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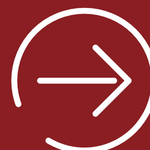

COMPANY LAW | by: Pinkesh Jain

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CBDT chief cracks whip at Gross Delay in tackling Vigilance Complaints against Tax Officials

Sushil Chandra, the Chairman of the CBDT, has issued a directive dated 13th June 2018 to the Principal Commissioners of Income-tax in which the shocking revelation is made that several vigilance complaints against income-tax officials are pending for several years and no action thereon has been taken. It is also stated that there are virtually no cases in which disciplinary proceedings on account of misconduct have been initiated by the department on its own. This indicates that actions which should have been taken by the department on complaints against Group 'B' and Group 'C' officers / officials are not being taken proactively.

Chairman has directed the disciplinary authorities to take immediate action in pending disciplinary proceedings. It is stipulated that departmental inquiries in non-CVC jurisdiction cases pending for more than six months should be completed latest by 30.06.2018.

(http://itatonline.org)

Income Tax Dept sells part of Cairn Energy's shares in Vedanta to recover tax dues

The Income Tax department has sold a portion of Cairn Energy's shares in Vedanta Ltd in a bid to recover some of the tax dues. In a statement to the exchanges, Cairn Energy said, "Cairn has now been notified by the IITD (Indian Income Tax Department) that it has sold part of Cairn's shareholding in VL (Vedanta Ltd), realising and seizing proceeds of $216 million. Following this sale, Cairn's retained holding in VL is now approximately 3 per cent. It is possible that the IITD may make further sales."

(https://www.thehindubusinessline.com)

Income Tax Tribunal directive regarding disposal of Low-Tax Effect Appeals of Department

The CBDT has issued Circular No. 03/2018 dated 11th July 2018 by which the monetary limits for maintainability of appeals filed by the Department have been enhanced significantly. The CBDT has stated that all appeals and cross-objections filed by the department before the Tribunal where the tax effect is less than Rs. 20 lakhs should be withdrawn/ treated as not pressed.

The CBDT has also made it clear that the Circular will apply to appeals and cross objections to be filed henceforth and it shall also apply retrospectively to pending appeals and cross objections.

(http://itatonline.org

CBDT further extends the time for Linking PAN with Aadhaar from 30th June 2018 to 31st March 2019

Vide its orders dated 31.07.17, 31.08.17, 08.12.17 & 27.03.18, in file of even number, CBDT had allowed time till 30th June, 2018 to link PAN with Aadhaar while filing the tax-returns. Upon consideration of the matter, the CBDT further extends the time for linking PAN with Aadhaar till 31st March, 2019.

(https://www.incometaxindiaefiling.gov.in/eFiling/Portal/StaticPDF_News/cbdt_order_regarding_linking_of_pan_with_aadhaar_30_06_2018.pdf)

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E-way bill Update | Threshold limit raised from rupees fifty thousand to rupees one lakh

E-way bill is now mandatory for **intra-state** movement of goods in Maharashtra for consignment value of goods **exceeding Rs. 1 Lakh.**

With this the state of Maharashtra becomes the fourth state to enhance the limit to Rs. 1 Lakh for intra-state movement after West Bengal, Tamil Nadu and New Delhi.

(Notification No. 15E/2018 – Maharashtra State Tax dated 29-06-2018)

Clarification regarding admissibility of Refund of unutilized input tax credit on account of inverted duty structure to fabric processors/Job Workers:

Earlier Notification No. 5/2017-Central Tax (Rate) dated 28.06.2017 specifies the goods in respect of which refund of unutilized input tax credit (ITC) on account of inverted duty structure under section 54(3) of the CGST Act shall not be allowed where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies of such goods.

However, in case of fabric processors, the output supply is the supply of job work services and not of goods (fabrics). Hence, it is clarified that the fabric processors shall be eligible for refund of unutilized ITC on account of inverted duty structure under section 54(3) of the CGST Act even if the goods (fabrics) supplied to them are covered under the above-said notification.

(Circular No. 48/22/2018-GST dated June 14, 2018)

High seas Sales is 'Exempt Supply' warranting reversal of ITC

BASF India Limited, the applicant, engaged in the business of manufacture and trading of chemicals and allied products.

The applicant sells the products purchased from its overseas related party to its customers in India, before the goods are entered for Customs clearance (commonly referred to as a 'High Sea Sale' transaction or HSS).

- The customer to whom goods are being sold is known to the applicant at the time of placing order on their overseas supplier.
- The applicant sought advance ruling on
  - Whether IGST will be leviable on the HSS effected by the applicant to its customers in India?
  - Whether Input tax credit (ITC) has to be reversed in HSS, if HSS is not subject to levy of IGST by treating the transaction as an 'exempt supply' for the purpose of Section 17 of CGST Act?

The Authority held as follows:

Question 1

- Integrated tax on goods imported into India is to be levied and collected in accordance with Section 3 of the Customs Tariff Act, 1975 and Section 12 of the Customs Act, 1962 and the same is to be levied and collected at the time of import into India.

- The goods are considered to be imported into India only after they clear the customs frontier after compliance of applicable procedures and payment of duty as applicable.

- Thus, as per Section 7(2) of the IGST Act and proviso to Section 5(1) of the IGST Act, it is very clear that in respect of imported goods, there is no levy and collection except in accordance with the provisions of Section 12 of the Customs Act, 1962 and Section 3 of the Customs Tariff Act, 1975.

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- Section 12 of the Customs Act, 1962 provides that custom duties, which includes integrated tax in respect of imported goods, would be levied only at the time of import.

- Thus, as per Section 7(2) of the IGST Act and proviso to Section 5(1) of the IGST Act, it is very clear that in respect of imported goods, there is no levy and collection except in accordance with the provisions of Section 12 of the Customs Act, 1962 and Section 3 of the Customs Tariff Act, 1975.

- In view of this the import of goods sold on high seas sale basis, though they are clearly in the nature of inter-state supply, it would come in the category of "exempt supply" as no duty is leviable on them except in accordance with Proviso to Section 5(1) of the IGST Act.

Question 2

Definition of exempt supply, as provided in Section 2(47) of the CGST Act, includes non-taxable supply. Further, Section 2(78), defines the term 'non-taxable supply' as below:

"Non-taxable supply" means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services tax Act". From the above definition, it is clear that goods which are sold on HSS basis is non-taxable supply as no tax is leviable on them till the time ofcustoms clearance, in accordance with and compliance of Section 12 of the Customs Act, 1962 and Section 3 of the Customs Tariff Act, 1975. Hence, the input tax credit to the extent of inputs, input services and common input services would be required to be reversed by the applicant as per Section 17 of the CGST Act.

[AAR-Maharashtra, BASF India Limited, dated May 21, 2018]

Levy of GST on RCM u/s 9(4) of CGST Act deferred till 30 th September, 2018

The Levy of GST on RCM with respect to procurement of supplies from unregistered persons was first deferred till March, 2018, then June, 2018 and now up to September, 2018.

(Notification No. 12/2018- Central tax (Rate) dated June 29, 2018)

Forthcoming GST Council Meeting

The 28 th GST Council Meeting will be held in New Delhi on Saturday, the 21 st of July, 2018 .

Some of the very significant issues of the GST are going to be discussed and decided upon in the forthcoming GST Council Meeting. Some of them are as under

- **Annual GSTR 9 Return** - Footprint of Annual GSTR 9 Return to be discussed

- **AAR Centralisation** – Due to the discrepancies in the decision pronounced by the different authority for advance rulings of different states, the need for Centralised AAR has arised.

- **Simplification of GST Returns Filings**

- **GST Return Reconciliation** with ITR – The Council will discuss the reconciliation of GSTR Return by the income tax return of the taxpayers. While there will talks over the annual return form and audits, the reconciliation will be done to check GST evasion.

- **Registration Eligibility of E-Commerce Companies** – E-commerce Companies providing services in India need not register if the annual turnover is less than 20 lakh and also not required to deduct TCS under section 52 of the CGST Act.

Back

Payments for marketing of taxpayer's BPO services in foreign countries are not taxable as FTS under the Income-tax Act as well as under the India-U.S. tax treaty

Based on the facts and in the circumstances of the case, recently,the Kolkata Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of Onprocess Technology India Pvt Ltd (the taxpayer) held that payments to a foreign company for marketing of taxpayer's Business Process Outsourcing (BPO) services in foreign countries are not taxable in India since the foreign marketing companies were engaged only for promoting and marketing of taxpayer's BPO service in the U.S. Except canvassing for customers in the foreign territories, these companies did not render any service in India nor the services performed were technical in nature. Further, services rendered did not involve making available to the taxpayer any technical know-how, drawings, designs etc. with the help of which the taxpayer carried on its BPO business. Therefore, the payment of fees did not fall within the provisions of Section 9(1)(vii) of the Income-tax Act, 1961 or under the India-U.S. tax treaty.

(Onprocess Technology India Pvt Ltd v. DCIT (ITA No. 1047/Kol/2016) – Taxsutra.com)

Payment of marketing survey expenses made directly by AE on behalf of Indian taxpayer held to be at ALP

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 BMW India Private Limited (the taxpayer) has pronounced its ruling on the Transfer Pricing dispute in favour of the taxpayer by holding that, the expenditure incurred towards conducting marketing survey specifically for the Indian market (wherein the AE does not make direct sales in India), cannot be construed to benefit the AE. It is pertinent to note here that the AE had directly made such payments to a third party and subsequently recovered (at costs) from the taxpayer.

The Tribunal, in relation to the International Transaction of 'payment of technical support cost', upheld the ALP determined by the taxpayer by application of the Comparable Uncontrolled Price method, thereby, rejecting the Transfer Pricing Officer's approach based on a random search on the Internet. The Tribunal endorsed the view that comparables should not be rejected merely due to the geographical difference, unless the impact of differences in the market conditions is demonstrated.

(BMW India Pvt. Ltd. v. ACIT (ITA No. 6160/Del/2014) – Taxsutra.com)

AMP transaction does not exist in the absence of an agreement with the AE

Based on the facts and in the circumstances of the case, recently, the Mumbai Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of Colgate Palmolive (India) Limited (the taxpayer) held that in the absence of an arrangement or agreement with the Associated Enterprise (AE), the taxpayer is not obliged to undertake any brand building for its AE. Tribunal noted that the Revenue brought no tangible evidence to substantiate that Advertising, Marketing, and Promotion expenses incurred by the taxpayer led to brand building, the creation of marketing intangible and benefited the taxpayer group. Tribunal stated no additions could be made merely on the basis of assumption of certain facts.

(Colgate Palmolive (India) Limited v. ACIT (ITA No. 6073/Mum/2014 and ITA No. 2778/Mum/2011))

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Indian subsidiary does not constitute a PE of a foreign company in India under the India-Saudi Arabia tax treaty

Based on the facts and in the circumstances of the case, recently, the Authority for Advance Rulings (AAR) in the case of Saudi Arabian Oil Company (the applicant/foreign company) held that the Indian subsidiary of the applicant does not constitute a fixed place Permanent Establishment (PE) in India under Article 5(1) of India-Saudi Arabia tax treaty (tax treaty) since the applicant is not carrying on its main business from the premises of its subsidiary and the fixed place is not available to the foreign company at its disposal. The foreign company's services are in the nature of support services. Further, the activities of the Indian subsidiary are duly compensated on an arm's length basis in accordance with the transfer pricing regulations.

Since none of the services are rendered by an employee of the applicant to its customers in India, the applicant does not have a service PE in India. Further, the Indian subsidiary of the applicant does not constitute an agency PE in India since the Indian company does not have the authority of a binding nature to conclude contracts which are specifically prohibited by the service agreement. The AAR held that exclusions provided under Article 5(4) of the tax treaty are applicable only if the applicant has a PE within the meaning of Articles 5(1) to 5(3) of the tax treaty.

(Saudi Arabian Oil Company (AAR No. 25 of 2016) – Taxsutra.com)

Foreign Investment in India - Reporting in Single Master Form

The Reserve Bank of India (RBI), with the objective of integrating the extant reporting structures of various types of foreign investment in India, has proposed to introduce a Single Master Form (SMF). The SMF would be filed online.

SMF would provide a facility for reporting total foreign investment in an Indian entity, as also investment by persons resident outside India in an Investment Vehicle.

Prior to the implementation of the SMF, the RBI will be providing an interface to the Indian entities, to input the data on total foreign investment in a specified format. The interface would be available on RBI website www.rbi.org.in from June 28, 2018 to July 12, 2018. Indian entities not complying with this pre-requisite will not be able to receive foreign investment (including indirect foreign investment) and will be non-compliant with Foreign Exchange Management Act, 1999 and regulations made thereunder.

(RBI/2017-18/194 A.P. (DIR Series) Circular No. 30 dated June 7, 2018)

Liberalized Remittance Scheme – Harmonization of Data and Definitions

It has been decided by the RBI that furnishing of Permanent Account Number (PAN), which hitherto was not to be insisted upon while putting through permissible current account transactions of up to USD 25,000, shall now be mandatory for making all remittances under Liberalized Remittance Scheme (LRS).

Further, in the context of remittances allowed under LRS for maintenance of close relatives, it has been decided, in consultation with Government, to align the definition of 'relative' with the definition given in Companies Act, 2013 instead of Companies Act, 1956.

(RBI/2017-18/204 A.P. (DIR Series) Circular No. 32 dated June 19, 2018)

Appointing effective date for following sections:

In exercise of the powers conferred by sub- section (2) of section 1 of the Companies (Amendment) Act, (1 of 2018), the Central Government hereby appoints the 15 th August, 2018 as the date on which the following provisions of the said Act shall come into force, namely :-

- Section 15
- Section 16
- Section 75
- Section 76

http://www.mca.gov.in/Ministry/pdf/CommencementNotification0507_06072018.pdf

MCA has constituted a 10-Member Committee to review the offences under the Companies Act, 2013

The Ministry of Corporate Affairs (MCA) has constituted a 10 Member Committee, headed by the Secretary of Ministry of Corporate Affairs, for review of the penal provisions in the Companies Act, 2013 may be setup to examine 'de-criminalisation' of certain offences.

The MCA seeks to review offences under the Companies Act, 2013 as some of the offences may be required to be decriminalised and handled in an in-house mechanism, where a penalty could be levied in instances of default. This would also allow the trial courts to pay more attention on offences of serious nature. Consequently, it has been decided that the existing compoundable offences in the Companies Act – 2013 viz. offences punishable with fine only or punishable with fine or imprisonment or both may be examined and a decision may be taken as to whether any of such offences may be considered as 'civil wrongs' or 'defaults' where a penalty by an adjudicating officer may be imposed in the first place and only consequent to further non-compliance of the order of such authority will it be categorised as an offence triable by a special court.

For retailed order, refer link:
http://www.mca.gov.in/Ministry/pdf/OrderCommitteeOffences_13072018.pdf

Amendment of Companies (Acceptance of Deposit) Rules.

In exercise of the powers conferred by section 73 and section 74 read with sub-section (1) and sub-section (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government in consultation with the Reserve Bank of India, hereby makes rules to further amend the Companies (Acceptance of Deposit) Rules. These rules will be in force on August 15, 2018.

Detailed rules can be referred in following link:
http://www.mca.gov.in/Ministry/pdf/CompaniesAcceptanceDepositsAmendmentRules_06072018.pdf

Director's KYC

The Ministry of Corporate Affairs (MCA) introduced the KYC norms for all directors of all Companies. To implement this, MCA has amended the Companies (Appointment and Qualification of Directors) Rules, 2014 effective from 10 th July, 2018.

Applicability of the Rules:
Rule 12A use the word "allotted", Hence this rule applicable to every individual allotted Director Identification Number (DIN) irrespective of whether he/ she hold any office of directors not.

Disqualified Directors:

Disqualification occurred when an individual having DIN and appointed in a Company as a Director, it implied already having DIN "allotted", so disqualified directors also submit KYC Form.

However clause (iii) of verification head of form DIR-3_KYC state as under:
iii) I am not restrained, disqualified, remove of, for being appointed as director of a company under the provisions of the Companies Act, 2013 including Section 164 and 169:

Therefore, applicant should attach with form DIR-3_KYC separate addendum about his/her Disqualification and practicing professional shall note the same.

Nature of compliance:

It is recurring nature compliance to be file every year means add one more form in our year ended compliance checklist.

Cut-off date :

31 st March of every financial year, if an individual having DIN as on 31 st March of a financial year shall mandatorily file form DIR-3_ KYC.

Due date of compliance:

Filing shall be completed within 30 days from the end of financial year i.e. on or before 30 th April of the Financial Year.

Financial Year 2017-18:

Every individual who has already been allotted DIN as at March 31, 2018 shall submit e-form DIR-3 KYC on or before 31st August, 2018. Therefore the due date, who has been allotted DIN from 1 st April, 2018 to 9 th July, 2018 shall submit e-form DIR-3 KYC on or before 30 th April of the next Financial Year i.e. 30.04.2019.

Designated Partner of LLP:

The Ministry, vide notification dated 5th July, 2011, has integrated the Director's Identification Number (DIN) issued under Companies Act, 1956 with Designated Partnership Identification Number (DPIN) issued under Limited Liability Partnership (LLP) Act, 2008 with effect from 9.7.2011:

Pursuant to this notification:

- With effect from 9.7.2011, no fresh DPIN will be issued. Any person, who desires to become a designated partner in a Limited Liability Partnership, has to obtain DIN by filing e-form DIN-1:
- If a person has been allotted DIN, the said DIN shall also be used as DPIN for all purposes under Limited Liability Partnership Act, 2008:

Reference also be drawn under verification column (v) of form DIR-3_KYC, Form DIR-3 which Is Application for allotment of Director Identification Number before appointment in an existing company or LLP.

Therefore an individual having DPIN also required to file for DIR-_KYC.

Filing of Form DIR-6 for change in particulars of Director:

If any DIN holder wish to change/update the particulars e.g. name, Date of Birth, Address etc.
By filing Form DIR-3_KYC, it shall be done, however later on changes shall be made by filing DIR-6 only.

Read More

What are the KYC documents:

From 10th July, 2018 it's a mandatory for every individual having allotted DIN as at 31st March, 2018 shall adhere to KYC norms. The acceptable document as under:

- **Resident Individual**
- For Identification
  Copy of PAN
  Copy of Aadhaar

- For verification
  Mobile Number & e-mail ID

- **Other than Resident Individual e.g. Foreign Directors**

Copy of Passport for identification and Mobile Number & e-mail ID for verification.

Signature Verification:

The KYC to be completed by physical signature in all the above KYC documents and because Form DIR-3_KYC submit online so e-form DIR-3_KYC digitally signed by the applicant and Practicing professionals as well.

FEE FOR FILING e- Form DIR-3 KYC

Fee payable till the 30th April of every financial year in respect of e-form DIR-3 KYC as at the 31st March of immediate previous year.	**-----**
Fee payable (in delayed case)	**Rs.5000**

Note: For the current financial (2018-2019),no fee shall be chargeable till, the 31st August, 2018 and fee of Rs.5000 shall be payable on or after the 1st September, 2018.:

Link :

https://taxguru.in/company-law/kyc-updation-directors-companies.html
http://www.mca.gov.in/Ministry/pdf/CompaniesAppointmentQualificationRules_06072018.pdf
http://www.mca.gov.in/Ministry/pdf/CompaniesRegistrationOfficesFeesRle_06072018.pdf

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