LALIT BAJAJ & ASSOCIATES

Connection

Volume III, Issue 2 February 2014

Just to Remind You:

- Feb 7 - Payment of TDS Deducted in January
- Feb 15 - e-Payment of PF for the month of January
- Feb 21 - Payment of MVAT for January
- Feb 21 - Submission of MVAT Return for January

Inside this issue:

Concept of Small Company under Companies Act, 2013

The concept of "Small Company" has been introduced for the first time by the Companies Act, 2013. The Act identifies some companies as small companies based on their capital and turnover position for the purpose of providing certain relief/ exemptions to these companies. Most of the exemptions provided to a small company are same as that provided to a one person company. The Act also provides for a simplified scheme of arrangement between two small companies, without requiring the approval of Tribunal, i.e. with the approval of Central Government (Regional Director).

Definition

Section 2(85) defines a Small Company as –

"**small company**" means a company, other than a public company,-

1. Paid up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; or
2. turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees:

Provided that nothing in this section shall apply to-

- a holding company or a subsidiary company;
- a company registered under section 8; or
- a company or body corporate governed by any Special Act;

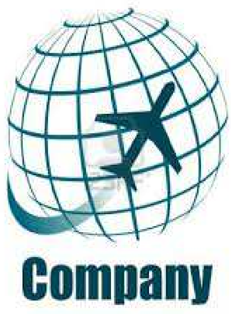
For qualifying as a small company, it is enough if either the capital is less than rupees fifty lakhs or turnover is less than rupees twenty crores. It is sufficient if either one of the requirement is met without meeting the other requirement. However, these limits may be raised but not exceeding rupees five crores in case of capital and rupees twenty crores in case of turnover.

Further, as per the definition of a small company, holding and subsidiary companies are specifically excluded from the concept of small company. Thus even though both the holding company and subsidiary company may fulfill the capital or turnover requirement of a small company, they will still fall outside the purview of small company and accordingly the benefits which are available to a small company cannot be applied to a company which is holding or subsidiary company.

In other words, a holding or a subsidiary company can never enjoy the privileges of a small company even though they may fulfill the capital or turnover requirement of a small company.

Similarly, a company may classify as a small company in a particular year but may become ineligible in the next year and may become eligible again in the subsequent year.

Section 129(3) mandates that a company which has one or more subsidiary companies must prepare consolidated financial statements in addition to standalone statement. However, companies which have subsidiary companies, i.e. holding companies are outside the purview of small companies. It appears from the above that the requirement of consolidation of financial statements will not arise for small companies. But, explanation provided under sub-Section 3 of Section 129 contains that for the purpose of consolidation, the word "subsidiary" shall include associate company and joint venture. Thus, a small company which has any associate company or joint venture will still be re-



"The Act also provides for a simplified scheme of arrangement between two small companies"

quired to prepare consolidated financial statements. This meaning of "subsidiary" is only for the limited purpose of Section 129(3) and not for the purpose of determining whether a company is a small company or not.

Salient Features:

- Only a private company can be classified as a small company.
- Holding company, subsidiary company, charitable company and company governed by any Special Act cannot be classified as a small company.
- For a small company, either the paid up capital should not exceed Rupees fifty lakhs or the turnover as per last statement of profit & loss should not exceed rupees two crores.
- The status of a company as "Small Company" may change from year to year. Thus the benefits which are available during a particular year may stand withdrawn in the next year and become available again in the subsequent year.

Special Provisions and Exemptions available to a Small Company

As mentioned before, the privileges/exemptions available to a small company are same as that available to a one person company, but not all privileges available to a one person company are available to a small company. For the sake of easy understanding and clarity, all the exemptions available to a small company are provided below.

The annual return of a Small Company can be signed by the company secretary alone, or where there is no company secretary, by a single director of the company.

A small company may hold only two board meetings in a year, i.e. one Board Meeting in each half of the calendar year with a minimum gap of ninety days between the two meetings.

A small company need not include Cash Flow Statement as part of its financial statement.

Provision regarding mandatory rotation of auditor/maximum term of auditor being 5 years in case of an individual and 10 years in case of a firm of auditors is not applicable to an OPC.

Banking Optimism in tough Economy

The last 9 months of performance of India has been impacted by slowing macros, increased risk in corporate environment, political instability, changing regulatory & business landscape, rising non performing loans (NPL) etc. India continued to face a tough macroeconomic environment and slowing Gross Domestic Product (GDP) growth. Reserve Bank of India (RBI) has revised its forecast for the current fiscal year ending March 31, 2014 to 5% from an earlier 5.5% and government is pushing all its efforts to maintain growth at 4.8% given the economic uncertainty, high inflation and twin deficit. Besides, this Industrial sector was also at low of 2% in FY 2013 and service sector was also impacted due to this bringing their growth % to 6.5% in current year from above 7% in previous decades. Weakening rupee is another concern for India and government with RBI is trying to stabilise the currency at current levels by curbing the import of gold and attracting foreign deposits. The weak macros with high inflation, high interest rates, high borrowing costs, delay in projects due to government approvals & weak currency is causing into weak corporate performance and tightening their liquidity which is prima facie the cause of rising NPL's and cause of high credit impairment provisions by the Banking industry causing stress in the Banking sector. Accordingly, banking sector is estimated to close the year with approx 4% bad assets and another 10% restructured assets. RBI has warned that INR 81 trillion banking industry faces a high risk because of rising bad loans & restructuring. The gross NPA's of 40 listed banks grew 36.95% to INR 2.29 trillion in the September quarter from INR 1.67 trillion a year earlier and equally worrying is the surge in restructured in advances. On a cumulative basis banks restructured INR 2.7 trillion worth of loans under Corporate Debt Restructuring (CDR). To address this issues, RBI has released discussion paper suggesting an array of measures to address the increase in bad loans through early recognition and resolution of sticky assets, strict action against wilful defaulters (in fact SBI is in process of real time update of will full defaulter systems) and more freedom for assets reconstruction companies in handling bad loans. As per the data compiled by RBI Infrastructure, Iron & Steel, textiles, aviation & mining sectors together made up 24% to total advances of banks and almost account for 53% of total stressed advances.

However, in spite of above hindrance RBI and Indian government is very optimistic on role of banking sector and is of strong view that Indian economy still needs few more banks to make financial inclusion possible and get most of the population under banking regime. Financial inclusion is not only to access to financial products but also to provide the easy, safe and low cost access to cash flow management systems which includes payment system to move money safely at low costs. As a first step as promised in the budget 2013 government has opened first Bharatiya Mahila Bank (BMB) on November 19, 2013 especially for women's. Besides, this RBI with a view to increase the presence of foreign banks in India has announced the scheme of subsidiarisation of foreign banks in November 2013. RBI is also evaluating and considering the proposals sent by various corporate & Non Banking Financial companies (NBFC) with regards to issue of new banking licenses in the country and as per source RBI will issue these licences in the year 2014 ahead of all stress in the economy and banking sector. Banks has also defined their resolutions for this year as increasing branches, more penetration in rural sector as a part of financial inclusion, accumulation of lazy deposits, reducing their bad loans. The government is also committed to infuse capital in public sector banks based on their performance and the government is scheduled to infuse a total of Rs.14,000 crore into state-run banks through preferential allotment of equity before end-March. According to this plan, IDBI Bank Ltd and Central Bank of India will receive Rs.1,800 crore each, Indian Overseas Bank (IOB) will get Rs.1,200 crore, Bank of India Rs.1,000 crore, Bank of Maharashtra Rs.800 crore, and United Bank of India and Dena Bank Rs.700 crore each. Among others, Bank of Baroda will receive Rs.550 crore, Punjab National Bank, Union Bank of India and Canara Bank will receive Rs.500 crore each from the government, and Allahabad Bank will get Rs.400 crore. In 2012-13, the government infused Rs.12,517 crore in 13 state-run banks.

RBI to withdraw banknotes issued prior to 2005

The Reserve Bank of India has advised that after March 31, 2014, it will completely withdraw from circulation all banknotes issued prior to 2005. From April 1, 2014, the public will be required to approach banks for exchanging these notes. Banks will provide exchange facility for these notes until further communication. The Reserve Bank further stated that public can easily identify the notes to be withdrawn as the notes issued before 2005 do not have on them the year of printing on the reverse side.

The Reserve Bank has also clarified that the notes issued before 2005 will continue to be legal tender. This would mean that banks are required to exchange the notes for their customers as well as for non-customers. From July 01, 2014, however, to exchange more than 10 pieces of Rs. 500 and Rs. 1000 notes, non-customers will have to furnish proof of identity and residence to the bank branch in which he/she wants to exchange the notes.

The rationale behind its move to withdraw banknotes printed prior to 2005 is to remove these banknotes from the market because they have fewer security features compared to banknotes printed after 2005. It is standard international practice to withdraw old series notes.

The RBI has already been withdrawing these bank notes from the market in a routine manner through banks. In Reserve Bank's view, the volume of the banknotes printed prior to 2005 today, still in circulation, is not significant enough to impact the general public in a large way.

However, it advises that the members of public may initiate the process of exchanging notes at bank branches at their convenience. Further, even July 1, 2014 onwards, members of public can exchange any number of these old series notes from the bank branches where they have their accounts.

The RBI assures that it will continue to monitor and review the process of withdrawal of old series notes so that the public is not inconvenienced in any manner.

The Reserve Bank has appealed to the public not to panic. They are requested to actively co-operate in the withdrawal process.

"Banknotes printed prior to 2005 have fewer security features."

Investment in New Plant or Machinery

"This deduction is available over & above Normal & Additional Depreciation"

A new section 32AC in the Income- tax Act has been inserted to provide additional deduction to such assessee,

where an assessee, being a company,—

- is engaged in the business of manufacture of an article or thing; and
- invests a sum of more than Rs. 100 crore in new assets (plant or machinery) during the period beginning from 1st April, 2013 and ending on 31st March, 2015,then, the assessee shall be allowed—

  or assessment year 2014-15, a deduction of 15% of aggregate amount of actual cost of new assets acquired and installed during the financial year 2013-14, if the cost of such assets exceeds Rs. 100 crore;

  for assessment year 2015-16, a deduction of 15% of aggregate amount of actual cost of new assets, acquired and installed during the period beginning on 1st April, 2013 and ending on 31st March, 2015, as reduced by the deduction allowed, if any, for assessment year 2014-15.

  Lock in Period of 5 Years

  Note: This is over & above Normal & Additional Depreciation.

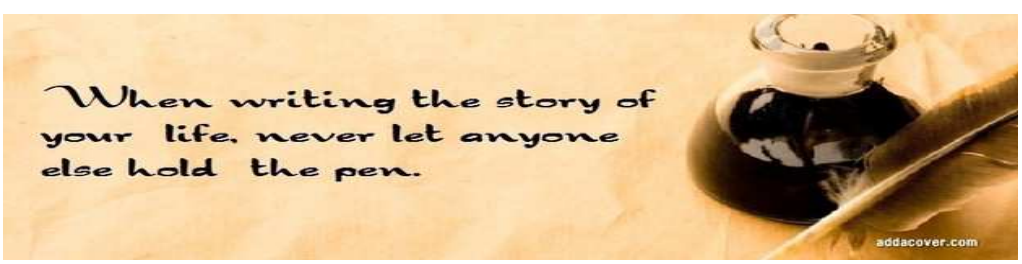
  The phrase "new asset" has been defined as new plant or machinery but does not include—

1. any plant or machinery which before its installation by the assessee was used either within or outside India by any other person;
2. any plant or machinery installed in any office premises or any residential accommodation, including accommodation in the nature of a guest house;
3. any office appliances including computers or computer software;
4. any vehicle;
5. ship or aircraft; or
6. any plant or machinery, the whole of the actual cost of which is allowed as deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any previous year.

It is further proposed to provide suitable safeguards so as to restrict the transfer of the plant or machinery for a period of 5 years. However, this restriction shall not apply in a case of amalgamation or demerger but shall continue to apply to the amalgamated company or resulting company, as the case may be.

Consequences if new asset acquired and installed is transferred with in 5 years from date of installation

1. If any new asset acquired and installed (emphasis ours) by the assessee is sold or otherwise transferred, except in connection with the amalgamation or demerger, within a period of five years from the date of its installation, the amount of deduction allowed under sub-section (1) in respect of such new asset shall be deemed to be the income of the assessee chargeable under the head "Profits and gains of business or profession" of the previous year in which such new asset is sold or otherwise transferred, in addition to taxability of gains, arising on account of transfer of such new asset.
2. Where the new asset is sold or otherwise transferred in connection with the amalgamation or demerger within a period of five years from the date of its installation, the provisions of sub-section (2) shall apply to the amalgamated company or the resulting company, as the case may be, as they would have applied to the amalgamating company or the demerged company.



DTAA between India and Republic of Fiji

The Government of the Republic of India signed a Double Taxation Avoidance Agreement (DTAA) with the Government of Republic of Fiji for the avoidance of double taxation and for the prevention of fiscal evasion with respect to taxes on income. The Agreement was signed by Shri P. Chidambaram, Union Minister of Finance on behalf of the Government of India and by Mr. Aiyaz Sayed-Khaiyum, Attorney General and Minister of Justice, Anti-Corruption, Public Enterprises, Communications, Civil Aviation, Tourism, Industry and Trade, on behalf of the Government of Republic of Fiji.

Speaking on the occasion, the Finance Minister Shri P. Chidambaram said that the need for the DTAA between the two countries was felt and negotiations were completed in 2011. He said that the Agreement will provide tax stability to the residents of India and Fiji and facilitate mutual economic cooperation as well as stimulate the flow of investment, technology and services between India and Fiji. The Finance Minister further said that the Agreement incorporates provisions for an effective exchange of information and assistance in collection of taxes between tax authorities of the two countries including exchange of banking information.

The DTAA provides that business profits will be taxable in the source State if the activities of an enterprise constitute a permanent establishment in the source state. Profits derived by an enterprise from the operation of aircraft in international traffic shall be taxable in the country of place of effective management of the enterprise. Dividends, interest, royalty income and fees for technical or professional services will be taxed both in the country of residence and in the country of source. However, the maximum rate of tax to be charged in the country of source will not exceed the prescribed limit for such dividends, interest, royalties and fees for technical services. Capital gains from the sale of shares will be taxable in the country of source. The Agreement also incorporates anti-abuse provisions to ensure that the benefits of the Agreement are availed of only by the residents of the two countries and to prevent any abuse of treaty.

Relief for CST Dealers in Maharashtra

At present, for obtaining declaration or certificates under the Central Sales Tax Act, 1956, the dealer submits/uploads application called SOR (Statement of Requirement) electronically. This SOR is processed by the Central Repository Officer and if found in order the statutory declarations/forms are approved and sent through post. The physical dispatch of these statutory declarations/ farms involves delay in actual delivery of forms to the applicants and hence was under revision.

The said process has been revised and it has now been proposed to electronically issue statutory declarations/forms under the Central Sales Tax Act, 1956 in PDF format to the e-mail address of the applicant. The relevant procedural changes have been designed so as to have minimum human interference. It is expected that in the eligible cases the applicant electronically receives the statutory declarations/forms in **T+ 1** days.

To make the above possible and to improve the quality of services to dealers, a comprehensive and end to end automated eCST Module has been developed by the MVAT department and is being rolled from 01/02/2014. In the new module, uploading of SOR, viewing the defect memo and also compliance to defect memo will happen online only. The CST Forms would be in digital formats and hence, printing of Forms on pre-printed stationery would be discontinued. The automatic messages will be delivered (through email & SMS) about status of SOR (Hold, Approved, Rejected etc.) to the dealers.

"New eCST Module to electronically issue statutory Declaration Forms under CST Act, 1956"

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No Service Tax on Sub-Brokers on services provided to member of Commodity Exchange during September 2004 and June 2012

No Service Tax Required to be Paid on Services Provided by An Authorised Person or Sub-Brokers to the Member of a Commodity Exchange in Respect of Such Taxable Service on which the Service Tax was not Being Levied During the Period Commencing from The 10th Day of September 2004 and Ending with the 30th Day of June 2012 in Accordance with the Prevalent Practice

In exercise of the powers conferred by section 11C of the Central Excise Act, 1944 (1 of 1944), read with section 83 of the Finance Act, the Central Government hereby directs that the service tax payable on the services provided by an authorised person or sub-broker to the member of a recognised association or a registered association, in relation to a forward contract, shall not be required to be paid in respect of such taxable service on which the service tax was not being levied during the period commencing from the 10th day of September 2004 and ending with the 30th day of June 2012 in accordance with the prevalent practice.

The Central Government is satisfied that a practice was generally prevalent regarding levy of service tax (including non-levy thereof), under section 66 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as 'the Finance Act'), on services provided by an authorised person or sub-broker to the member of a recognised association or a registered association, in relation to a forward contract, and that such services were liable to service tax under the Finance Act, which was not being levied according to the said practice during the period commencing from the 10th day of September 2004 and ending with the 30th day of June 2012.

Tax Audit Limit Increased from 45 to 60

In view of the enhancement of professional competence of members to perform quality services in an IT-enabled environment, the Council of the Institute at its 331st meeting held from 10th to 12th February, 2014 has decided to increase the "specified number of tax audit assignments" for practicing Chartered Accountants, as an individual or as a partner in a firm , from 45 to 60. The said limit will be effective for the audits conducted during the financial year 2014-15 and onwards. Accordingly, the Council Guidelines No.1-CA (7)/02/2008, dated 8th August,2008 stands amended from 1.4.2014 as under:-

In the Council General Guidelines, 2008, the Council Guidelines No.1-CA (7)/02/2008, dated 8th August,2008, in Chapter VI "Tax Audit assignments under Section 44AB of the Income-tax Act, 1961 ", in Explanation given in Para 6.1, in sub-para(a) and sub-para(b), the figure "45" be substituted with the figure "60".