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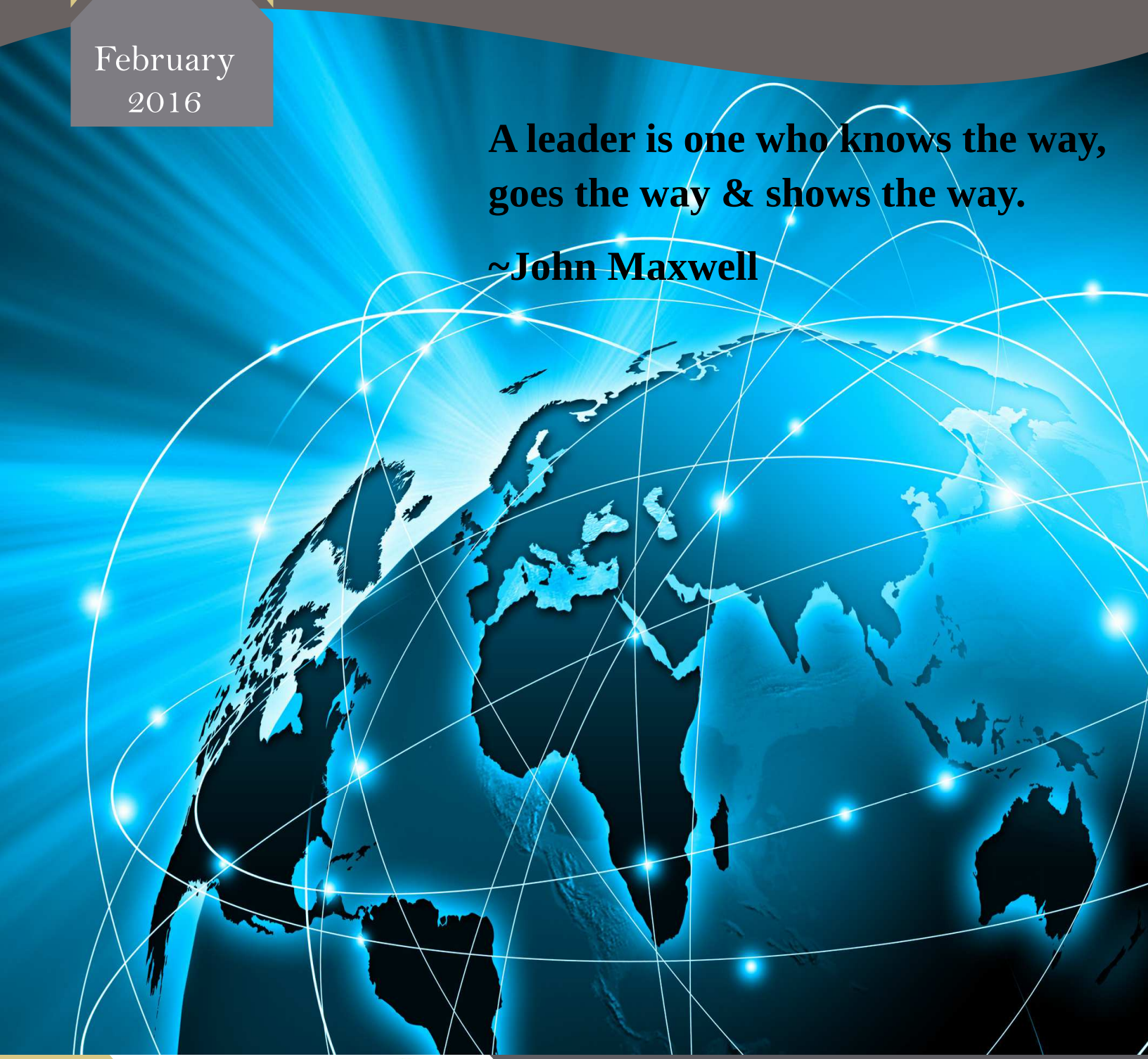


A leader is one who knows the way, goes the way & shows the way.

~John Maxwell

INNOVATE CREATE LEAD

Lalit Bajaj & Associates
Chartered Accountants

Volume IV, Issue 10 February 2016

LALIT BAJAJ & ASSOCIATES

COMMUNIQUÉ

Dear Seniors, Friends & Colleauges,

Go-Green Be Green

February month has started with pleasant weather especially for Mumbaikars where we can also get away with warm weather prevailing for almost 10 months of year with humidity. Time to enjoy with family and get together with everyone in evenings with hot cup of tea.

Though, like us everyone must be observant that this time cold started little late almost delay of fortnight, may be due to global warming created by subjects of the world. Recent conference on weather in Paris, France was to deliberate possible impact of increasing global warming, increasing its side effects and possible way to get over this or reduce to extent possible. This has highlighted fact that everyone needs to contribute to healthy environment. In that spirit, we as professional participants can not be oblivious of the fact that we also need to pump equal amount of effort to save the environment and boost to green initiative. We can do this by way of using social networking, email in our daily routine than using lots of papers and then throwing them in dustbin. It will not only help in reducing costs plus also help in pollution free surroundings. As nominated by the Prime Minister of India we can take prominent role in Clean India campaign and ask our clients to do same way.

It has been rightly said that same recipe doesn't bring springs there has to be different cook to entice family and society. As fraternity we are not only responsible for financials but equally responsible for society where we live, as financials will be able to save the purpose only when society is away of these issues. We have been observant of the fact that ICAI in every journal ask members to send mail to opt for E-copy and same needs to be communicated to Institute. I would urge members to do honor as this will not only help in go green initiative also helps Institute to channelize their money in other fruitful activities and also boost country initiative of Digital India.

Heartiest Congratulations to new ICAI members and students who are not able to make should go back to their study room think of mistakes and revamp their confidence and give 100% to studies to come out with flying colors in coming exam.

Best Wishes

CA Lalit Bajaj

JUST TO REMIND YOU

- Feb 21 - Payment of ESIC of Jan
- Feb 21 - Payment of MVAT & WCT for Jan.
- Feb 29 - Payment and Monthly Return of Maharashtra PT

INSIDE THIS ISSUE:

Internal Financial Control

The apex body of chartered accountants - ICAI has issued detailed guidelines on audit of internal financial controls over financial reporting as required under the new companies' law. According to the guidance note, the auditor needs to obtain reasonable assurance to state whether an adequate internal financial controls (IFC) system was maintained and whether such internal financial controls system operated effectively in the company in all material respects with respect to financial reporting only.

Clause (e) of Section 134(5) of the Companies Act, 2013 requires that The Directors' Responsibility Statement referred to in clause (c) of sub-section (3) shall state that:

(e) the directors, in the case of a *listed company*, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.

Section 143(3)(i) of the Act requires that auditor should state in his report that:

"Whether the Company has adequate internal financial controls system in place and the operating effectiveness of such controls"

Definition of Internal Control as defined in the Companies Act, 2013

The Companies Act, 2013 has defined internal control in two places. One definition is given under Section 134(5) (e). Another definition is given in Section 134(10) by way of inclusion of Standard on Auditing. Auditing Standards which are now part of the Companies Act, 2013, by virtue of Section 143(10) defines internal control as follows:

Definition as per Section 134(5) of the Companies Act, 2013

Explanation - For the purposes of this clause, the term "internal financial controls" means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information;

Definition as per SA 315

Internal control – The process designed, implemented and maintained by those charged with governance, management and other personnel to provide reasonable assurance about the achievement of an entity's objectives with regard to reliability of financial reporting, effectiveness and efficiency of operations, safeguarding of assets, and compliance with applicable laws and regulations. The term "controls" refers to any aspects of one or more of the components of internal control.

It may be noted that both the definition are not similar at the same time they have vast coverage.

Further, it may be noted that both Management and the Auditor will need to follow both the definition as given in the charging Section 143 i.e. as per Standard on Auditing and also the definition given in Section 134(5). Standards on Auditing are applicable to all the companies and are mandatorily required to be followed.

Distinction between Internal Financial Control and Operating Control

It may be noted that Internal Controls and policies can be applied by the management for various operational activities of the Company.

A question arises whether auditor is required to comment on all the controls of the Company or only those which are related to Financial Controls. A close review of above definitions suggests that only the Financial Controls as required to be reported in SA 315 is the auditor's responsibility for reporting. This is also termed as "Internal controls relating to financial reporting'.

Management on the other hand may have more controls relating to various operations of the Company viz. Shop Floor management etc. Unless they impact financial reporting they would not come under preview of above section.

Auditors Duty

Auditor while ascertaining the operating and effectiveness of control will have to comply with all the requirements enumerated in SA 315 and document his findings.

Documentation of Auditor should therefore needs to be robust enough to demonstrate that he has looked into the Internal Controls for each assertion and mapped them to various risks in respect of account balances and each class of transaction.

Management's Responsibility

The approach of new Companies Act is of self-governance and in case of non-governance, stringent penalties are provided in the Act. Management should therefore, be cautious to take following steps to ensure that there exist a proper internal control system.

- Review existing process and map them with risks & controls and ensure that they are adequate
- Improve the process and controls wherever it is observed that process is slack
- Assess Fraud Risk and built processes around the same so that risk is minimized
- Test Internal controls so formed on regular basis and ensure that processes are working effectively
- In-house team may be assigned this task or a consultant may also be appointed in the first year of implementation.

What are the consequences when auditor concludes that internal controls were not effective?!?!

- The Auditor report will include a qualified opinion. Not only merely for internal control, but also under section 143(3)(f) of the Act as non-existence of appropriate internal control can also have adverse affect on the functioning of the Company
- It can be safely concluded that non existence of internal control would imply that existence of Fraud cannot be effectively monitored and the financial statements would lack credibility

- Credit rating agencies will take it negatively also it may affect negotiation power of the entity with borrowers.

Conclusion

The requirement of internal control is now legally mandated. In respect of the listed companies, it is by virtue of Section 134(5) of the Companies Act, 2013. Private limited companies are covered by inclusion of Standard on Auditing, in the Companies Act and reporting requirement by auditors. It is therefore, suggested that all the companies should re-visit the existing internal controls and strengthen them to ensure that whenever they are tested will not fail.

SERVICE EXPORTS FROM INDIA SCHEME

The Service Exports from India Scheme ('SEIS') was introduced last year under the new Foreign Trade Policy 2015-2020 ('the FTP') to encourage export of services from India. The new SEIS policy initiative is a much better policy initiative than the erstwhile Served From India Scheme ('SFIS') that had its own limitations in terms of usage and transferability.

The idea behind SEIS is simply to encourage service exporters by way of grant of a duty credit scrip that can be used for a variety of purposes including payment of customs duty, excise duty and service tax on all goods and services except those specifically prohibited. The Commerce Minister could very well sense the challenges faced by service exporter in the erstwhile SFIS scheme and basis that, the new and much improved SEIS policy was announced.

The major difference between these two schemes is that the new scheme recognizes the domicile of the service provider (in India) rather than it's legal shareholding structure. That means any company **located in India** shall be treated as a service exporter (subject to conditions of the FTP) rather than a service being exported by an **Indian company**.

Under the erstwhile policy, the benefit of duty scrip was only allowed to those companies that were promoting the 'India brand' and consequently, any service export to related foreign entity(s) was dis-allowed. This was on the

basis the policy was meant to promote the Indian originated service exporters and not to those who were simply earning foreign exchange without promoting the brand India.

The above position was however subject to legal disputes with companies taking DGFT to Court and arguing that the intention of the legislature was never to dis-allow benefits to non-India brand promoting companies. Though, this contention was accepted by the **Delhi High Court** in the case of **Yum Foods vs Union of India**, at the ground level in practical the benefit was not granted to Indian subsidiaries of the foreign company. However, conflicting view was taken by the **Mumbai High Court** in the case of **UHDE India Pvt Ltd vs Union of India**, where the Court accepted the plea of DGFT and held that SFIS benefit could only be allowed to companies promoting India as a brand.

Keeping in view all these challenges, the new SEIS policy has removed the aspect of domicile of a company and with effect from April 1, 2015 the exporters of **notified services** who are based/located in India shall be granted the benefit of SEIS duty scrip.

When Can You Apply For SEIS Duty Scrip

The first set of applications for the SEIS duty scrip shall commence from **1st April 2016** (though the time limit is 12 months from the end of the relevant FY of claim period) for all eligible exports made during the FY 2015-16. The application should be made in Form ANF3B using digital signatures.

Consequently, **it is now the right time to ascertain** whether the export of services by your company qualify for this benefit and if yes, what are the house-keeping activities one should do to make yourself ready for the SEIS scrip.

Why Should You Apply For SEIS Duty Scrip

SEIS duty scrip allows a service exporter the following cash benefits:

You can import goods (except specifically notified as ineligible under Appendix 3A of the FTP) and pay customs duty using the duty scrip;

You can pay excise duty on goods including capital goods that are locally procured from Indian manufacturers;

You can pay service tax on services procured from Indian service providers;

If you are not importing or buying goods, the duty scrip can be easily sold/transferred in the market (at discount), thereby ensuring you a good source of miscellaneous income; and

Anyone who buys SEIS scrip from you can use it for the above-mentioned purposes.

Are You An Eligible Service Provider

Service providers who provide services under the following two categories are only allowed to apply for SEIS duty scrip:

Supply of a service from India to any other country – **Cross Border trade**; and

Supply of a service from India to service consumer(s) of any other country – **Consumption abroad**

The Policy specifically prohibits scrip entitlement to service providers engaged in supply of service from India through commercial presence in any other country **(Commercial presence)** or supply of a service from India through the presence of natural persons in any other country **(Presence of natural persons)**.

It is therefore, critical to analyze whether your services are indeed covered under the first two models (i.e., cross border trade or consumption abroad).

Litigative Propositions

The two modes of supply of service, i.e., commercial presence and presence of natural persons might be a matter of concern since the DGFT officials would tend to apply these two modes as a service delivery model in order to refrain from granting the benefit. For example, in the case of manpower supply (which is an eligible service) to any company outside India, a view could be taken that such service is typically covered under the 'presence of natural persons' mode and consequently, should be denied the benefit. Whereas, the assesse could argue otherwise on the basis that supply of natural persons to an overseas entity is typically a cross border trade and since the person supplied by the assessee wouldn't be under the control and supervision of the assessee, typically this service should get covered under the cross border mode.

Also, where a law firm assists a client in international arbitration matters should it get covered under the 'cross border' trade model or would the officials insist covering it under the 'presence of natural persons' model will be interesting to note.

POT FOR VALUATION OF FLATS GIVEN TO LANDOWNERS

As announced by the Finance Minister in his Budget Speech 2014-15, the Ministry of Finance has set up a High Level Committee (HLC) to interact with trade and industry and ascertain areas where clarity on tax laws is required. It has been pointed out by the HLC that there is a divergence of view between Para 6.2.1 of the Education Guide 2012 and the CBEC Circular No. 151/2/2012-ST dated 10.2.2012 on how flats handed over to land owners are to be valued for the purpose of levy of service tax. The two views need to be reconciled. The HLC has opined that the guidelines communicated by the said Circular are more appropriate.

The issue has been examined. In a tri-partite construction business model, there are 3 parties involved:

- The land owner;
- The builder/developer; &
- The contractor (who undertakes the construction).

Typically, in such a model, the land owner enters into an agreement with the builder, whereby, the land owner gives either land /development rights (to construct/develop a residential complex and sell flats/houses of such complex to buyers) to the builder. The builder/developer, in turn, agrees to assign a portion of the constructed area, in the form of flats in favour of the land owner. The remaining flats are sold by the builder/developer to various buyers. The builder/developer receives consideration for the construction service provided by him, from two categories of service receivers:

- from landowner, in the form of land /development rights; and
- from other buyers, normally in the form of money.

According to the **CBEC Education Guide on Taxation of Services, 2012** value of construction service provided to such land owner will be the value of the land when the same is transferred and the point of taxation will also be determined accordingly. However, **Circular No. 151/2/2012-ST dated 10.2.2012** states that value of land / development rights in the land may not be ascertainable ordinarily and therefore, value, in the case of flats given to first category of service receiver, that is, the land owner, is determinable in terms of section 67(1)(iii) read with rule 3(a) of Service Tax (Determination of Value) Rules, 2006. Accordingly, the value of these flats would be equal to the value of similar flats charged by the builder/developer from the second category of service receivers. In case the prices of flats/houses undergo a change over the period of sale (from the first sale of flat/house in the residential complex to the last sale of the flat/house), the value of similar flats as are sold nearer to the date on which land is being made available for construction should be used for arriving at the value for the purpose of tax. **Service tax is liable to be paid by the builder/developer on the 'construction service' involved in the flats to be given to the land owner, at the time when the possession or right in the property of the said flats are transferred to the land owner by entering into a conveyance deed or similar instrument(e.g. allotment letter).**

The Circular dated 10.2.2012 is in accordance with the provisions relating to valuation as laid down in the Finance Act, 1994 and the Service Tax (Determination of Value) Rules, 2006. As regards the Education Guide, it has been clearly stated in the Education Guide, 2012 that it is merely an educational aid based on a broad understanding of a team of officers on the issues. It is neither a "Departmental Circular"nor a manual of instructions issued by the Central Board of Excise and Customs. To that extent it does not command the required legal backing to

be binding on either side in any manner. The guide was released purely as a measure of facilitation so that all stakeholders could obtain some preliminary understanding of the new issues for smooth transition to the new regime. Hence, Circulars such as the present one would prevail over the Education Guide, 2012.

5. In view of the above, it is directed that in valuing the service of construction provided by a builder/developer to a landowner, who transfers his land/development rights to builder, for getting, in return, constructed flats/dwellings from builder/developer, the Service Tax assessing authorities should be guided by the said Board Circular dated 10.2.2012 and not the Education Guide.

CBDT Clarifications on FATCA and CRS

Currency

For the upcoming reporting in March 2016 and May 2016, all reporting has to be done in INR. For the reporting in 2017, Form 61B and Schema will be suitably modified to include a field for capturing type of currency

New Fixed Deposit account as Pre-existing Account

In banking system, there are procedures where Fixed Deposit (FD) can be opened by an existing customer who is having an existing saving bank account with the same financial institution, without any additional documentation. These fixed deposits are assigned separate account numbers from the existing saving bank account. Therefore, they are classified as new accounts by the banks.

During stakeholders consultations, representatives of financial institutions informed that in such cases, no additional documentation are obtained for these fixed deposits accounts as they are intrinsically related to existing saving bank account and all KYC documents are available for the existing saving bank account.

In these cases, where no additional documentation are required for certain FD accounts, financial institution may treat the new FD account as pre-existing account subject to the following conditions:

- the saving bank account is opened on or before 30.06.2014 in the case of FATCA and 31.12.2015 in the case of CRS ;
- the due diligence requirements have already been carried out or are in the process of being carried out for the preexisting saving bank account and
- the accounts are treated as linked or as a single account or obligation for the purposes of applying any of the due diligence requirements and reporting.

The above situation will also be applicable to Auto sweep facility linked to existing saving bank account.

Global Custodian and Local Custodian

It was submitted by financial institutions that majority of the accounts opened in India by foreign investors, including Foreign Portfolio Investor (FPI), are contracted through Global Custodians (GCs) who in turn appoint or contract with Local Sub Custodians in India to facilitate registration and investments of these foreign investors in India. Query was received whether Local Sub-custodian may apply due diligence procedure only on the GCs and not on the GCs end-clients.

It has been decided that Local Sub-custodian are required to carry out the due diligence on the accounts held by GC end-clients. However, for carrying out due diligence, the Local Sub-custodian may rely on the KYC/FATCA/CRS documentation done by GC for the account holders including the self-certification. Further, it may be clarified that the obligations for due diligence and reporting remain that of the Local Custodian who should also be able to access all documents in relation to an account holder.

"Local sub-custodian are required to carry out the due diligence of accounts held by Global Custodian end clients"

HUF

Several queries have been received regarding due diligence of HUF accounts. The issue is whether due diligence may be conducted

either only on the Karta or on all coparceners alongwith Karta.

In this regard, it has been decided that for the purpose of compliance, an HUF account shall be treated as an entity account. The due diligence of HUF accounts will be same as prescribed under PMLA/ KYC procedures.

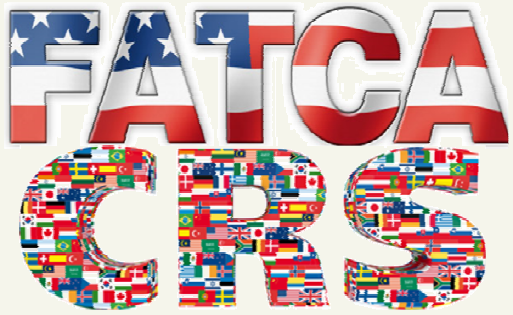
NBFC

Queries have been received regarding reporting by NBFC whether they are depository institution or investment entity.

In this regard, it has been decided that an NBFC which accepts deposit in the course of a banking business or a similar business as mentioned in the definition of depository institution will be considered as Depository Institution and will report accordingly. An NBFC which is working as investment entity, will report accordingly.

Procedure for furnishing the report

Presently the procedure for registration and submission of report under FATCA and CRS is as per **Notification No. 4 dated 4th September, 2015** issued by the Principal Director General of Income Tax (Systems) which is available on the website of Income tax Department www.incometaxindia.gov.in However, the procedure for registration and submission of report is being revised and the same will be made available on the website referred above as and when rolled out.

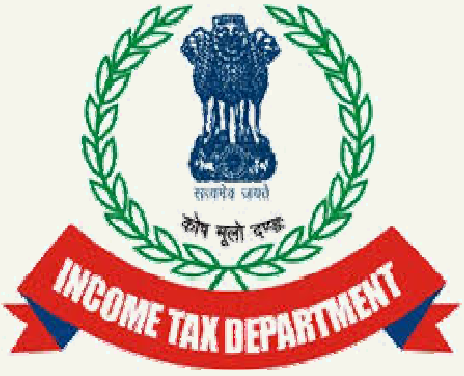


PASS RECTIFICATION ORDER U/S 154 WITHIN 6 MONTHS: CBDT

Instruction No. 01/2016 Dated: 15th of February, 2016

Sub-section (8) of section 154 of the Income-tax Act, 1961 ('Act') stipulates that where application for amendment is made by assessee/deductor/collector with a view to rectify any mistake apparent from record, the income-tax authority concerned shall pass an order, within a period of six months from the end of the month in which such an application is received, by either making amendment or refusing to allow the claim. It has been brought to the notice of the Board that the said time limit of six months has not been observed in deciding some applications. In such cases, the authorities often take a view that since no action was taken within the prescribed time-frame, application of the taxpayer is deemed to have lapsed, thereby not requiring any action.

The matter has been examined by the Board. In this regard, the undersigned is directed to convey that the aforesaid time-limit of six months is to be strictly followed by Assessing Officer while disposing applications filed by the assessee/deductor/collector under section 154 of the Act. The supervisory officers should monitor the adherence of prescribed time limit and suitable admin action may be initiated in cases where failure to adhere to the prescribed time frame is noticed.



Rectification Application U/s 154 in writing : CBDT

Instances have come to the notice of the Board that in some cases, rectification order under section 154 of the Income Tax Act, 1961 ('Act') is being passed by the Assessing Officer on AST system without giving copy of the order to the taxpayer concerned. This is causing grievance to the taxpayers as they remain unaware of such orders and consequently, are unable to pursue the matter further, either in appeal or rectification, if required.

Sub-section (4) of section 154 of the Act mandates that rectification order shall be passed in **writing** by the Income Tax authorities. Therefore, on consideration of the matter, the Board hereby directs that all rectification applications must be disposed of after passing an order in writing, to be duly served upon the taxpayers concerned and not by merely marking necessary rectification on the AST System.

MCA notifies Central Registration Centre

S.O. 218 (E) – In exercise of the powers conferred by sub-sections (1) and (2) of section 396 of the Companies Act, 2013 (18 of 2013) (herein after referred to as the Act), the Central Government hereby establishes a Central Registration Centre (CRC) having territorial jurisdiction all over India, for discharging or carrying out the function of processing and disposal of applications for reservation of names under the provisions of the said Act.

The CRC shall function under the administrative control of Registrar of Companies, Delhi (ROC Delhi), who shall act as the Registrar of the CRC until a separate Registrar is appointed to the CRC. The CRC shall process applications for reservation of name i.e., e-Form No. INC-1 filed along with the prescribed fee as provided in the **Companies (Registration of Offices and Fees) Rules, 2014.**

Processing and approval of name or names proposed in e-Form No.INC-29 shall continue to be done by the respective Registrar of Companies having jurisdiction over incorporation of companies under the Companies Act, 2013 as per the provisions of the Act and the rules made thereunder.

The CRC shall be located at Indian Institute of Corporate Affairs (IICA), Plot No. 6, 7, 8, Sector 5, IMT Manesar , District Gurgaon (Haryana), Pin Code- 122050.

Ministry of Corporate Affairs
Govt. of India

Manner of Signing of Certificates by CAs

The Council of the Institute of Chartered Accountants of India (ICAI), at its 349th meeting held on 17th and 18th January, 2016 considered an issue relating to manner of signing of certificates by Chartered Accountants. The Council noted that presently different practices were in vogue in respect of the manner of signing of various certificates issued by the members of the ICAI.

On a consideration of the matter, the Council, with a view to bring uniformity in the manner of signing of certificates, has decided to require the members of the ICAI to include (in addition to any other requirements in this regard prescribed by the relevant law or regulation under which the certificate is being issued) the following details in their "Signatures" on the certificates issued by them:

- Name of the CA firm
- Firm Registration Number (FRN)
- Name of the member
- Designation (Partner/Proprietor)
- Membership Number

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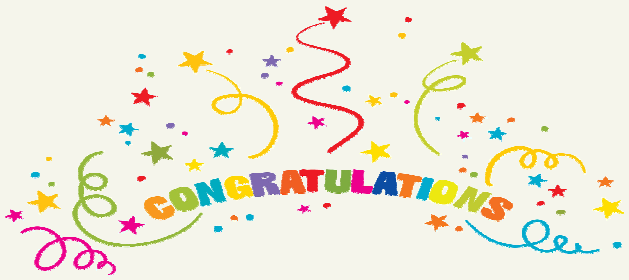
Innovate Create Lead



New President & Vice - President of ICAI

CA. M. Devaraja Reddy
President, ICAI

CA. Nilesh Vikamsey
Vice-President ICAI

DSC MANDATORY FOR FILING CUSTOM DOCUMENTS

Registration Module : To capture the Digital Signature and update the KYC details a new Registration module is likely to be started. Please visit the New Registration Advisory and New Registration Demo under downloads section on ICEGATE home page.

Digital Signature : Use of Digital Signature for filing of documents through ICEGATE has been made mandatory w.e.f. 1st Janurary'2016. All remote EDI service users are requested to procure Digital Signature from any certifying authority and start using in filing of documents through ICEGATE. To sign the documents the Common Signer utility hosted at ICEGATE web-site may be utilized by the users. The Advisory, Common Signer, Process Document etc. are available at

https://www.icegate.gov.in/digitalSign/digitalSign.html