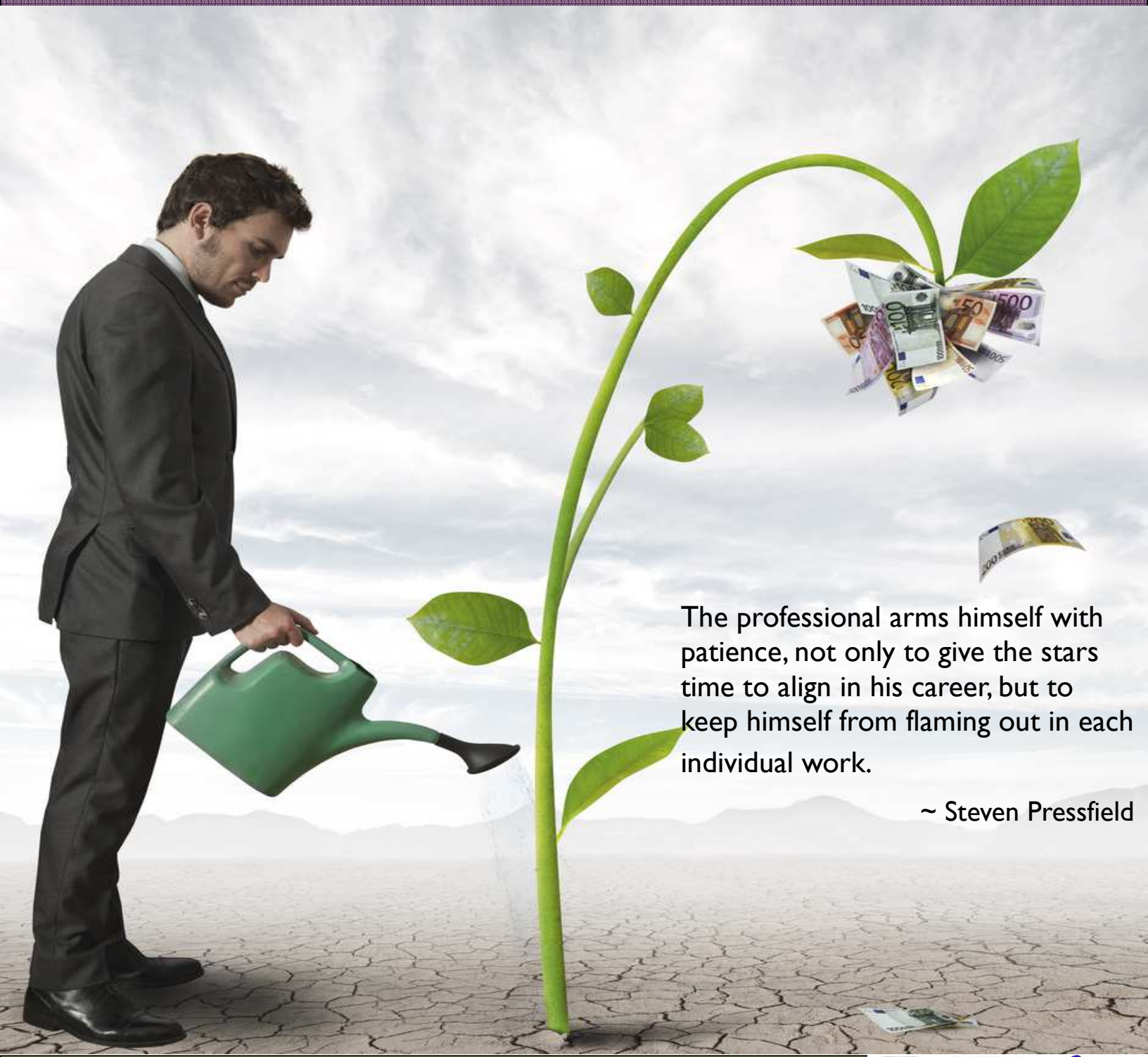
Connection

Volume IV | Issue 2 | June 2015



The professional arms himself with patience, not only to give the stars time to align in his career, but to keep himself from flaming out in each individual work.

~ Steven Pressfield

Lalit Bajaj & Associates
Chartered Accountants

INNOVATE CREATE LEAD

LALIT BAJAJ & ASSOCIATES

Volume IV, Issue 2 June 2015

Just to Remind You:

- Jun 21 - Payment of MVAT & WCT TDS for May
- Jun 21 - Submission of MVAT Return for May
- Jun 30 - Payment & Monthly Return of Maharashtra PT
- Jun 30 - Payment of Tax for 2015-16 by PTEC holder

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Company Secretary under Companies Act, 2013

Definition of Company Secretary:

As per Section 2 sub section 24 of Companies Act, 2013 Company Secretary or secretary means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 who is appointed by a company to perform the functions of a Company Secretary under this Act;

As per Company Secretary Act, "Company Secretary" means a person who is a member of the Institute of Company Secretary of INDIA.

A. Designation of Company Secretary as KMP, if company already have a Company Secretary:-

Private Limited Company:

Requirement to appoint Company Secretary in Private Limited Company govern by the Provision of Rule- 8A of 'The Companies Appointment and Remuneration of Managerial Personnel, Rules 2014' Chapter XIII.

Time Period: The Act doesn't provide the time period in which a Company have to designate Company Secretary as KMP. But it's advisable to appoint a Company Secretary as KMP in first board meeting conduct after applicability of such provision. In this Case Rule 8A come into force from 9th June, 2014.

Process to Designate as KMP: Below given is process:

I. Call Board Meeting: Pass a Board Resolution for designation of Company Secretary as KMP as per section 203.

II. Consent to act as KMP: Receive consent from Company Secretary to act as KMP.

III. Filling of Form with ROC:

MGT-14: As per provision of Section 179 (3) Rule 8(2): Company require to file MGT-14 within 30 days of passing of Board Resolution

MR-1: As per Rule 3 of Chapter XIII: Company required filing MR-1 at the time of appointment of KMP within 60 days of passing of Board Resolution

Note:

As per Section 170 (2) there is needed to file form DIR-12 for any change in particular of Director or KMP. So in the above case change is designation of KMP and director. But practically it's not possible to file e-form DIR-12 for change in particular. If we try to file same then MCA will not accept the same.

Above mention resolution for designation as KMP can't pass as Resolution by Circulation. There is need to hold Board Meeting for the same.

Public Limited Company:

Requirement to appoint Company Secretary in Private Limited Company govern by the Provision of Rule- 8 of The Companies Appointment and Remuneration of Managerial Personnel, Rules 2014 (Chapter XIII).

Time Period: The Act doesn't provide the time period in which a Company have to designate Company Secretary as KMP. But it's advisable to appoint a Company Secretary as KMP in first board meeting conduct after applicability of such provision. In this Case Rule 8 come into force from 1st April, 2014.

Process to Designate as KMP: Below given is process:

I. Call Board Meeting: Pass a Board Resolution for designation of Company Secretary as KMP as per section 203.

II. Consent to act as KMP: Receive consent from Company Secretary to act as KMP.

III. Filling of Form with ROC:

MGT-14: As per provision of Section 179 (3) Rule 8(2): Company require to file MGT-14 along within 30 days of passing of Board Resolution.

MR-1: As per Rule 3 of Chapter XIII: Company required filing MR-1 at the time of appointment of KMP within 60 days of passing of Board Resolution.

Note:

As per Section 170 (2) there is needed to file form DIR-12 for any change in particular of Director or KMP. So in the above case change is designation of KMP and director. But practically it's not possible to file e-form DIR-12 for change in particular. If we try to file same then MCA will not accept the same.

Above mention resolution for designation as KMP can't pass as Resolution by Circulation. There is need to hold Board Meeting for the same.

B. Appointment of Company Secretary as per Companies Act, 2013:

Requirement to appoint Company Secretary in Private Limited Company govern by the Provision of Rule 8A and in Public / Listed Company by the provisions of Rule-8 of The Companies "Appointment and Remuneration of Managerial Personnel" Chapter XIII under Section-203 of Companies Act, 2013.

Time Period: As per Section 203(4), if Company doesn't not have Company secretary before 01st April, 2014 and provision of Section 203 applicable on such company then such company has to appoint Company Secretary with in 6 (Six) month till 30th September, 2014 (from 1st April, 2014).

Process to Appoint as Company Secretary:

I. Call Board Meeting: As per Section- 203(2) Pass a Board Resolution for Appointment of Company Secretary. Board Resolution should contain the following

Terms and Condition of Appointment.

Remuneration

Membership No.

II. Consent to act as Company Secretary: Receive consent from Company Secretary to act as Company Secretary.

III. Consent to act As Company KMP: Receive consent from Company Secretary to act as Company Secretary.

IV. Process for appointment of Company Secretary: Below given is process:

MGT-14: As per provision of Section 179 (3) Rule 8(2): Company require to file MGT-14 along within 30 days of passing of Board Resolution with, [Attachment: Consent Letter and CTC of Board Resolution].

MR-1: As per Rule 3 of Chapter XIII: Company required filing MR-1 at the time of appointment of KMP within 60 days of passing of Board Resolution, with [Attachment: CTC of Board Resolution and Consent Letter)

DIR- 12: As per Section 170 (2) there is needed to file form DIR-12 for appointment of Director or KMP within 30 days of passing of Board resolution with (Attachment: Consent Letter, Appointment Letter, Self attested Copy of PAN card and CTC of Board Resolution).

Note:

Circular Resolution: Resolution for appointment of CS is given in Section 179(3) Read with rule 8(2). Every Resolution mention in 179(3) required to be passed by Meeting of Board of Director (Including Video Conferencing). So Appointment of Removal of Board of Director can't done by Circular Resolution.

Filling of Vacancy of Company Secretary: As per Section 203 In case of Vacancy at place of Company Secretary. Company will appoint another Company Secretary within 6 month from the date of resignation of Company Secretary.

Register Of Key Managerial Personnel: Section- 170(1) Every company shall keep at its registered office a register containing such particulars of its directors and key managerial personnel as may be prescribed in Rule 17 of the Companies (Appointment and Qualification of Directors) Rules 2014, which shall include the details of securities held by each of them in the company or its holding, subsidiary, subsidiary of company's holding company or associate companies.

Rule 17 of the Companies (Appointment and Qualification of Directors) Rules 2014: prescribed every company shall keep at its registered office a register of its directors and key managerial personnel containing the following particulars, namely:-

- Director Identification Number (optional for key managerial personnel);
- present name and surname in full;
- any former name or surname in full;
- father's name, mother's name and spouse's name(if married) and surnames in full;

- date of birth;
- residential address (present as well as permanent);
- nationality (including the nationality of origin, if different);
- occupation;
- date of appointment and reappointment in the company;
- date of cessation of office and reasons therefore;
- Office of director or key managerial personnel held or relinquished in any other body corporate;
- membership number of the Institute of Company Secretaries of India in case of Company Secretary, if applicable; and
- Permanent Account Number (mandatory for key managerial personnel if not having DIN);
- In addition to the details of the directors or key managerial personnel, the company shall also include in the aforesaid Register the details of securities held by them in the company, its holding company, subsidiaries, subsidiaries of the company's holding company and associate companies relating to-
- the number, description and nominal value of securities;
- the date of acquisition and the price or other consideration paid;
- date of disposal and price and other consideration received;
- cumulative balance and number of securities held after each transaction;
- mode of acquisition of securities ;
- mode of holding – physical or in dematerialized form; and
- whether securities have been pledged or any encumbrance has been created on the securities.
- date of the board resolution in which the appointment was made;

Extension of time of filing of Notice of appointment of Cost Auditor

The Ministry has received several representations about the non-availability of the revised form CRA-2 on MCA-21 required for filing of notice of appointment of the Cost Auditor for the F.Y. 2015-16, although the time limit for filing of the same has either lapsed or will be lapsing. The revised form CRA-2 has now been notified on 12th June, 2015 and is available on the MCA21 system for filing.

In view of the delay in availability of revised Form CRA-2 on the MCA21 portal, however, the additional fee on account of any delay beyond the prescribed period of 30 days from the date of Board Meeting in which the appointment of the Auditor was made for filing of CRA-2 for the financial year starting on or after 1st April, 2015 is waived for all such filings till 30th June, 2015.

The revised e-Form CRA-4 has also been notified vide the above mentioned notification and will be made available on MCA-21 portal shortly. Therefore, on the similar lines mentioned in above paras, additional fees on delayed filing of form CRA-4 beyond the prescribed period of 30 days from the date of receipt of a copy of Cost Audit Report from the Cost Auditor for the Financial Year starting on or after 1st April, 2014 is also waived for all such filings till 31st August, 2015.

COST AUDIT

CBDT Strategy for Recovery of Taxes / Arrears of Demand

"The target recovery of Arrear Demand has been fixed at Rs. 51,359 crore for the FY 2015-16"

The target for recovery of cash collection out of Arrear Demand of Rs 8,27,680 crore, as on 01.04.2015, has been fixed at Rs 51,359 crore for the F.Y. 2015-16. To achieve the target, systematic and regular monitoring, fidelity of data and clarity in approach is desirable.

Since the very beginning, the focus needs to be on the reduction of Arrear Demand by de-duplication of the entries and cleansing the arrear demand data. Priority should be accorded to reduce entries of amounts less than Rs.10000/- and those pending for more than 2 years. These steps have already been reiterated in the SOP several times. In addition to these, care must be taken to avoid generating any infructuous demand. Simultaneously, the work of executing Write-off under summary procedure must be carried out.

The following are the steps that may be taken by the field units to manage arrear demand:

Assessment Work

Quality assessment orders should be issued and legally sustainable demand be raised. During the assessment, the AO should gather all details about assets of the assessee so that effective recovery can be made after issue of notice of demand. In appropriate cases provisional attachment of assets may also be made by invoking section 281 B of the Income Tax Act, 1961 so as to protect the interest of revenue. There should be error free reporting of dossier demands.

Initiation of recovery measures

Complete information about the assessee, details of directors and sister concerns etc. must be gathered during the assessment proceedings. AO must maintain a recovery folder containing the details of all bank accounts of the assessee's, debtors, details of assets (both movable and immovable). Bifurcation of cases into actionable and non-actionable cases should be done. Actionable cases are those wherein the "non-actionable demand" is either nil or is very small. Non- actionable cases are those having large amounts or major amounts of demand in the following categories:

- Cases where demand is pending write off
- Assessee is not traceable
- Cases where there are no assets/inadequate assets for recovery
- Demand raised on protective basis
- Cases where Department has lost in appeal but the demand is outstanding for other years as it is in further appeal
- Notified persons under the Special Court (Torts) Act, 1992
- Cases before BIFR
- Companies under Liquidation
- Cases before Income Tax Settlement Commission (ITSC)
- Demand stayed by Court/ ITAT/IT Authorities
- Demand not enforceable as Bank Guarantee has been given
- Demand where assets jointly attached with other agencies

In the case of non-actionable demands, an in-depth review in each of the cases must be done at least twice in a year to determine the status of the case and to make efforts to convert these from the non-actionable to the actionable category. For example, if the case is before the Settlement Commission, it would require maintaining liaison with the ITSC to have an early hearing and disposal of the case.

AO should ensure that the operational bank accounts are attached so that there is effective recovery from the bank accounts and infructuous work is avoided. Assets of partners/directors of defaulter firms/companies can be ascertained and considered for attachment. Attachment of debtors can be pursued more actively. For tax defaulters who have deceased, legal heirs should be located. Similarly, in case of firms/private companies, partner/directors can be traced for further recovery. For these purposes, information available in Individual Transaction Statement (ITS) may also be referred to.

Files may be examined for implementation of provisions of sections 281(1) of the Act to declare transfers of properties as void, if made to avoid claims in respect of taxes or sums payable on account of pendency of any proceeding under the Act or after completion thereof but after service of notice under Rule 2 of the Second Schedule.

Further, summons can be issued to assessees and their

statements recorded to gather details about immovable and movable assets owned by them. Recovery surveys can be mounted to enforce collection. Mechanism for making field enquiries, enquiries from the directors/ partners/ promoters/legal heirs/ legal representatives/ authorized representatives etc. should be activated.

Use of internal and external resources in recovery matter

Access to Individual Transaction Statement (ITS) has been provided to all the Range Heads. The ITS can be used a very effective tool for recovery especially in cases where demands are difficult to recover.

One of the means to enforce recovery is through correspondence with the CIBIL (Credit Information Bureau of India) that contains PAN-wise records of loans etc taken by entities from banks / financial institutions. The organization assigns Credit Scores to borrowers depending on factors like repayment pattern, defaults, loans taken etc. The demands, which have been confirmed in first appeal, could be considered for such verification. Further, since CIBIL also contains information about the credit rating of such entities, this would also help in ascertaining the financial capability of the PAN holders against whom demand has been raised. This channel is expected to be effective as the CIBIL contains information about loans/ credit etc taken by different entities.

The help of the Investigation Wing can be taken in important cases for recovery. In appropriate cases references may be made to FIU-IND through DIT (Recovery) to obtain information about bank accounts and other assets of the assessee.

Priority disposal

Identification of high demand cases pending before the CsIT (A) should be done, particularly the ones in which there is likelihood recovery of substantial demand. The CsIT (A) should be requested for early disposal of such cases. Providing timely Remand Report to CsIT (A) / ITAT will prevent delay in disposing-off the appeal. Monitoring the progress in high demand cases before ITAT and preventing Departmental Representatives from seeking adjournment in such cases without prior approval of the respective Pr CCsIT/ CCsIT should be done.

Stay of Demand / Instalment

Stay and instalment should be given within parameters of Instruction No. 1914. All stay petitions need to be reviewed from time to time, especially when granted by IT authorities. Carte-blanche stay by the field officers should not be given. In case conditional stay is given upto a particular date or disposal of appeal by CIT (A), whichever is earlier, attempt should be made to collect part of the demand before considering the stay petition.

While granting instalment for payment of arrear demand, the amount of instalment should be commensurate vis-a-vis the total arrear so that the instalment is not of a meagre amount. In cases where there is a default in payment of instalments, there must be a review of the instalments granted.

The Apex Court in a case of Vodafone had directed the company to pay 25% of the taxes and balance 75% by way of bank guarantee, even before admittance of the appeal. The underlying principle is that the Government needs funds in public interest and there should be no impediment in recovery of taxes. Accordingly, the Standing Counsels may be briefed to take up the matter before High Court/ Supreme Court for vacation of stay on such lines. The Standing Counsels may also be advised to explore the possibility of filing caveats in cases where the taxpayer was likely to seek stay from High Court to prevent granting of stays in large number of cases.

Regular monitoring of demands locked up at the level of CIT(A), ITAT, High Court, Supreme Court, Special Court, Settlement Commission, etc may be conducted. ITAT needs to be requested for vacation of stay and early hearing of cases especially in high demand cases. Similarly, the Departmental Representative may be advised to plead for payment of taxes in cases of stay before the ITAT.

Assessee Not Traceable and having No/Inadequate Assets for Recovery

Usually cases of 'assessees not traceable' or `No assets for recovery' remain unattended. Such cases need to be reviewed urgently to see whether further efforts can locate the assessee or assets. All avenues of available information needs to be explored and action may be taken as per the procedures laid down in the Board's letter dated 29.09.2011 and 27.12.2011. The reports prescribed as Annexure-I, II, III & IV of the said letter should be prepared

after due diligence. In case of companies, provisions of section 179 may be invoked in suitable cases to effect recovery from directors.

Demand Not Under Dispute

In the category of `Demand not Under dispute' identification of the amount `recoverable' and 'difficult to recover' should be done by placing them in separate baskets as per the proforma devised by the Directorate of Recovery and communicated to the field authorities. Thereafter, the recoverable portion of the demand is to be collected.

TRO's Action Plan

The AO should refer cases of arrear demand to the TRO at the beginning of the F.Y. and provide him with all the relevant information available pertaining to the assessee for effective recovery. It is expected that TROs are posted in substantive capacity in all charges throughout the year on priority basis. Progressive disposal of the Tax Recovery Certificates by the TROs has to be monitored and achievements projected quarterly for status review by the CBDT. TRCs pending for more than 2 years should be disposed-off on priority basis.

TROs may exercise the powers for appointment of a receiver for business under the provisions of Rule 69 Schedule II of the Act. Attachments can be made of movable assets u/s 226(3) of the Act and of immovable property under Rule 48 of Schedule II. TROs should be directed to dispose-off properties under attachment in suitable cases.

The machinery of the TRO should be strengthened by providing more infrastructure and manpower. The TROs should be further trained specifically for their work in order to increase their effectiveness. The Pr CsIT need to monitor the work of TROs especially in the area of attachment and sale of property to ensure that the attached properties are sold within one year.

In respect of non-compliant defaulters, the provisions of arrest and detention as per the provisions of Rules 73 to 81 of Schedule II should be invoked by the TRO. Stringent action can be taken in suitable cases including use of the provisions for prosecution u/s 276C(2) of the Act.

In liquidation cases, there should be prompt lodging of the claim with Official Liquidator and thereafter proper coordination be made with the Official Liquidator. Pr CsIT may instruct AOsiTROs to monitor cases in Debt Recovery Tribunals (DRTs) working under the Recovery of Debts due to Banks and Financial Institutions Act, 1993 and to consider lodging of claims of outstanding demand in such cases before the DRT.

BIFR cases

For BIFR cases, the website www.bifr.nic.in should be checked regularly to obtain information about cases that have abated/ discharged from the BIFR or where the rehabilitation period has expired; In such cases there is no bar of recovery. The list of BIFR cases which have been removed from the register of BIFR has been apprised to the relevant charges and unfettered recovery of such demands can be made.

Demand Management

At times, arrear entries are existing because of pending rectification orders, faulty TDS credit pending appeal effect, etc. The data pertaining to arrear demand, as uploaded on CPC portal as on 01.04.2015, requires to be properly reconciled, verified and confirmed. Field authorities must dedicate adequate time for recovery in every quarter during the year.

Write-off work at the level of Local/Regional/Zonal Committee level.

Cases must be processed for write-off especially where it has been ascertained beyond doubt that assessee is untraceable. References can be made as per Instruction numbers 14/2003 dated 06.11.2003; 7/2004 dated 19.08.2004 and 2/2010 dated 18.03.2010 and other relevant Instructions. Quarterly report on the meetings of Zonal Committee should be sent to the DIT(Recovery), alongwith the minutes of the meeting.

Procedure for recovery of demand where assets/money lie abroad

Tax authorities have enough powers to enforce the collection of taxes owed by a taxpayer. However, due to jurisdictional limitation, these powers cannot be exercised when the taxpayer has left the jurisdiction without paying the tax dues or has no assets within the jurisdiction that may serve to recover the debts. The provisions for Assistance in Collection of Taxes in DTAA and TIEAs provide the legal basis for rendering assistance by one Contracting State in the collection of tax owed to the

other Contracting State.

The provisions for Assistance in Collection of Taxes are present in 48 out of 94 DTAAs and in 3 out of 16 TIEAs which are in force in India. The Multilateral Convention and the SAARC Multilateral Agreement also have provisions for assistance in collection of taxes. However, in the Multilateral Convention, the signatories can place a reservation against providing such assistance and several countries/ jurisdictions have put in such reservation. The Manual on Exchange of Information lists the countries/ jurisdictions with which India has an agreement under one or the other treaty for assistance in collection of taxes.

The assistance in collection is provided under the treaties in respect of a "revenue claim", which is normally defined to mean an amount owed in respect of a tax imposed in the country requesting assistance. The claim should be enforceable under the law of the requesting country and should normally be undisputed by the taxpayer. It should be owed by a person who, at the time of making the request, cannot prevent its collection under the law of the requesting country. Most importantly, the requesting country should have taken all reasonable measures for collection of the claim under its own laws and administrative practice. Some treaties allow assistance in collection even if the revenue claim has not reached finality. In such cases, requests for measures of conservancy may be made. However, the amount of claim should be quantified and evidenced by a statutory order or notice.

Section 228A(2) of the Income-tax Act provides that where an assessee is in default or is deemed to be in default in making a payment of tax, the Tax Recovery Officer may, if the assessee has property in a country outside India with which the Central Government has entered into an agreement for recovery of income-tax, forward to the Board a certificate drawn up by him under section 222 of the Income-tax Act which may be forwarded to the other country under the terms of the agreement.

In cases where assets/money lie abroad and where the tax treaties provide for assistance in collection of taxes, the officers concerned may make a request to foreign tax authorities to collect the "revenue claim" or take conservancy measures in accordance with the provisions of the treaties. This request should be made through the Indian Competent Authority, i.e., JS (FT&TR-I) or JS (FT&TR-II) as the case may as per the procedure prescribed in the Manual on Exchange of Information.

Submission of Long Form Audit Reports by Concurrent Auditors

LFAR in respect of branch should be addressed by the branch auditors to the Chairman of the bank, concerned with a copy thereof to the Central Statutory Auditors.

2. The above matter has been examined in light of Para B (1) (ii) of Guidelines for Appointment of Statutory Auditors in Public Sector Banks hosted on RBI web site (at link http://www.rbi.org.in/scripts/bs_viewcontent.aspx?Id=946#AN2) which is reproduced below:

In respect of branches below the cut-off point, which are subject to concurrent audit by chartered accountants, henceforth, LFARs and other certifications done earlier by SBAs will now be submitted by the concurrent auditors and such branches may not generally be subject to statutory audit.

3. You are advised that henceforth Concurrent Auditors, who are chartered accountants, of branches below the cut-off point will submit LFAR only to the Chairman of the bank. The banks in turn will consolidate/ compile all such LFARs submitted by the Concurrent Auditors and submit to Statutory Central Auditor as an internal document of the bank.

Condonation of Delay in Filing Refund Claim

In supersession of all earlier Instructions/Circulars/ Guidelines issued by the Central Board of Direct Taxes (the Board) from time to time to deal with the applications for condonation of delay in filing returns claiming refund and returns claiming carry forward of loss and set-off thereof under section 119(2)(b) of the Income-tax Act, (the Act) the present Circular is being issued containing comprehensive guidelines on the conditions for condonation and the procedure to be followed for deciding such matters.

2. The Principal Commissioners of Income-tax/ Commissioners of Income-tax (Pr.CsIT/CsIT) shall be vested with the powers of acceptance/rejection of such applications/claims if the amount of such claims is not more than Rs.10 lakhs for any one assessment year. The Principal Chief Commissioners of Income-tax/Chief Commissioners of Income-tax (Pr.CCsIT/CCsIT) shall be vested with the powers of acceptance/rejection of such applications/claims if the amount of such claims exceeds Rs.10 lakhs but is not more than Rs. 50 lakhs for any one assessment year. The applications/claims for amount exceeding Rs.50 lakhs shall be considered by the Board.

3. No condonation application for claim of refund/loss shall be entertained beyond six years from the end of the assessment year for which such application/claim is made.This limit of six years shall be applicable to all authorities having powers to condone the delay as per the above prescribed monetary limits, including the Board. A condonation application should be disposed of within six months from the end of the month in which the application is received by the competent authority, as far as possible.

4. In a case where refund claim has arisen consequent to a Court order, the period for which any such proceedings were pending before any Court of Law shall be ignored while calculating the said period of six years, provided such condonation application is filed within six months from the end of the month in which the Court order was issued or the end of financial year whichever is later.

5. The powers of acceptance/ rejection of the application within the monetary limits delegated to the Pr.CCsIT/ CCsIT/Pr.CsIT/CsIT in case of such claims will be subject to Following conditions:

At the time of considering the case under Section 119(2)(b), it shall be ensured that the income/loss declared and/or refund claimed is correct and genuine and also that the case is of genuine hardship on merits.

The Pr.CCIT/CCIT/Pr.CIT/CIT dealing with the case shall be empowered to direct the jurisdictional assessing officer to make necessary inquiries or scrutinize the case in accordance with the provisions of the Act to ascertain the correctness of the claim.

6. A belated application for supplementary claim of refund (claim of additional amount of refund after completion of assessment for the same year) can be admitted for condonation provided other conditions as referred above are fulfilled. The powers of acceptance/rejection within the monetary limits delegated to the Pr.CCsIT/CCsIT/Pr.CsJT/ CsIT in case of returns claiming refund and supplementary claim of refund would be subject to the following further conditions:

The income of the assessee is not assessable in the hands of any other person under any of the provisions of the Act.

No interest will be admissible on belated claim of refunds.

The refund has arisen as a result of excess tax deducted/ collected at source and/or excess advance tax payment and/or excess payment of self -assessment tax as per the provisions of the Act.

7. In the case of an applicant who has made investment in 8% Savings (Taxable) Bonds, 2003 issued by Government of India opting for scheme of cumulative interest on maturity but has accounted interest earned on mercantile basis and the intermediary bank at the time of maturity has deducted tax at source on the entire amount of interest paid without apportioning the accrued interest/TDS, over various financial years involved, the time limit of six years for making such refund claims will not be applicable.

8. This circular will cover all such applications/claims for condonation of delay under section 119(2xb) which are pending as on the date of issue of the Circular.

9. The Board reserves the power to examine any grievance arising out of an order passed or not passed by the authorities mentioned in para 2 above and issue suitable directions to them for proper implementation of this Circular. However, no review of or appeal against the orders of such authorities would be entertained by the Board.

DGFT Extends last date for submitting application for PSIA

Amendment in paragraph 2.55 and 2.56 of Handbook of Procedures of FTP, 2015-20 as notified by Public Notice No.12/2015-2020, dated 18.5.2015 - Pre Shipment Inspection Agency (PSIA).

In exercise of powers conferred under paragraph 2.04 of the Foreign Trade Policy, 2015-20, the Directorate General of Foreign Trade hereby makes the following amendments in the Public Notice No.12/2015-2020, dated 18.5.2015:

Amendment in paragraph 4 of Public Notice No.12/2015-2020 dated 18th May, 2015

Amended paragraph 4 shall read as under:-

The existing PSIAs (as on 01.04.2015) will have to file fresh applications in ANF 2L (new format) latest by 18th June, 2015 for updation of details of their offices/ branches/authorised representatives in various countries etc. and expansion of their areas of operation, if they so desire, as per the above mentioned procedure laid down in revised paragraph 2.55 of HBP of FTP 2015-20. Applications received after 18th June, 2015 shall be taken up for consideration after July, 2015.

Amendment in paragraph 5 of Public Notice No. 12/2015-2020 dated 18th May, 2015

Amended paragraph 5 shall read as under:-

New applicants who desire to be recognised as Pre-shipment Inspection Agencies (PSIAs) (w.e.f. 01.07.2015) may also apply by 18th June, 2015 in proforma prescribed in ANF 2L (new format) as per the above mentioned procedure laid down in revised paragraph 2.55 of HBP of FTP 2015-20. Applications received after 18th June, 2015 shall be taken up for consideration after July, 2015.

The following paragraph 7 is inserted in the Public Notice No. 12/2015-2020 dated 18th May, 2015:

The applicants may submit their applications initially without bank guarantee, as required under S.No.9 of ANF-2L. Their applications would not be rejected only on the ground of non-submission of bank guarantee. Applicants would, however, be required to submit bank guarantee or an equivalent financial instrument, before they are notified as PSIA, by the competent authority, as per FTP/HBP 2015-20.

Effect of this Public Notice

The last date for submitting the applications for entitlement as PSIA has been extended. Applicants can, for the time being, submit applications initially without bank guarantee. However, they shall be required to submit bank guarantee or an equivalent financial instrument before they are notified as PSIA.

Case Law - Levy of Late Fees u/s 234E

The Hon'ble Amritsar bench has given a landmark judgement on the issue of 234E Fee levied prior to June,2015 in the case of Sibia Healthcare Private Limited v./s Dy. Commissioner of Income-tax (TDS), in I.T.A. No.90/Asr/2015 and has deleted the addition- The Hon'ble Tribunal held as under:-

" in our considered view, the adjustment in respect of levy of fees under section 234E was indeed beyond the scope of permissible adjustments contemplated under section 200A. This intimation is an appealable order under section 246A(a), and, therefore, the CIT(A) ought to have examined legality of the adjustment made under this intimation in the light of the scope of the section 200A. Learned CIT(A) has not done so. He has justified the levy of fees on the basis of the provisions of Section 234E. That is not the issue here. The issue is whether such a levy could be effected in the course of intimation under section 200A. The answer is clearly in negative. No other provision enabling a demand in respect of this levy has been pointed outto us and it is thus an admitted position that in the absence of the enabling provision under section 200A, no such levy could be effected. As intimation under section 200A, raising a demand or directing a refund to the tax deductor, can only bepassed within one year from the end of the financial year within which the related TDS statement is filed, and as the related TDS statement was filed on 19th February 2014, such a levy could only have been made at best within 31st March 2015. That time has already elapsed and the defect is thus not curable even at this stage. In view of these discussions, as also bearing in mind entirety of the case, the impugned levy of fees under section 234E is unsustainable in law. We, therefore, uphold the grievance of the assessee and delete the impugned levy of fee under section 234E of the Act. The assessee gets the relief accordingly."

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ICAI invites suggestions on CSR Activities that can be undertaken by CAs

Corporate Social Responsibility (CSR) is very vital in the present context of businesses. It is viewed as one of the most essential drivers while laying down the business plans and most of the corporates are aligning their CSR activities with their mainstream agenda. However, responsibility towards the society is way beyond the balance sheets. We as socially conscious professionals have to understand the societal needs and have to find out innovative ways of contributing to the society and nation in tune with such needs and therefore facilitate the social responsibility in its true essence. CSR activities are very dynamic in nature. They are driven by the diverse factors including the industry and societal environment in which they operate.

In view of above, suggestions are requested from the members at large on the CSR activities that can be undertaken by the members/CA Firms. Moreover, you are also requested to provide information on the CSR activities that are presently being undertaken by you/your firm.

You can pen down your suggestions and activities undertaken at Suggestion Form and can reach us at csr@icai.in (Source- ICAI)