

Connection

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Lalit Bajaj & Associates
Chartered Accountants



“As entrepreneurs we must continue to ask ourselves 'What's next?' It takes humility to realize that we don't know everything, not to rest on our laurels and know that we must keep learning and observing.”

- Cher Wang

Companies (Amendment) Bill, 2014

Just to Remind You

- **Dec 15 - Payment of Advance Tax (Companies 75% & Others 60%)**
- **Dec 15 - E-Payment of PF for November**
- **Dec 21 - Submission of MVAT Return for November**
- **Dec 21 - Filing of Annual Reports under CLSS**
- **Dec 31 - Service Tax Payment under VCES along with Interest**

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The Union Cabinet, chaired by the Prime Minister Shri Narendra Modi, approved the introduction of the Companies (Amendment) Bill, 2014 in Parliament to make certain amendments in the Companies Act, 2013.

The Companies Act, 2013 (Act) was notified on 29.8.2013. Out of 470 sections in the Act, 283 sections and 22 sets of Rules corresponding to such sections have so far been brought into force. In order to address some issues raised by stakeholders such as Chartered Accountants and professionals, following amendments in the Act have been proposed:

- Omitting requirement for minimum paid up share capital, and consequential changes. (For ease of doing business)
- Making common seal optional, and consequential changes for authorization for execution of documents. (For ease of doing business)
- Prescribing specific punishment for deposits accepted under the new Act. This was left out in the Act inadvertently. (To remove an omission)
- Prohibiting public inspection of Board resolutions filed in the Registry. (To meet corporate demand)
- Including provision for

writing off past losses/depreciation before declaring dividend for the year. This was missed in the Act but included in the Rules.

- Rectifying the requirement of transferring equity shares for which unclaimed/unpaid dividend has been transferred to the IEPF even though subsequent dividend(s) has been claimed. (To meet corporate demand)
- Enabling provisions to prescribe thresholds beyond which fraud shall be reported to the Central Government (below the threshold, it will be reported to the Audit Committee). Disclosures for the latter category also to be made in the Board's Report. (Demand of auditors)
- Exemption u/s 185 (Loans to Directors) provided for loans to wholly owned subsidiaries and guarantees/securities on loans taken from banks by subsidiaries. (This was provided under the Rules but being included in the Act as a matter of abundant caution).
- Empowering Audit Committee to give omnibus approvals for related party transactions on annual basis. (Align with SEBI policy and increase ease of

doing business)

- Replacing 'special resolution' with 'ordinary resolution' for approval of related party transactions by non-related shareholders. (Meet problems faced by large stakeholders who are related parties)
- Exempt related party transactions between holding companies and wholly owned subsidiaries from the requirement of approval of non-related shareholders. (corporate demand)



- Bail restrictions to apply only for offence relating to fraud u/s 447. (Though earlier provision is mitigated, concession is made to Law Ministry & ED)
- Winding Up cases to be heard by 2-member Bench instead of a 3-member Bench. (Removal of an inadvertent error)
- Special Courts to try only offences carrying imprisonment of two years or more. (To let magistrate try minor violations).



“E-Voting provisions in the Companies Act, 2013 not to become mandatory till 2015”



Electronic Voting System

Just as the AGM season started Ministry of corporate affairs dropped a bombshell that e-voting provisions in the companies' act 2013 do not become mandatory till 2015.

Shareholders of the company can express their assent or dissent on resolution by way of vote. When it is impossible to shareholder to physically attend the general meeting so “Passing of resolution through Postal Ballot” was introduced in the companies' act 1956. There was no provision in companies act 1956 regarding voting through electronic means. SEBI circular dated 13 July 2013 brings an amendment to provide shareholders e-voting platform.

Now the companies act 2013 has introduced a new provision voting through electronic means under section 108 this section requires that all Listed companies and the company having 1000 or more shareholders to provide e-voting. Shareholders can vote electronically in any general meeting of the company on any resolution pursuant to Companies Act, 2013.

E-voting is a secured system based process for display of electronic ballots, recording of vote of members and votes polled in favour or against, such that entire voting is exercised by way of electronic means get registered and counted in an electronic registry in a centralized server with adequate cyber security.

For the purpose of e-voting the company is required to follow a certain systematic procedure explained below

- The notice of general meeting is required to sent to all the members, Directors and the auditors of the company either-By registered post or speed post, through courier service or through an electronic means i.e. at registered e-mail ID
- The notice shall also be placed on website of the company.
- The notice shall also contain that business may be transacted through evoting-system and company is providing the facility of e-voting system.
- The notice shall clearly contain the process and the manner of voting including time schedule and time period during which vote may cast and shall also provide the login ID and facility of generating password for security.
- The company shall also publish an advertisement for notice of the meeting in a vernacular news paper in vernacular language and also in English newspaper at once at least 5 days before the meeting.
- The notice of meeting should contain that

Business may be transacted by e-voting;

The date and time of commencement and end of voting through electronic means;

The statement that voting shall not be allowed through electronic means;

The e-voting shall remain open for not less than 1 day and not more than 3 days. Such voting period shall be completed 3 days prior to the date of general meeting.

At the end of voting period, the portal where the votes are cast shall forthwith be blocked.

The Board of Directors of the company may appoint the scrutinizer, who may be company secretary in practice or the CA in practice, cost accountant in practice, Advocate but not being the person who is in employment of the company.

The scrutinizer shall within the period of not exceeding 3 working days from the date of conclusion of the e-voting period, Unblock the votes in presence of at least two witnesses

- The Scrutinizer shall maintain the register either manually or electronically to record the assent and dissent received from shareholder.

- The register and all other papers relating to the e-voting shall be kept by scrutinizer in safe custody until the chairman approves and signs the minutes of the meeting and thereafter it will be returned to company.
- The results declared along with scrutinizer's report shall be display on the company's website within 2 days of passing of the reso-

lution at general meeting.

E-voting platform:

In order to handle the problem in the postal ballot, NSDL and CDSL has developed the e-voting platform to enable shareholders vote electronically in convenient manner with the help of following websites,

Process of e-voting for the shareholder:

The shareholder can login the e-

voting system using their user ID i.e (DematAccount Number/ folio Number) or PAN and password.

After login the Demat account the shareholder will have to confirm their personal details and compulsorily change their password. This password can be used by demat account holder for voting on resolutions of the company in which they are eligible to vote.

Extension of Due Date for filing CRA - 2

Government has received representations from stakeholders seeking clarifications about Rules 5 (1) and 6 (2) of the Companies (Cost Records and Audit) Rules, 2014 regarding maintenance of cost records and filing of notice of appointment of the Cost Auditor in Form CRA-2 in electronic mode.

The matter has been examined in the Ministry and the following is clarified:

Considering delay in availability of Form CRA-2 on the MCA website, it has been decided to extend the date of filing of the said Form without any penalty/late fee up to 31st January,

2015. Form CRA-2 will be made available on the MCA website soon. It is noted that some companies have filed Form 23C for appointment of Cost Auditor for the financial year 2014-15. It is clarified that such companies need not file form CRA-2 afresh for the financial year 2014-15.

Extension of Due Date for CLSS

In continuation to the Ministry's General Circular No. 34/2014 dated 12.08.2014 and 40/2014 dated 15/10/2014

on the subject cited above, this Ministry has, on consideration of requests received from various stakeholders, has decided

to extend the Company Law Settlement Scheme (CLSS 2014) upto 31st December, 2014.

Extension of Due Date of AGM for Companies registered in J&K

The State of Jammu and Kashmir faced unprecedented floods, particularly in the Kashmir valley in September 2014. Kashmir Chamber of Commerce and Industry and others have represented that due to the devastation caused by the floods, companies registered in the State could not convene

AGMs for the financial year 2013-2014 within the stipulated time as required under the provisions of Companies Act, 2013.

In view of the exceptional circumstances, Registrar of Companies Jammu and Kashmir is advised to exercise powers conferred on him under the third

proviso to section 96(1) of the Companies Act, 2013 to grant extension of time upto 31/12/2014 to those companies registered in the State of Jammu and Kashmir who could not hold their AGMs (other than first AGM) for the financial year 2013-14 within the stipulated time.



*"The Companies
(Amendment) Bill,
2014 has proposed
14 amendments in
the recently notified
Companies Act,
2013"*





“CBDT has issued instructions from time to time, on some of the issues, there is a need for further consolidation of instructions”



Section 80C - Bank Term Deposit Limit Increased to Rs. 1.5 Lakhs

In exercise of the powers conferred by clause (xxi) of sub-section (2) of section 80C of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby makes the following amendments to the the Bank Term Deposit Scheme, 2006,

namely:-

- (1) This scheme may be called the Bank Term Deposit (Amendment) Scheme, 2014.
- (2) It shall come into force on the date of its publication in the Official Gazette.

In the Bank Term Deposit Scheme, 2006, in para 3, in clause (1), for the words “one lakh rupees”, the words “one hundred and fifty thousand rupees” shall be substituted.

CBDT issues further guidelines on IT Scrutiny & Appeals

On several occasions the Finance Minister has emphasised the need for furthering a non-adversarial tax regime. A non-adversarial tax regime cannot be achieved without concerted endeavour at each level, especially at levels where the public interaction is high. Though the Central Board of Direct Taxes (CBDT) has issued instructions from time to time on some of these issues, there is a need for consolidation of earlier instructions and issuance of further directions in this regard. Accordingly, CBDT hereby directs that the officials of the Income-tax Department must adhere to the following guidelines for achieving such objective:

- Letter dated 21.08.2014 of Chairman, CBDT on cleanliness and punctuality should be implemented in letter and spirit as these are the basic requirements of an efficient and taxpayer centric organisation.
- Any appointment given to the public must be honoured and such appointments should not be cancelled or postponed without any unavoidable rea-

son, especially when the assessee/representative is willing to attend.

- Despite less than one percent cases being selected for scrutiny assessment, this area of work continues to remain in focus where the tax administration is questioned as adversarial. The selection of cases under Computer Assisted Scrutiny Selection has resolved the issue of subjectivity in selection of cases for scrutiny. However, the process of scrutiny involving long and non-specific questionnaires, the nature of additions made and the high-pitched assessments without proper basis continue to attract adverse attention. Instruction No. 6/2009 entrusted a responsibility on each Range Head to ensure improvement in quality of assessments by issuing directions under section 144A of the Act. There is a need to follow the said Instruction in letter and spirit and accordingly, the Range Heads are required to ensure that

frivolous additions or high-pitched assessments without proper basis are not made. The Principal Commissioners of Income-tax/ Commissioners of Income-tax are required to supervise the work of their subordinates to ensure due discharge of these functions.

- Instruction No. 15 of 2008 dated 04.11.2008 provides for review of scrutiny assessment orders by the supervising officers on a quarterly basis. Instruction No. 16 of 2008 dated 4.11.2008 lays down the procedure for Inspection of work of Assessing Officers, Tax Recovery Officers, Range Offices and Commissioners of Income-tax (Appeals). These instructions are issued with the overall aim of capacity building and improving quality of work. Supervisory authorities are required to ensure that these instructions are duly followed.
- Instruction No. 7 of 2014 dated 26.09.2014 clarifies that ordinarily in scrutiny

cases selected on the basis of AIR/CIB/26AS information, the scrutiny shall be limited to that information. Wider scrutiny would be possible only with the sanction of Principal Commissioner of Income-tax/ Commissioner of Income-tax in specified cases and under the monitoring of the Range Head. (Such cases form 25-30% of the total scrutiny basket, thus limiting the cases of full scrutiny).

- Withholding of refunds due to mismatch of TDS data has been sought to be remedied through Instruction No. 5 of 2013 dated 08.07.2013 which provides for grant of credit on the basis of evidence submitted by the assessee. This Instruction must be followed scrupulously.
- Instruction No. 1914 of 1993 dealing with recovery of demand, stay of demand and grant of instalments has stood the test of time and is equally relevant today. Same is reiterated for implementation in deserving cases. Measures for recovery of tax should be subject to the said Instruction.
- In cases of remand, the Commissioners of Income-tax (Appeals) should specify the aspect which needs to be verified. The practice of forwarding the entire documents/submission of the assessee for comments
- Threshold limits have been set for appeals to ITAT, High Courts and Supreme Court at Rs. 4 lakhs, Rs. 10 lakhs and Rs. 25 lakhs, respectively. This, however, does not imply that appeals above these amounts have to be necessarily filed. Where the tax effect is above these amounts, the officer concerned is enjoined with the duty to ensure that the same is filed only if it is feasible to so do on merits of the case.
- A review of the proposals for filing SLPs reveals that in most of the cases, the decision to file a reference before the High Court itself was not in order. No substantial question of law existed or the question of law was not correctly drafted. Hence, in stations having more than one Chief Commissioner of Income-tax (CCIT) the decision to file a reference before the High Court will be taken by two CCsIT including the CCIT in whose jurisdiction the matter lies. The Principal CCIT/ CCIT (CCA) concerned may issue directions for pairing of CCsIT for this purpose. In case of disagreement between the two CCsIT, the matter will be referred to the Principal

CCIT/ CCIT (CCA). For references in the jurisdiction of the Principal CCIT/ CCIT (CCA), in case of disagreement, the matter will be referred to the CCIT-II.

- Any regime where taxpayers' grievances are not attended to in time may be considered adversarial. Time limits have been set out for their disposal under Citizens' Charter, CPGRAMS, etc. However, the pendency reflects poorly on the monitoring effort. All the supervisory authorities are directed to ensure that the grievances are disposed off within the specified time period.
- The issue of summons without adequate caution and due application of mind has caused concern to the Board. Supervisory authorities have to ensure that the summons are issued only in deserving cases. Summons should also clarify if the person has been called as a witness or in his own case, and the matter for which he has been called.





Exemption from filing CST Return partially withdrawn

It has been clarified earlier by the trade above, that where there are no inter-State sales in any return period then no return is required to be filed under the Central Sales Tax Act, 1956 (CST Act) provided that the Maharashtra Value Added Tax Act, 2002 (MVAT Act) return for the same period shows 'NIL' turnover of inter-State sales.

The exemption granted in respect of filing of the returns under the CST Act was posing difficulties in generating the lists of returns defaulters under the CST Act in the automation system i.e. Mahavikas.

In view of the above, the issue has been re-examined and fresh guidelines are being issued by modifying the earlier circulars on the subject.

The revised instructions are as follows:

- A dealer, who is claiming deduction, u/s. 8(1) of the MVAT Act or deduction u/s 6A (branch transfers etc.) of the CST Act, in the MVAT return shall be required to file a return, under the CST Act. In other words, a dealer who is effecting the following types of transactions during a period shall be required to file CST return:
 - inter-State sales u/s. 3 of the CST Act,
 - goods transferred u/s. 6A (1) of CST Act,
 - Sales outside the state u/s. 4 of CST Act,
 - export sales u/s 5(1) and 5 (3) of the CST Act,
 - Sales in the course of import u/s. 5(2) of the CST Act,
- The instructions shall be applicable for the returns starting from the period from 1st October, 2014 onwards.

It may be noted that a dealer not filing CST return in the above referred contingencies shall be treated as defaulter under CST act.

Chartered Accountant nominated to conduct Service Tax Audit

The Central Government vide Notification No. 23/2014-ST dated December 5, 2014 had substituted Rule 5A(2) of the Service Tax Rules, 1994 (the Service Tax Rules) with the following:

“(2) Every assessee, shall, on demand make available to the officer empowered under sub-rule (1) or the audit party deputed by the Commissioner or the Comptroller and Auditor General of India, or a cost accountant or chartered account-

ant nominated under section 72A of the Finance Act, 1994,-

- (i) the records maintained or prepared by him in terms of sub-rule (2) of rule 5;
- (ii) the cost audit reports, if any, under section 148 of the Companies Act, 2013 (18 of 2013); and
- (iii) the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961 (43 of 1961),

for the scrutiny of the officer or the audit party, or the cost accountant or chartered accountant, within the time limit specified by the said officer or the audit party or the cost accountant or chartered accountant, as the case may be.”



RBI releases Charter of Customer Rights

The Reserve Bank of India has released a Charter of Customer Rights, which enshrines broad, overarching principles for protection of bank customers and enunciates the 'five' basic rights of bank customers. These are: (i) Right to Fair Treatment; (ii) Right to Transparency; Fair and Honest Dealing; (iii) Right to Suitability; (iv) Right to Privacy; and (v) Right to Grievance Redress and Compensation.

The Reserve Bank has also advised the Indian Banks' Association (IBA) and the Banking Codes and Standards Board of India (BCSBI) to formulate a "Model Customer Rights Policy" encapsulating the principles enshrined in the Charter.

Initially, all the scheduled commercial banks, regional rural banks and urban co-operative banks are expected to prepare their own Board approved policy incorporating the five basic rights of the Charter which, among other things, would contain a monitoring and oversight mechanism for ensuring adherence. The policy, if needed, would have to be suitably dovetailed with the "Model Customer Rights Policy" proposed to be formulated by IBA/BCSBI.

The Reserve Bank would monitor the progress and oversee the adherence by banks over a period of time.

Charter of Customer Rights

Right to Fair Treatment:

Both the customer and the fi-

ancial services provider have a right to be treated with courtesy. The customer should not be unfairly discriminated against on grounds such as gender, age, religion, caste and physical ability when offering and delivering financial products.

Right to Transparency, Fair and Honest Dealing :

The financial services provider should make every effort to ensure that the contracts or agreements it frames are transparent, easily understood by and well communicated to, the common person. The product's price, the associated risks, the terms and conditions that govern use over the product's life cycle and the responsibilities of the customer and financial service provider, should be clearly disclosed. The customer should not be subject to unfair business or marketing practices, coercive contractual terms or misleading representations. Over the course of their relationship, the financial services provider cannot threaten the customer with physical harm, exert undue influence, or engage in blatant harassment.

Right to Suitability :

The products offered should be appropriate to the needs of the customer and based on an assessment of the customer's financial circumstances and understanding.

Right to Privacy:

Customers' personal informa-

tion should be kept confidential unless they have offered specific consent to the financial services provider or such information is required to be provided under the law or it is provided for a mandated business purpose (for example, to credit information companies). The customer should be informed upfront about likely mandated business purposes. Customers have the right to protection from all kinds of communications, electronic or otherwise, which infringe upon their privacy.

Right to Grievance Redress and Compensation :

The customer has a right to hold the financial services provider accountable for the products offered and to have a clear and easy way to have any valid grievances redressed. The provider should also facilitate the redress of grievances stemming from its sale of third party products. The financial services provider must communicate its policy for compensating mistakes, lapses in conduct, as well as non-performance or delays in performance, whether caused by the provider or otherwise. The policy must lay out the rights and duties of the customer when such events occur.



*RBI has released a
Charter of
Customer Rights
which enunciates
the five basic rights
of bank customer.*





“Rate cuts of 100 - 150 bps are expected in calendar year 2015”



Report on Financials

After 30 years of long period, new BJP lead government formed with full majority leading to fast decision making without fear and creating positive environment for business & Industries. At the same time the new government is dedicated towards overall development and taken steps like removing hurdles for business, focusing on good governance & compliances, developing new 100 high tack cities with intent to diversify development & easing load of population on metro cities, fresh initiative towards cordial relations ships with neighbors, Brand Development as “Make in India”. God is also with new government by reducing in crude oil prices leading to easing inflation and has ultimate impact on reducing of current account deficit by reversal of cycle from import to export by way of low cost production & services. Looking the size of the country, converting it into results will take its own time. This is just similar to wait for fruits after reaping seeds. But definitely we will enjoy sweet fruits.

Because of these, depending upon risk appetite, presently Equity and Bond fund with long duration will be good bet for Investments for better returns & for a period of 3 years. However, shorter period is also good but selectively. Rate cuts of 100 -150 bps is expected in calendar year 2015. In Equity side, Banking & Finance, Infrastructure, Telecom and IT sector expected to perform well and

Gold & Properties seems languish and not advisable, at least for a period of 2-3 years. Every RBI rate cut & changes in margins will give opportunity of good returns. This opinion is formed based on the below mentioned factors gathered from general circulation/s:

- **RBI rate stance:** Window for a rate cut, now, is between mid-January to early-April 2015. A more dovish shift in the tone will happen once the RBI gains some confidence on the sustenance of the current inflation trajectory.
- **Inflation – Downward trajectory:** The headline CPI inflation decelerated further in October, printing 5.5% after 6.5% in September. November is likely to see another round of sharp correction on headline inflation.
- **Fiscal Deficit Consolidation:** The government set a target of 3% for GFD/GDP by FY2017; thus limiting supply of G-sec in the coming years.
- **CAD – wider but comfortable:** 1QFY15 CAD/GDP worsened to 1.7% with deterioration in both trade balances and net invisibles. For FY2015, we expect CAD/GDP at 1.7% (US\$36.1 bn), unchanged from FY2014.
- **Global Commodities – Headed south:** Falling global commodities leads to improvement in CAD as well as fall in inflation giving RBI more flexibility on rate front
- **Credit Off Take close to Multi Year Low :**Low credit growth could lead to banks having higher appetite for G-sec and Bonds
- **Growth – GDP & IIP continues to be weak**
- **Global Rates:** Spread between Indian ten year G-sec and US 10 Year Treasury currently at 5.87% substantially above historical average spread of 4.49%; thus giving enough cushion if US rates were to go up.
- **Repo rate close to all time high:** With repo rate close to peak levels RBI has enough room to cut rate if inflation was to ease and growth remains weak.
- **Themes to play in Bond Market in Current Environment:** Fall in Interest rates – Play thru long duration funds / bonds. Rating Migration – Play thru High Yielding Funds.

Kisan Vikas Patra (KVP) Relaunched

The Union Finance Minister Shri Arun Jaitley has re-launched the Kisan Vikas Patra (KVP) in the presence of Shri Ravi Shankar Prasad, Union Minister of Communication and IT and Shri Jayant Sinha, Minister of State for Finance among others. Increasing savings rate in the economy was one of the priorities of the new Government on assuming charge. In view of the popular demand and to revitalize Small Savings, the Finance Minister in para 27 of his Budget Speech announced that "Kisan Vikas Patra (KVP) a very popular instrument among small savers will be reintroduced. The instrument will encourage people, who may have banked and unbanked savings to invest". Accordingly, it is decided to reintroduce Kisan Vikas Patras (KVPs). KYC norms regarding all National Savings Schemes (NSS) are now applicable in post offices and banks w.e.f. January, 2012.

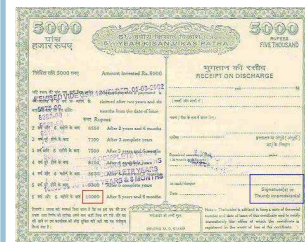
The re-launched Kisan Vikas

Patra (KVP) will be available to the investors in the denomination of Rs. 1000, 5000, 10,000 and 50,000, with no upper ceiling on investment. The certificates can be issued in single or joint names and can be transferred from one person to any other person / persons, multiple times. The facility of transfer from one post office to another anywhere in India and of nomination will be available. The certificate can also be pledged as security to avail loans from the banks and in other case where security is required to be deposited. Initially the certificates will be sold through post offices, but the same will soon be made available to the investing public through designated branches of nationalised banks.

Kisan Vikas Patras have unique liquidity feature, where an investor can, if he so desires, encash his certificates after the lock-in period of 2 years and 6 months and thereafter in any block of six months on pre-determined

maturity value. The investment made in the certificate will double in 100 months.

Reintroduction of Kisan Vikas Patra (KVP) is a welcome step not only in the direction of providing safe and secure investment avenues to the small investors but will also help in augmenting the savings rate in the country. The scheme will also safeguard small investors from fraudulent schemes. With a maturity period of 8 years 4 months, the collections under the scheme will be available with the Govt. for a fairly long period to be utilized in financing developmental plans of the Centre and State Governments and will also help in enhancing domestic household financial savings in the country.



"KVP will be available in the denominations of Rs. 1000, 5000, 10,000 and 50,000"

CBDT notifies threshold for Rs. 100 Cr for Advance Ruling

In a positive move to cut tax litigation, the Central Board of Direct Taxes (CBDT) has notified that resident taxpayers who plan transactions valuing Rs 100 crore or above can approach the Authority for Advance Rulings (AAR) for determination of their tax liabilities under such transaction.

This step will help reduce litigation on mergers and acquisitions (M&As) and transfer

pricing orders issued by the tax department after a transaction is announced. Earlier, this facility was available only for multinational companies (MNCs) and their overseas arms. However, with this change, the local subsidiary of an MNC can approach the AAR for advance tax rulings.

The tax department has clarified the advance rulings will not be applicable if the question being sought to be raised before the

AAR is already pending before any tax authority or Appellate Tribunal.

The CBDT notification is a part of measures to reduce tax litigation as promised by Finance Minister Arun Jaitley in his maiden Budget in July 2014. The Budget had announced the opportunity to seek advance rulings from AAR would also be available to local resident taxpayers.





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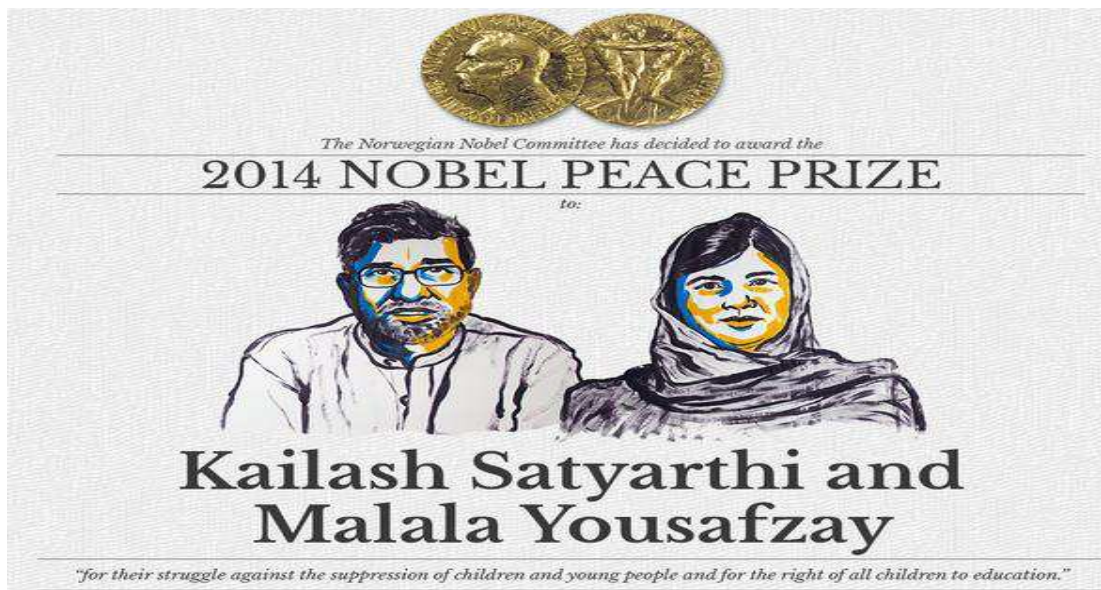
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2015



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