissioners and Commissioners of Income Tax will individually monitor 20 and 30 grievances respectively, every week.
(http://www.ptinews.com/news/7297182_Taxpayers--grievances--CBDT-allots-quota-to-top-brass.html)

Determination of holding period of converted shares /Debentures

In the case of a capital asset, being a share or debenture of a company, which becomes the property of the assessee due to conversion (in the circumstances mentioned in clause (x) of section 47), there shall be included the period for which the bond, debenture, debenture-stock or deposit certificate, as the case may be, was held by the assessee prior to the conversion.
(http://www.incometaxindia.gov.in/communications/notification/notification18_2016.pdf)

No recovery of demands till the stay petition is disposed off with reasons:
In the case of Khandelwal Laboratories Pvt. Ltd vs. DCIT, Mumbai High Court has held that:
Any action to recover taxes adopting coercive means is not permissible till the petitioner's application for stay under Section 220(6) of the Act is disposed off. An order passed on a stay application must give reasons for the refusal to stay the demand.

Therefore, the action of the Assessing Officer in attaching the petitioners' bank accounts under Section 226(3) of the Act as well as subsequent withdrawal of the attached amounts from the bank accounts is without jurisdiction and bad in law.

The petitioners have a statutory right to its stay application being heard and disposed off before the Revenue can adopt any coercive proceedings on the basis of the Notice of demand under Section 156 of the Act issued to the assessee.

Such action on the part of the Assessing Officer, if permitted, would lead Section 220(6) of the Act becoming redundant.

In the above view, the Notice under Section 226(3) of the Act issued by the Assessing Officer to the petitioners' bankers are quashed and set aside and the Assessing Officer is directed to re-deposit the amount of within a period of one week.

Income Tax Department releases ITR forms for AY 2016-17:
The Central Board of Direct Taxes has notified the forms for filing of Income-tax returns for Assessment Year 2016-17. These return forms, namely ITR-1 (Sahaj), ITR- 2, ITR-2A, ITR-3 & ITR-4S (Sugam) are available, where as ITR-4, ITR-5, ITR-6 & ITR-7 will be soon available on the official website of the Department of Income Tax.

From Assessment Year 2016-17, individuals and HUFs filing their returns of income in ITR-1, ITR-2, ITR-2A and ITR-4S, having income exceeding Rs.50 lakh will now be required to furnish information regarding assets and liabilities in Schedule-AL of the relevant ITR form.
(http://www.incometaxindia.gov.in/Lists/Press%20Releases/Attachments/458/press-release-itr-2016-04.01.2016.pdf)

Release of new functionality to taxpayers to secure their E-filing account
In order to ensure that taxpayers are able to secure their E-filing account against any fraudulent attempts, the Income Tax Department has introduced a new facility called the "E-filing Vault".

In order to use this facility, taxpayers can log in to their E-filing Account and under their profile page select "E-filing Vault – higher security". Taxpayers can then select to login with any one or multiple options of the higher security methods namely – Using Aadhaar linkage to generate OTP, Login through Net-Banking or Login using Digital Signature Certificate (DSC).

Once this has been done, any future attempt to login will require the additional check of OTP using Aadhaar or the taxpayers will have to login using net banking or login using DSC. By using this facility, taxpayers can prevent anyone from logging in even if in the past they shared the user id and password.

Once the taxpayer has selected reset password using any one or multiple options of the higher security methods namely – Using Aadhaar linkage to generate OTP, Login through Net Banking or Login using

Digital Signature Certificate (DSC), then no other person will be able to reset taxpayer's password even if the secret answer or E-filing OTP etc is known.

Additional EVC options using ATM, Bank Account Validation or Demat Account Validations are shortly going to be introduced and these options will also be available for the higher level of security for login as well as resetting of password.
(http://www.incometaxindia.gov.in/Lists/Press%20Releases/Attachments/459/Press-Releasenew-functionality-04-04- 2016.pdf)

Compensation from Builder for alternate accommodation not liable to TDS u/s 194I and hence not liable for disallowance u/s 40(a)(ia)

In the case of M/s. Sahana Dwellers Pvt. Ltd. vs. Income Tax Officer Ward–8 (3) (1), ITAT Mumbai has held that:
On a plain reading of the definition of rent, it becomes clear that the payment made by the assessee does not come within the purview of rent as prescribed in the said provision as the assessee is not making such payment for use of any land, building, etc. On the contrary, if the facts involved are considered as a whole, the payment made by the assessee is nothing else but in the nature of compensation.

No TDS on Transaction Charges paid to Bombay Stock Exchange by member
Supreme Court in the case of C.I.T. -4, Mumbai Versus M/s Kotak Securities Ltd has held that :
There is no exclusivity to the services rendered by the Stock Exchange and each and every member has to necessarily avail of such services in the normal course of trading in securities in the Stock Exchange.

Such services, therefore, would undoubtedly be appropriate to be termed as facilities provided by the Stock Exchange on payment and does not amount to "technical services" provided by the Stock Exchange, not being services specifically sought for by the user or the consumer.

The view taken by the Bombay High court that the transaction charges paid to the Bombay Stock Exchange by its members are for 'technical services' rendered is not an appropriate view.

Such charges, really, are in the nature of payments made for facilities provided by the Stock Exchange. No TDS on such payments would, therefore, be deductible under Section 194J of the Act".

High Court passes strictures against the high-handedness of IRS officer
In the case of Piramal Fund Management Pvt Ltd vs. The Dy Commissioner of I. Tax, Hon'ble Mumbai High Court has come down heavily of the behavior of the assessing officer (I R S). High Court has held that:

The conduct on the part of Assessing Officer to accept a stay petition and not immediately give acknowledgment of its receipt is unacceptable.

The least that is expected of a Civil Servant is to be fair and civil.

In absence of the above, his conduct is not one becoming of an Officer belonging to the prestigious Indian Revenue Services.

In case he does not accept it and give an acknowledgment, he can deal with the application / letters as is appropriate in accordance with the law.

We believe that what has happened in this case is an aberration. The Chief Commissioner of I Tax would ensure that his officers do not behave in such a high handed and unfair manner, not expected of civil servants.
(http://itatonline.org/archives/)

CBDT directs reopening assessments to tax Bogus Capital Gains/ Loss in Penny Stocks Scam by taxpayers

The CBDT has issued a letter dated 16.03.2016 in which it has noted that an investigation has been conducted by Kolkata Investigation Directorate in respect of large number of penny stock companies, whose share prices were artificially raised on the Stock Exchanges in order to book bogus claims of Long Term Capital Gains or Short Term Capital Loss by various beneficiaries.

Based upon outcome of such investigation and analysis of the data, the Systems Directorate has now uploaded details of such information in respect of individual assessees who have made transactions in such penny stocks. The CBDT has directed that the information relating to the "Penny Stock" should be considered by AO's for making assessments u/s 143(3) and reopening assessments u/s 148 of the Act.

Vide EFS Instruction under reference a new button 'Penny Stock' has been added on Individual Transaction Screen (ITS) to display information related to penny stock, now enabled on the screen of the Assessing Officers (Aos). Available information regarding the manipulative transactions has been captured in the functionality, including the investigation report of the Kolkata Investigation Directorate. The functionality also contains a guidance note for the Assessing Officers.
(http://www.itatonline.org/info/index.php/cbdt-directs-reopening-assessments-in-claim-of-bogus-capital-gains-loss-inpenny-stocks-scam-by-tax payers/)

No Depreciation allowed when cost of assets treated as application of income u/s 11

In the case of The Deputy Commissioner of Income-Tax- (E) -IV, Chennai v/s Sivananda Saraswati Sevashram ITAT Chennai has held that :

When the cost of the asset was allowed u/s 11 of the Act as application income to the assessee which is a charitable institution entitled for exemption u/s 11, the cost of the asset becomes NIL. When the cost of the asset becomes NIL, there is no question of allowing any depreciation. If the depreciation is allowed then it would amount to double deduction. Therefore, this Tribunal is of the considered pinion that provisions of section 11 of the Act will override section 32. In other words, if the assessee claims exemption u/s 11 under Chapter III of the Act, it cannot claim depreciation u/s 32 of the Act.

Comptroller and Auditor General of India Report 3 of 2016 (Direct Taxes)

The Report contains significant results of the compliance audit of the Department of Revenue-Direct Taxes of the Union Government.

"The uncollected demand is rising despite clear provisions in the (Income Tax) Act to enforce collection and recovery of outstanding demand viz. attachment and sale of assessess' movable and immovable property, appointment of a receiver for the management of assesses' properties and imprisonment," said the CAG Report.

The Compliance Audit Report of the Comptroller and Auditor General of India (CAG) tabled in Parliament said the tax demand has indicated that more than 96 per cent of uncollected demand is "difficult to recover" in 2014-15. The main reasons that demands have remained uncollected include

inadequate assets for recovery, assessee not traceable, cases under liquidation and demand stayed by various authorities.

The report further said voluntarily compliance of corporate and non-corporate assessees during 2014-15 was 83.2 per cent, down from 84.6 per cent in 2013-14.

The official auditor, the report found that direct taxes increased by 9 per cent in 2014-15 (Rs 57,196 crore) compared to 2013-14. However, share of direct taxes in gross tax revenue decreased slightly to 55.9 per cent in 2014-15 from 56.1 per cent in the previous financial year. During 2010-11 to 2014-15 period, the compounded annual growth rate of corporate tax and income tax was 9.5 per cent and 16.7 per cent, respectively.

It further said the Commissioner of Income Tax (Appeal) disposed of only 0.07 million appeals (24.2 per cent) in 2014-15 out of 0.31 million appeals due for disposal and appeals pending increased from 0.23 million in 2013-14 to 0.23 million in 2014- 15.

The CAG said Central Board of Direct Taxes did not evolve any mechanism/system for monitoring of high value cases which were pending for a considerable time and were required to be written-off.
(http://www.business-standard.com/article/economy-policy/uncollected-tax-demand-increased-to-rs-7-lakh-cr-in-fy15- 116031100619_1.html)

Service Tax

Notification amending service tax return format to incorporate Swachh Bharat Cess

The government has issued a notification to amend the service tax returns format (Form ST-3) in order to incorporate details of Swachh Bharat cess payable/paid by the taxpayers.
(Notification No. 20/2016 -ST dated March 8, 2016)

Amendment in Point of Taxation in case of Service Tax payable under Reverse Charge Mechanism

A notification has been issued to insert a new proviso in Rule 7 of Point of Taxation Rules, 2011. As per this proviso, where there is change in the liability or extent of liability of a person required to pay tax as recipient of service notified under subsection (2) of section 68 of the Act, in case service has been provided and the invoice issued before the date of such change, but payment has not been made as on such date, the point of taxation shall be the date of issuance of invoice.
(Notification No. 21/2016 -ST dated March 30, 2016)

Important Judgments:

TDS (grossed up) on consideration paid to a Foreign Service Provider does not attract service tax

In the instant case, the issue was whether Tax Deduction at Source (TDS) deposited to the government on the consideration paid to a Foreign Service Provider (which was agreed to be net of the TDS amount) would be liable to service tax under a reverse charge mechanism.

The Mumbai Tribunal held that on a plain reading of the service tax law as applicable at the time being in force; it appears that service tax liability should be discharged on the amount billed by the service provider. Accordingly, since the amount billed by the foreign service provider in the present case was

net of TDS and the TDS amount (grossed up) was borne by the service recipient, such TDS amount would not be liable to service tax under a reverse charge mechanism.

[Mis Magarpatta Township Development & Construction Co. Ltd. vs Commissioner of Central Excise, Pune -1/1 (TS-90- CESTAT-2016(Mumbai)]

CENVAT credit on input services received prior to obtaining of Service Tax Registration

Denial of CENVAT credit on input services received prior to obtaining of service tax registration on the ground that obtaining of registration is mandatory for availing CENVAT credit is incorrect especially considering the fact that there is no provision to this effect in the CENVAT Credit Rules, 2004.

[CST vs. Verizon Data Services India P. Ltd. (2015) 39 STR 522 (Tri.-Chennai)]

VAT AND PROFESSION TAX FOR MAHARASHTRA

New Forms for filing VAT returns:

In Exercise of the powers conferred by sub-rule (2) of Rule 17A of the Maharashtra Value Added Tax Rules 2005, the Commissioner of Sales Tax, Maharashtra State hereby in respect of the periods starting on or after 1st April 2016, substitutes the returns in forms 231, 232, 233, 234 and 235.

These changes are with effect from 1st April 2016.

The new forms are available on the department website.

(Notification no. VAT/ADM-2016/1B/Adm-8- Dated: 24th Feb 2016)

Change of Rate of VAT from 5% to 5.5% :

The department of Sales Tax has increased the VAT rate of goods covered under Schedule C from 5% to 5.5%.

This new rate is applicable from 1st April 2016.

The notification mentions the serial numbers of the entries to which the new rate is applicable. All the products which fall in the entries which are not mentioned in the notification will be charged at the same rate i.e. 5%

Moreover, more entries are added to the Schedule A.

(Notification no.: VAT 1516/C.R. 31/ Taxation -1 Dated: 30th Mar 2016)

New Annexure for filing VAT returns:

The department of sales tax, along with new forms, has also issued new format of annexure to be filled by the dealers with their VAT/CST returns.

The dealer has to fill the Sales and purchase annexure for the period concerned.

In the Sales Annexure transaction wise details are now required to be submitted by the dealer.

The details to be provided are –

- Transaction date
- Sales invoice number

• TIN of the purchaser
• Net Value and Tax value
• Value of Tax free sales, exempt sales, etc.
• Labour charges and other charges
• Action (for the dealers who wish to revise their returns u/s 20(4)(b) and 20(4)(c)- for additions and deletion of invoices in the annexure earlier submitted)
• Return Form Number
• Transaction code according to the transaction type

In the Purchase Annexure also transaction wise details are now required to be submitted by the dealer. The details to be provided apart from those mentioned above for the sales annexure are-
• Bifurcation of purchases of capital goods and other goods
• TIN number of the seller
• Purchases from Unregistered dealers
• This annexure is to be filled along the returns from April 2016 onwards.

FEMA

Guidelines for Foreign Direct Investment (FDI) on E-commerce
As per the FDI policy, contained in the 'Consolidated FDI Policy Circular 2015' (FDI Policy) as amended from time to time, FDI up to 100% under automatic route is permitted in Business to Business (B2B) e-commerce. No FDI is permitted in Business to Consumer (B2C) e-commerce. However, FDI in B2C e-commerce is permitted in following circumstances:

A manufacturer is permitted to sell its products manufactured in India through e-commerce retail.

A single brand retail trading entity operating through brick and mortar stores is permitted to undertake retail trading through e-commerce.

An Indian manufacturer is permitted to sell its own single brand products through e-commerce retail. Indian manufacturer would be the investee company, which is the owner of the Indian brand and which manufactures in India, in terms of value, at least 70% of its products in house, and sources, at most 30% from Indian manufacturers.

In order to provide clarity to the extant policy, guidelines for foreign direct investment on e-commerce sector have been formulated and are enumerated below:

Definitions:
E-commerce: E-commerce means buying and selling of goods and services including digital products over digital & electronic network.

E-commerce entity: E-commerce entity means a company incorporated under the Companies Act 1956 or the Companies Act 2013 or a foreign company covered under section 2 (42) of the Companies Act, 2013 or an office, branch or agency in India as provided in section 2 (v) (iii) of FEMA 1999, owned or controlled by a person resident outside India and conducting the e-commerce business.

Inventory based model of e-commerce: Inventory based model of ecommerce means an e-commerce activity where inventory of goods and services is owned by e-commerce entity and is sold to the consumers directly.

Marketplace based model of e-commerce: Marketplace based model of ecommerce means providing of an information technology platform by an ecommerce entity on a digital & electronic network to act as a facilitator between buyer and seller.

Guidelines for Foreign Direct Investment on e-commerce sector:
100% FDI under automatic route is permitted in marketplace model of ecommerce.

FDI is not permitted in inventory based model of e-commerce.

Other Conditions:
Digital & electronic network will include network of computers, television channels and any other internet application used in automated manner such as web pages, extranets, mobiles etc.

Marketplace e-commerce entity will be permitted to enter into transactions with sellers registered on its platform on B2B basis.

E-commerce marketplace may provide support services to sellers in respect of warehousing, logistics, order fulfillment, call centre, payment collection and other services.

E-commerce entity providing a marketplace will not exercise ownership over the inventory i.e. goods purported to be sold. Such an ownership over the inventory will render the business into inventory based model.

An e-commerce entity will not permit more than 25% of the sales affected through its marketplace from one vendor or their group companies.

In marketplace model goods/services made available for sale electronically on website should clearly provide name, address and other contact details of the seller. Post sales, delivery of goods to the customers and customer satisfaction will be responsibility of the seller.

In marketplace model, payments for sale may be facilitated by the e-commerce entity in conformity with the guidelines of the Reserve Bank of India. In marketplace model, any warrantee/ guarantee of goods and services sold will be responsibility of the seller.

E-commerce entities providing marketplace will not directly or indirectly influence the sale price of goods or services and shall maintain level playing field.

Guidelines on cash and carry wholesale trading as given in para 6.2.16.1.2 of the FDI Policy will apply on B2B e-commerce.

Subject to the conditions of FDI policy on services sector and applicable laws/regulations, security and other conditionalities, sale of services through e-commerce will be under automatic route.

The above clarification by the government is certainly a welcome move and should address the concern of both offline and online retailers. It's a significant attempt on part of the government to provide clear and transparent regime for this sector to raise foreign investment.
(Press Note No 3 (2016 Series) D/o IPP File No.: No. 5/3/2015-FC.1 dated: 29.03.2016)

External Commercial Borrowings (ECB) – Revised framework
Taking into account prevailing external funding sources, particularly for long term lending and the critical needs of infrastructure sector of the country, the extant ECB guidelines have been reviewed by the Reserve Bank of India (RBI) in consultation with the Government of India. Accordingly, RBI has decided to make the following changes in the ECB framework:

Companies in infrastructure sector, Non-Banking Financial Companies -Infrastructure Finance Companies (NBFC-IFCs), NBFCs-Asset Finance Companies (NBFC-AFCs), Holding Companies and Core Investment Companies (CICs) will also be eligible to raise ECB under Track I of the framework with minimum average maturity period of 5 years, subject to 100 per cent hedging.

For the purpose of ECB, "Exploration, Mining and Refinery" sectors which are not included in the Harmonized list of infrastructure sector but were eligible to take ECB under the previous ECB framework (c.f. A.P. (DIR Series) Circular No. 48 dated September 18, 2013) will be deemed as in the infrastructure sector, and can access ECB as applicable to infrastructure sector under (I) above.

Companies in infrastructure sector shall utilize the ECB proceeds raised under Track I for the end uses permitted for this Track. NBFCs-IFCs and NBFCs-AFCs will, however, be allowed to raise ECB only for financing infrastructure.

Holding Companies and CICs shall use ECB proceeds only for on-lending to infrastructure Special Purpose Vehicles (SPVs).

The individual limit of borrowing under the automatic route for aforesaid companies shall be as applicable to the companies in the infrastructure sector (currently USD 750 million).

Companies in infrastructure sector, Holding Companies and CICs will continue to have the facility of raising ECB under Track II of the ECB framework subject to the conditionalities prescribed thereof.

The companies added under Track I should have a Board approved risk management policy. Further, the designated AD Category-I bank shall verify that 100 per cent hedging requirement is complied with during the currency of ECB and report the position to RBI through ECB 2 returns.

On the ECB framework announced vide Circular dated November 30, 2015, it is further clarified that:

The designated AD Category-I banks may, under the powers delegated to them, allow refinancing of ECBs raised under the previous ECB framework, provided the refinancing is at lower all-in-cost, the borrower is eligible to raise ECB under the extant ECB framework and residual maturity is not reduced (i.e. it is either maintained or elongated).

ECB framework is not applicable in respect of the investment in Non-convertible Debentures (NCDs) in India made by Registered Foreign Portfolio Investors (RFPIs).

Minimum average maturity of Foreign Currency Convertible Bonds (FCCBs)/ Foreign Currency Exchangeable Bonds (FCEBs) is 5 years irrespective of the amount of borrowing. Further, the call and put option, if any, for FCCBs shall not be exercisable prior to 5 years.

Only those NBFCs which are coming under the regulatory purview of the Reserve Bank are permitted to raise ECB. Further, under Track III, the NBFCs may raise ECBs for on-lending for any activities including infrastructure as permitted by the concerned regulatory department of RBI.

The provisions regarding delegation of powers to designated AD Category-I banks is not applicable to FCCBs/FCEBs.

In the forms of ECB, the term “Bank loans” shall be read as “loans” as foreign equity holders / institutions other than banks, also provide ECB as recognized lenders.

All other aspects of the ECB policy shall remain unchanged.
(RBI/2015-16/349 A.P. (DIR Series) Circular No. 56 dated March 30, 2016)

Foreign Direct Investment (FDI) in India – Review of FDI policy –Insurance sector

The extant FDI policy for Insurance sector has since been reviewed by the Government of India and accordingly it has been decided to enhance the limit of foreign investment in insurance sector from 26 to 49 percent under the automatic route subject to certain terms and conditions which have been notified through Notification No. FEMA. 366/2016-RB dated March 30, 2016
(RBI/2015-16/350 A.P. (DIR Series) Circular No. 58 dated March 31, 2016)

International Tax

CBDT clarifies on the India-UK tax treaty benefits available to the UK partnership firms

In February 2014, the protocol to the India-UK tax treaty (the tax treaty) amended the definition of the 'person' to delete the exclusion of the UK partnership firms. Further, the term 'resident' was amended to include partnership firms, estate or trusts as resident of a contracting state to the extent of income of such partnership firms, estate or trusts is subject to tax in that state as the income of a resident, either in its hands or in the hands of its partners or beneficiaries. Certain apprehensions that the term 'person' in the tax treaty does not specifically include partnerships have been brought to the notice of the Central Board of Direct Taxes (CBDT). Accordingly, clarity was sought from the CBDT whether the provisions of the tax treaty are applicable to a partnership firm.

Recently, the CBDT has clarified that the provisions of the tax treaty would be applicable to a partnership that is a resident of either India or the UK, to the extent that the income derived by such partnerships, estate or trust is subject to tax in that state as the income of a resident, either in its own hands or in the hands of its partners or beneficiaries.

This is a welcome move on part of the CBDT and will reduce litigation in line with the government's intention.

(CBDT Circular No. 2/2016 dated 25 February 2016)

Incurring more expenditure on AMP compared to comparable companies, cannot be inferred as an international transaction between the taxpayer and its foreign AE

Based on the facts and in the circumstances of the case, recently, the Bangalore Bench of the Income-tax Appellate Tribunal in the case of Essilor India Pvt Ltd (the taxpayer) held that in the absence of an arrangement and agreement between the taxpayer and its Associated Enterprise (AE) to incur advertisement, marketing and sales promotion (AMP) expenditure to promote brand value, incurrence of more expenditure on AMP compared to comparable companies, cannot be inferred as an international transaction between the taxpayer and its foreign AE. Therefore, the question of determination of the arm's length price (ALP) on such transaction does not arise.

Further, considering that the AMP expenditure was not included as part of the cost base for computing the Profit Level Indicator, the Tribunal directed the Assessing Officer /Transfer Pricing Officer to include the same as part of the cost base for the purpose of determination of ALP.
(Essilor India Pvt Ltd v. DCIT (IT (TP) A No. 29/Bang/2014 and IT (TP) A No. 227/Bang/2015)

CBDT replaces guidelines for selection and referral of transfer pricing cases for assessment
The Central Board of Direct Taxes (CBDT) issued a new Instruction no. 3/2016 replacing the existing Instructions regarding the 'Guidelines for Implementation of Transfer Pricing Provisions'. Vide this Instruction, the CBDT has reiterated and prescribed an additional mandatory criteria to select cases for specialized Transfer Pricing scrutiny, clarified the role of Assessing Officers and Transfer Pricing Officers and provided guidance for maintenance of the database.

This instruction is applicable with immediate effect. This instruction is another step by the CBDT in moving towards a nonadversarial tax regime, where the compliant taxpayers can expect a supportive interface with the tax department.
(CBDT Instruction No. 3/2016)

CBDT notifies the Rules in relation to the Safe Harbour provisions for offshore funds
The Finance Act, 2015 had introduced the provisions of Section 9A of the Income Tax Act, 1961 (the Act) whereby an offshore fund shall not be construed to have a business connection in India or be construed as a person resident in India solely on account of an investment manager in India (hereinafter referred to as 'the safe harbour provisions'). These provisions laid down certain onerous eligibility criteria for the offshore fund and the investment manager for the benefit of these safe harbour provisions to apply. Several representations were made by the industry to relax these conditions in order to be more practical.

Subsequently, a committee chaired by Mr. Narayan Murthy was constituted by the SEBI which recommended certain policy changes to make the safe harbour provisions more effective. However there were no material amendments on this front in the Union Budget 2016.

In this backdrop, CBDT has now issued a Notification dated 15 March 2016 prescribing Income Tax Rules (Rule 10V) for provisions introduced in Section 9A of the Income-tax Act, 1961 vide the Finance Act, 2015. These rules lay down the guidelines on operational aspects of the existing provisions, provide for non-denial of these beneficial provisions under certain circumstances, provide clarifications on transfer pricing aspects and procedures to obtain approval from the CBDT for eligibility of these provisions.
(CBDT Notification No. 14/2016 [F.No. 142/15/2015-TPL] dated 15th March 2016)

A foreign company engaged in outsourcing services constitutes a business connection under the Incometax Act but does not have a PE in India under the India-UK tax treaty
Based on the facts and in the circumstances of the case, recently, the Delhi Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of Vertex Customer Management Ltd. (the taxpayer) held that the taxpayer has a business connection in India under Section 9(1)(I) of the Income-tax Act, 1961. However, the taxpayer does not have a fixed place Permanent Establishment (PE), service PE or Dependent Agent PE in India under Article 5(1) of the India-UK tax treaty.

The Tribunal also held that since there is no PE of the taxpayer in India, the business income is not chargeable to tax in India. Even if it is assumed that there is a PE of the taxpayer in India, no profit can

be attributed since the PE was compensated at an arm's length price in accordance with FAR analysis.
(DCIT v. Vertex Customer Management Ltd.(ITA No. 3759/Del/2013) – Taxsutra.com)

Company Law

Companies (Share Capital and Debentures) Amendment Rules, 2016

In exercise of powers conferred by sub-section (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government, vide notification dated 10 March 2016, has issued the Companies (Share Capital and Debentures) Amendment Rules, 2016 to amend the regulations. The amended regulation provides a clarification that where the audited accounts are more than six months old, the calculations with reference to buy back should be on the basis of un-audited accounts not older than six months from the date of offer document which are subjected to limited review by the auditors of the company. The notification will be effective from the date of its publication in the Official Gazette.
(http://www.mca.gov.in/Ministry/pdf/Notification_11032016.pdf)

In exercise of the powers conferred by sub-sections (1) and (2) of Section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Share Capital and Debentures) Rules, 2014, namely:—

(1) These rules may be called the Companies (Share Capital and Debentures) Second Amendment Rules, 2016.

(2) They shall come into force on the date of their publication in the Official Gazette.

In the Companies (Share Capital and Debentures) Rules, 2014, in rule 17, after sub-rule (5), the following proviso shall be inserted, namely:- "Provided that where all members of a company agree, the offer for buy-back may remain open for a period less than fifteen days.''
(http://www.mca.gov.in/Ministry/pdf/AmendmentRules_30032016.pdf)

Companies (Accounting Standards) Amendment Rules, 2016.

In exercise of the powers conferred by clause (a) of sub-section (1) of section 642 of the Companies Act, 1956 (1 of 1956) read with section 210A and sub-section (3C) of section 211 and of the said Act, the Central Government, in consultation with National Advisory Committee on Accounting Standards, has made amendment to the Companies (Accounting Standards) Rules, 2006, namely:-

These rules may be called the Companies (Accounting Standards) Amendment Rules, 2016.

They shall come into force on the date of their publication in the Official Gazette.

In the Companies (Accounting Standards) Rules, 2006 (hereinafter referred to as the principal rules), in rule 2,-

(i) for clauses (a) and (b), the following clauses shall be substituted, namely:-
(a) "Accounting Standards" means the standards of accounting or any addendum thereto as specified in rule 3 of these rules;
(b) "Act" means the Companies Act, 1956 (1 of 1956) or the Companies Act, 2013 (18 of 2013), as the case may be;';

(ii) for clauses (d) and (e), the following clauses shall be substituted, namely:-
(d) "Financial Statements" means financial statements as defined in sub-section (40) of section 2 of the Companies Act, 2013;
(e) "Enterprise" means a 'company' as defined in sub-section (20) of section 2 of the Companies Act, 2013 or as defined in section 3 of the Companies Act, 196, as the case may be;'.

In the principal rules, in rule 4, in sub-rule (2), the words "General Purpose" shall be omitted.

In the principals rules, in the ANNEXURE, under the heading "ACCOUNTING STANDARDS", under the subheading "A. General Instructions", after paragraph 4, the following paragraph shall be inserted namely:-

"5. The reference to 'Schedule VI' or 'Companies Act, 1956' shall mutatis mutandis mean 'Schedule III' and 'Companies Act, 2013', respectively."

The list of amended Accounting standards is as follows:

Accounting Standard (AS) 2 – Valuation of Inventories
Accounting Standards (AS) 4 - Contingencies and Events Occurring After the Balance Sheet Date
Accounting Standard (AS) 10 - Property, Plant and Equipment
Accounting Standard (AS) 13 - Accounting for Investments
Accounting Standard (AS) 14 - Accounting for Amalgamations
Accounting Standard (AS) 21 - Consolidated Financial Statements
Accounting Standard (AS) 29 - Provisions, Contingent Liabilities and Contingent Assets
(http://www.mca.gov.in/Ministry/pdf/Notification_30032016.pdf)