

Connection

LLB & Co.

June 2016

Volume V, Issue 3



"It's the repetition of affirmations that leads to belief. And once that belief becomes a deep conviction, Things begin to happen"

~Muhammad Ali

LLB & Co.

JUST TO REMIND YOU:

- June 15 - Payment of Advance Tax
- June 15 - E-payment of PF for May
- June 21 - Payment of MVAT & WCT TDS
- June 30 - Payment & Monthly Return of Maharashtra PT
- June 30 - E-filing of 15G/H in respect of period 2015-16

INSIDE THIS ISSUE:

SEIS	3
Service Tax - Case Law	5
Brief of Finance Act 2016	7
Direct Tax Update	11
E-Filing of IT Appeals	14
Direct Tax - Update	14
Form 15G/H Due Date	15

Communiqué



Dear Seniors, Friends & Colleagues

“Life isn’t about waiting for the storm to pass; It’s about learning to dance in the Rain.”

We all are eagerly waiting to feel the rain showers. Wish you a Happy Monsoon!!

We are preparing ourself to comply with the compliances for the year ending 31st March, 2016 and this newsletter will always be a friend in all your endeavours as professionals.

Technology has imbibed to such an extent in our life that we have been embarked with additional commitments and extensive knowledge about various statutes. In such scenario, specialization is the best alternative to get to the heart of the client and satisfactorily add value to his requirements.

The Mammoth deal of LinkedIn, Professional Networking Site, with Microsoft has redefined the stake on networking among professionals in today’s world. We have to continuously enrich ourself by bringing in knowhow and expanding vertically and horizontally simultaneously.

Good Governance, transparent approaches are the ideals of our present time economy and the aftereffects are felt all across the departments whether sales tax, income tax or excise, etc. The same principles can work wonders in our own organizations. Reduced corruption, minimum dependence on manpower, reduced human intervention, immediate redressal of processes, etc are some of the advantages we are enjoying.

Many of you must be now homeward bound after having a relaxed holiday with your loved ones. Hectic days lie ahead with all statutory deadlines fast approaching. I take this opportunity to wish you the best for timely completion of your professional assignments with dedication.

July 1, celebrated as CA Day, marks the establishment of the ICAI in India. All chartered accountants of India will be busy preparing for celebrations through the month of June. It is a matter of overwhelming joy that our Institute, being one of the largest accounting body of the world, having numerous overseas Chapters spanning all possible continents of the world to facilitate best-possible professional relationship of world accounting fraternities with ours. Despite outstanding achievements in the past, we will remember that we still have miles to go from where we are at present.

I love to be connected with members and if you have any issues or matters wherein I can be of any help, you are always welcome.

Best Wishes,

CA Lalit Bajaj

Service Exports from India Scheme



CA Santosh Maurya

“SEIS is one of the key export promotion schemes introduced in FTP 2015-20”



Introduction

The Services Exports from India Scheme ('SEIS') is one of the key export promotion schemes introduced in the Indian Foreign Trade Policy 2015-20 ('FTP'), with an object to 'encourage export of Notified Services from India'. In this article, we have made an attempt to discuss few of the key features of this scheme.

Notified Services under SEIS

SEIS replaces the erstwhile Served From India Scheme (SFIS), with an objective to encourage export of Notified Services from India. Continuing some of the key principles, the present Scheme rewards the specified Service Exporters (which specifically includes SEZ Units, while excluding STPI/ EOU etc) of Notified Services, located in India, with 'Duty Credit Scrips'.

It is imperative to note not all services are notified under the list of services eligible for the duty Scrip Notification. The notified services are Business Services which includes professional services, research and development services, Rental/Leasing services without operators, Other business services, Communication Services like Audio-visual services, Construction and related engineering services, Educational Services, Environmental Services, Health related and social services, Tourism and travel related services, Recreational, Cultural and Sport-

ing Services, Transport services like Maritime Transport Services, Air transport services, Road Transport Services, Services Auxiliary To All Modes Of Transport etc. The detailed list of Notified Services is provided in Public Notice No. 3 /2015-20 dated April 1, 2015 (Notification).

Reference has been made in the above Notification to the Central Product Code Classification (CPC) which constitutes a complete product classification covering all goods and services, and developed and maintained by the United Nations Statistics Division.

Entitlement

The eligible service providers are entitled to the Scrip at the rate of 3% or 5% of the Net Foreign Exchange earned on the export of such Notified Services. Net Foreign Exchange earnings for the scheme are defined as 'Gross Earnings of foreign exchange minus total expenses / payment / remittances of foreign exchange by the IEC holder, relating to service sector in the financial year'.

Benefits of Scrips

The Scrips are freely transferable and can be used for payment of specified duties/taxes on procurement of services and goods. There are no conditions attached to the Scrips issued under this Scheme. The Scrips as well as the goods imported/ domestically procured against

them are freely transferable. These Scrip are valid for a period of 18 months from the date of issue and must be valid on the date on which actual debit of duty is made.

Further, Customs Duties/ Excise Duty/ Service Tax paid in cash or through debit under Duty Credit Scrip shall be adjusted as CENVAT Credit or Duty Drawback as per provisions made in this regard.

Primary conditions for availing SEIS benefits

Only Notified Services (as discussed in the above paragraphs) rendered in the manner as per Para 9.51(i) and Para 9.51(ii) of the FTP shall be eligible i.e. the following methods:

- (i) Supply of a 'service' from India to any other country; (Mode1- Cross border trade)
- (ii) Supply of a 'service' from India to service consumer(s) of any other country (Mode 2- Consumption abroad)

It is important to note that supply of service through 'commercial presence' (Mode 3) i.e. supply of a service from India through commercial presence in any other country OR through 'presence of natural persons'(Mode 4) i.e. supply of a service from India through the presence of natural persons in any other country, are not eligible for entitlement under the scheme

Such service provider should have minimum net free foreign exchange earnings of US\$15,000 in preceding fi-



nancial year to be eligible for Duty Credit Scrip.

In order to claim reward under the scheme, Service provider shall have to have an active IEC at the time of rendering such services for which rewards are claimed.

Procedure for application

In order to facilitate trade and ease of doing business in India, the Directorate General of Foreign Trade (‘DGFT’) has provided online filing of documents / applications using digital signature in Form ANF 3B along with the certificates issued by Chartered Accountants / Company Secretary / Cost Accountant. However, certain documents such as invoice copies, agreement with service exporters, FIRC’s, etc are required to be filed in physical form at the time of processing of applications.

The application should be filed within a period of 12 months from the end of relevant financial year of claim period i.e. for FY15-16, the application is required to be filed before March 31, 2017.

Jurisdictional Regional Authorities (RA) and Port of Registration

The eligible service providers have an option to choose Jurisdictional RA on the basis of Corporate Office/ Registered Office/Head-Office/ Branch Office address

endorsed on IEC for submitting application/ applications, and should be opted at the beginning of financial year.

Further, the applicant can choose any port as port of registration and mention it in the application. The RA will issue the Scrip with such port of registration. Post issue, the Scrip needs to be registered at the port of registration of duty credit, and can be automatically used at any EDI port for import and at any manual port under Telegraphic Release Advise (TRA) procedure. In case port of registration is a manual port, TRA shall be required for imports at any other port.

On request, split certificates of the Scrip subject to a minimum of INR 5 Lakh each and multiples thereof may also be issued, at the time of application. Where the Scrip has already been issued, request for splits can be permitted at the Port of registration, and is allowed only in respect of EDI enabled ports.

Conclusion

The new FTP issued by the Government is a much better policy initiative than the erstwhile policy which had its own limitations in terms of usage, fungibility and transferability. While the benefits have been reduced from 10% (under SFIS) to 3 or 5% of NFE,

free transferability, allowing CEN-VAT Credit / Duty Drawback are certainly welcome move and boost provided to the service sector exporters. Further, by facilitating the aforesaid, the Government’s intention is clearly to ensure that tangible export benefit accrues to service exports.

List of key relevant Legislations/ Notifications

FTP

Foreign Trade Policy (Paragraphs 3.07 to 3.19)

Handbook of procedure (Paragraphs 3.04 to 3.19)

Public Notice No. 3/2015-2020, dated 1.4.2015

CBEC

Notification No. 25/2015-Customs, dated 08.04.15

Notification No.21/2015-CE, dated 08.04.15

Notification No.11/2015-ST, dated 08.04.15

“Service Providers are entitled for scrips @ 3% or 5% of Net Foreign Exchange earned ”



Delhi HC Judgment on Construction of Complex Service



Statute- Section 65 (105) (zzzh) of the Finance Act, 1994

Matter in dispute- Service tax on services in relation to construction of complex

Petitioner's Argument:-

His agreement with the builder is a composite contract for purchase of immovable property and contends that in absence of specific provisions for ascertaining the service component of the said agreement, the levy would be beyond the legislative competence of the Parliament.

Basis of Judgment:

Thus, while the legislative competence of the Parliament to tax the element of service involved cannot be disputed but the levy itself would fail, **if it does not provide for a mechanism to ascertain the value of the services component which is the subject of the levy.** [Para 37]

Limitation of Judgment:

(1) The Order is most likely to be challenged in the Supreme Court;

(2) the authority of service tax levied under Section 65 (105) (zzzh) of the Finance Act, 1994 has been challenged but the same section have been deleted wef 1st July, 2012.

(3) "Although such composite contracts for development of complex and sale of units therein would fall within the scope of works contract as held by the Supreme Court in *Larsen and Toubro v. State of Karnataka* (2014) 1 SCC

708, we do not propose to examine whether services involved in construction of complexes is exigible to service tax as services in relation to execution of a works contract falling within the scope of Section 65(105)(zzza) of the Act or under Section 65B (44) after the amendments brought about in the Act by virtue of Finance Act, 2012 – the said controversy is outside the scope of the present petitions and it would not be appropriate for us to examine it in these petitions. [Para 30 of the Judgment]

Fact of the case:-

The Petitioner is individuals who have entered into agreements with a builder (M/s Sethi Buildwell Pvt. Ltd. – hereafter 'the builder') to buy flats in a multi-storey group housing project named –Sethi Group – Max Royall being developed by the builder in Sector 76, Noida, Uttar Pradesh.

The builder has in addition to the consideration for the flats also recovered service tax from the Petitioners, which is payable by him for on services 'in relation to construction of complex' as defined under Section 65 (105)(zzzh) of the Finance Act, 1994 (hereafter 'the Act') and *inter alia* impugn the explanation to Section 65(105)(zzzh) of the Act (hereinafter 'the impugned explanation') introduced by Finance Act 2010 as being *ultra vires* of the Constitution of India.

Contentions of Petitioner

The Agreement with the builder is a composite con-

tract for purchase of immovable property and the Parliament does not have the legislative competence to levy service tax on such transaction.

That in absence of specific provisions for ascertaining the service component of the said agreement, the levy would be beyond the legislative competence of the Parliament. The Act and the rules made there under do not provide any machinery for computation of value of services, if any, involved in construction of a complex and, therefore, no such tax can be imposed.

Consideration and Judgment

The Court's consideration for contention (i) [Parliament does not have the legislative competence to levy service tax on composite contract]:-

The Court considered that the entries relating to taxation in List I and List II of the Seventh Schedule to the Constitution of India are mutually exclusive and the Parliament did not have the power to levy tax on immovable property.

But By a legal fiction, construction of a complex which is intended for sale by a builder or any person authorised by him before, during or after construction is deemed to be a service provided by the builder to the buyer. The only exception contemplated is where no sum is received from the prospective buyer prior to grant of the completion certificate. The grant of completion certificate implies that the project is complete and at that stage all services



and goods used for construction are subsumed in the immovable property; thus at that stage sale of a complex or a part thereof to a buyer constitutes an outright sale of immovable property, which admittedly is not chargeable to service tax.

The Court's Judgment for contention (i) [Parliament does not have the legislative competence to levy service tax on composite contract]:-

"We do not find any merit in the contention that the imposition of service tax in relation to a transaction between a developer of a complex and a prospective buyer impinges on the legislative field reserved for the States under Entry-49 of List-II of the Seventh Schedule to the Constitution of India." [Para 34]

In another words, the court held that the Parliament has the legislative competence to levy service tax in relation to the services rendered in construction of a complex.

The Court's consideration for contention (ii)[No existence of mechanism to ascertain the value of services component]:-

After deciding that the legislative competence of parliament to tax the element of service involved cannot be disputed, the court considered that the levy itself would fail if it does not provide for a mechanism to ascertain the value of services component.

During the consideration, the court was having clarity that in order to levy tax, the Statute must clearly specify the three element- of taxation, namely, (i) the subject of tax; (ii) the person who is liable totax; and (iii) the rate and measure of tax.

it is also essential to examine the measure of tax used for the levy. The measure of tax must have a nexus with the object of tax and it would be impermissible to expand

the measure of service tax to include elements such as the value of goods because that would result in extending the levy of service tax beyond its object and would impinge on the legislative fields reserved for the State Legislatures.

Clearly service tax cannot be levied on the value of undivided share of land acquired by a buyer of a dwelling unit or on the value of goods which are incorporated in the project by a developer. Levying a tax on the constituent goods or the land would clearly intrude into the legislative field reserved for the States under List II of the Seventh Schedule of the Constitution of India.

In **Commissioner of Central Excise and Customs v. Larsen & Toubro (2016) 1 SCC 170**, the Supreme Court clearly explained the necessity for segregating the elements of services and sale of goods in a composite contract.

Section 67 of the Finance Act, 1994, provides for valuation of taxable services.

Service Tax (Determination of Value) Rules 2006 has been formulated under the Section 67. But the court found that there was no machinery provision for ascertaining the service element involved in the composite contract.

Further the court held that the abatement to the extent of 75% by a notification or a circular cannot substitute the lack of statutory machinery provisions to ascertain the value of services involved in a composite contract.

The Supreme Court had affirmed the decision of the Orissa High Court in **Larsen and Toubro Limited v. State of Orissa and Ors: (2008) 12 VST 31 (Orissa)** wherein the Court held that Circulars or other instructions could not provide the machinery provisions for levy of tax. The charging provisions as well as the machinery for

its computation must be provided in the Statute or the Rules framed under the Statute.

the Supreme Court in **Govind Saran Ganga Saran v. CST: (1985) 155 ITR 144 (SC)** held that:-

"The components which enter into the concept of a tax are well known. The first is the character of the imposition known by its nature which prescribes the taxable event attracting the levy, the second is a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax, the third is the rate at which the tax is imposed, and the fourth is the measure or value to which the rate will be applied for computing the tax liability. If those components are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law.

The Court's Judgment for contention (ii)[No existence of mechanism to ascertain the value of services component]:-

"In the present case, we find that there is no machinery provision for ascertaining the service element involved in the composite contract. [Para 39]



Finance Act 2016 passed in Lok Sabh



“The President
assented the
finance bill on
14th May 2016”



The Finance Budget 2016 has been passed in Lok Sabha on 05 May 2016 with few amendments. The president assented the finance bill on 14 May 2016. The following are the major highlights of Finance Act, 2016:-

Amendment in Direct Tax

1. Rate of **surchage** has been increased from **12% to 15%** if total income of an individual/HUF/AOP/BOI/trust exceeds Rs. 1 crore.

2. An **additional tax at 10%** shall be paid by a **resident individual, HUF or a firm** on gross amount of dividend, if such **dividend received** by them from a domestic company **exceeds Rs. 10 lakhs per annum**.

3. *The Finance Bill, 2016 as passed by the Lok Sabha inserted a new clause to provide that the period of 36 months would be substituted with **period of 24 months in case of unlisted shares**. In other words, unlisted shares of company would be treated as **short-term capital asset** if it is held for a period of 24 months or less immediately preceding the date of its transfer.*

4. Relief under Section 87A has been raised from **2,000 to Rs. 5,000** in order to provide for relief to small taxpayers. This relief is available to a **resident individual** if his/her total income is not more than Rs. 5,00,000.

5. In case of domestic company, the rate of Income-tax shall be 29% of the total income if the total turnover or gross receipts of the com-

pany in the previous year 2015-16 does not exceed Rs. 5 crore and in all other cases the rate of Income-tax shall be 30% of the total income.

6. For the purpose of **advance tax**, to bring at par the **non-corporate tax payers with corporate taxpayers**, non-corporate tax payers shall be required to pay advance tax in four installments', viz; 15%, 45%, 75% and 100% of tax on or before 15thJune, 15thSeptember, 15thDecember and 15thMarch respectively.

7. **Advance tax provisions shall apply to assessee's opting for presumptive taxation u/s 44AD** and consequently interest on default and deferment of advance tax under section 234B and 234C respectively shall be levied.

8. TCS is to be levied at **1% in case of sale in cash of goods or services**, if value there of exceeds Rs.2lakhs. Further, levy of **TCS at 1% on sale of motor vehicle**, if the value exceeds Rs. 10 Lakhs.

9. A new section 44ADA is introduced for computing **professional income on presumptive basis** at 50% of gross receipts if the receipts do not exceeds Rs. 50 Lakhs.

10. The limit of **section 44AD** is increased to **2 Crores**.

11. Increase in the limit from Rs. 25 Lakhs to Rs. 50 Lakhs under section 44AB for requirement of audit for specified professionals.

12. In order to provide relief to newly setup domestic compa-

nies, the rate of tax shall be 25% if the following conditions are met:

a. the company has been setup and registered on or after 01-03-2016;

b. the company is engaged in the business of manufacture or production of any article or thing and is not engaged in any other business;

c. the company has not claimed any benefit under section 10AA, benefit of accelerated

d. depreciation, benefit of additional depreciation, investment allowance, expenditure on scientific research and any deduction in respect of certain income under Part-C of Chapter-VI-A other than the provisions of section 80JJAA; and

e. the option is furnished in the prescribed manner before the due date of furnishing of income.

13. Tax incentives for New startups is defined as below:

a. a deduction of 100% of the profits and gains derived by an eligible start-up from a business involving innovation development, deployment or commercialization of new products, processes or services driven by technology or intellectual property.

b. The benefit is available to all startups which is setup by 01-04-2019.

c. Section 54EE is introduced to provide exemption from capital gains tax if the

d. Long term capital gains proceeds are invested by an



assessee in units of such specified funds, as may be notified by the Central Government in this behalf and such amount remains invested for 3 years. The Investment in the units of the fund shall be allowed maximum up to Rs. 50 Lakhs.

14. In order to encourage indigenous research & development activities and to make India a global R & D hub, the government has decided that where income of the eligible assessee, who is the true and first inventor of the invention and whose name is entered on the patent register as the patentee in accordance with Patents Act, 1970, includes **royalty in respect of such patent, the same shall be taxable at 10%**(excluding SC, EC & SHEC) under section 115BBF.

15. With a large objective of 'Housing for All', the government has come up with amendment to provide **100% deduction of the profits of an assessee developing and building affordable housing projects** if the housing project is approved by the competent authority before the 31-03-2019 subject to certain conditions which are as follows:

a. The project is completed within a period of 3 years from the date of approval,

b. The project is on a plot of land measuring not less than 1000 sq.metres where the project is within 25 km from the municipal limits of four metros namely Delhi, Mumbai, Chennai & Kolkata and

in any other area, it is measuring not less than 2000 sq. metres where the size of the residential unit in the said areas is not more than thirty sq. metres and sixty sq. metres, respectively,

c. where residential unit is allotted to an individual, no such unit shall be allotted to him or any member of his family, etc

16. In furtherance to the goal of the Government of providing 'housing for all', the government has also incentivized first-home buyers availing home loans, by providing additional deduction in respect of interest on loan taken for residential house property from any financial institution **up to Rs. 50,000** if the **value of the house is less than Rs. 50 Lakhs** and **loan amount not exceeding Rs. 35 Lakhs** has been sanctioned by the bank during 01-04-2016 to 31-03-2017. The benefit shall last till repayment of loan. This deduction will be over and above the limit of Rs. 2,00,000 as mentioned in Section 24(b).

17. In order to increase the employment opportunities, the government has come up with expansion of section 80JJAA to provide that the deduction under the said provisions shall be available in respect of cost incurred on any employee whose total emolument does not exceed Rs. 25,000 per month. No deduction, however, shall be allowed in respect of cost incurred on those employees, for whom the entire contribution under Employees' Pension Scheme notified in accordance with Employees' Provident Fund and Miscellaneous Provisions Act, 1952, is paid by the Government.

18. In order to provide relief to the individual tax payers, section 80GG (deduction for rent paid) has been amended so as to increase the maximum limit of deduction from existing Rs. 2,000

per month to Rs. 5,000 per month.

19. There is an amendment that **any shares received** by an individual or HUF as a consequence of demerger or amalgamation of a company **shall not attract the provisions of clause (vii) of subsection (2) of section 56.**

20. In view of the fact that housing projects often take longer time for completion, therefore section 24(b) has been amended to provide that deduction on account of interest paid on housing loan shall be available if the **acquisition or construction is completed within 5 years(as against current 3 years)** from the end of the financial year in which loan was borrowed.

21. In order to reduce compliance burden, **section 206AA has been amended so as to provide that the provisions of this section shall not apply** to a non-resident, not being a company, or to a foreign company, in respect of any other payment, other than interest on bonds, **subject to such conditions as may be prescribed. The government has not yet provided an condition to avail such benefit.**

22. Now, the **Non-compete fees and exclusivity rights** shall also be taxed under "profits and gains from business and profession".

24. Section 50C has been amended to provide that if the sale agreement is entered much before the actual date of transfer of the immovable property in which actual sale consideration is mentioned, then the **stamp duty value as on the date of sale agreement** shall be deemed to be full value of consideration.

25. In finance bill 2016, it was proposed that the contri-





contributions made on or after 01-04-2016 by an employee participating in recognized provident fund (RPF) or superannuation fund (SAF) up to 40% of accumulated balance on withdrawal shall be exempt. That means **balance 60% shall be taxable on withdrawal except if the amount is annuitized. If annuitized, the regular pension received will be taxed and the tax liability will be deferred to next years. However, the government has rolled back such proposal in Finance Act 2016 passed in Lok sabha.**

26. Any payment by NPS trust to an employee on account of closure of pension scheme, to the extent of 40% of accumulated balance, shall be exempt from tax. However, the whole amount received by nominee, on death of the assessee shall be exempt from tax.

27. If a person having income which is exempt u/s 10(38) and income of such person without giving effect to the said clause of section 10 exceeds the maximum amount which is not chargeable to tax, shall also be liable to **file income tax return before the due date.**

28. Time limit for filing **belated return** has also been reduced. In this regard, it has been provided that, any person who has not furnished a return within the time allowed to him under sub-section (1), may **furnish the return for any previous year at any time before the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.**

29. Belated return can also be revised within such time

as mentioned in section 139 (5) of the Act.

30. **Section 139(9) has also been amended so as to provide that a return shall not be regarded as defective merely because self-assessment tax and interest payable** in accordance with the provisions of section 140A has not been paid on or before the due date of filing of return,

31. **A return shall be processed u/s 143(1) prior to completion of assessment u/s 143(3),** However, the finance bill as passed by the Lok Sabha provides that the processing of return is not necessary before the expiry of one year from the end of the financial year in which return is furnished, where a notice is issued for scrutiny assessment under Section 143(2).

32. Currently, the time limit for completion of assessment is two years from the end of assessment year in which the income was first assessable. Since the government is desirable that proceedings under the Act are finalized more expeditiously as digitization of processes within the Department will enhance its efficiency in handling workload. **In order to simplify the provisions, the time limit has been rationalized to complete the assessments. It has been reduced by 3 months in each case.** Eg. for completion of assessment under section 143 or section 144 be changed from existing 24 months(2 years) to 21 months from the end of the assessment year in which the income was first assessable,

33. Section 244A has also been amended so as to provide that in cases where the

return is filed after the due date, the period for grant of **interest on refund may begin from the date of filing of return.** An **additional interest** on such refund amount, which arises out of appeal being delayed beyond the prescribed time, shall be calculated at the rate of 3% p.a., for the period beginning from the date following the date of expiry of the time allowed under sub-section (5) of section 153 to the date on which the refund is granted.

34. Section 271 shall not apply to and in relation to any assessment for the assessment year commencing on or after the 01-04-2017. **Penalty shall be levied under the newly inserted section 270A w.e.f. 01-04-2017.** The new section 270A provides for levy of penalty in cases of under reporting and misreporting of income.

35. The application of POEM has been deferred for one year more.

36. GAAR will apply from 01 April 2017.

37. Disallowance under section 14A will be limited to 1% of the average monthly value of the investments yielding exempt income, but not exceeding the actual expenditure under rule 8D.

Amendment in Service Tax & Excise

1. The facility for **revision of return** available to service tax assessee only, has been **extended to manufacturers also.**

2. Enabling provision is being made to levy **Krishi Kalyan Cess (KKC)** on all taxable services w.e.f. 01-06-2016, to finance and promote initia-





tives to improve agriculture @ 0.50%. The notification is still awaited.

3. The exemption on following services has been withdrawn-

a. Services by senior advocate (an advocate designated as Senior advocate by High Court of any state or Supreme court of India) to an advocate or firm of advocates providing legal services shall not be taxable @ 14%,

b. Service of construction, erection, commissioning or installation of original works pertaining to monorail or metro, in respect of contracts entered into on or after 01-03-2016 shall be taxable @ 5.60%,

c. Services of transport of passengers, with or without accompanied belongings, by ropeway, cable car or aerial tramway shall be taxable @ 14%,

d. Service Tax is being levied on transportation of passengers by air conditioned stage carriage with effect from 01-06-2016, at the same level of abatement as applicable to the transportation of passengers by a contract carriage, that is, 60% without credit of inputs, input services and capital goods.

4. The following are few services shall be new entry for exemption:

a. The services of general insurance business provided under 'Niramaya' Health Insurance scheme launched by National Trust for the Welfare of Persons

with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability in collaboration with private/public insurance companies are being exempted from Service Tax with effect from 1st April, 2016.

b. Services by way of construction etc. in respect of-

(i) housing projects under Housing For All (HFA) (Urban) Mission/ Pradhan Mantri Awas Yojana (PMAY);

(ii) low cost houses upto a carpet area of 60square metres in a housing project under "Affordable housing in Partnership" component of PMAY,

(iii) low cost houses upto a carpet area of 60squaremetres in a housing project under any housing scheme of the State Government,

5. Services of construction provided to the government, a local authority in respect of construction of govt. schools, hospitals, etc. or construction of ports or airports,

6. The benefit of **quarterly payment of Service Tax** is being extended to 'One Person Company' (OPC) and HUF with effect from 01-04-2016.

7. Services **provided by mutual fund agents to asset management company** are being made taxable under **forward charge** with effect from 01-04-2016,

8. Interest rates on delayed payment of duty/tax across all indirect taxes are being rationalized and **made uniform at 15%** except where service tax collected but not deposited by exchequer interest rate will be 24% from the date service tax payment became due. Where value of taxable services in the preceding year/years covered by the notice is less than Rs. 60 Lakh, the rate of interest shall be 12%.

9. The rate of abatement in respect of services by way of **construction of residential complex, building, civil structure, or part thereof, shall be 70%** as against current (70%/75%) therefore new rate of tax shall be 4.20%,

10. The new rate of service tax in case of GTA services used for shifting of household goods shall be 5.60%. The existing rate of tax of 4.20% on transport of other goods by GTA continues unchanged.

11. Service tax on the services of Information Technology Software on media bearing RSP is being exempted from Service Tax with effect from 01-03-2016 provided Central Excise duty is paid on RSP,

12. Section 73 of the Finance Act, 1994 is being amended so as to increase the **limitation period from 18 months to 30 months** for short levy/non levy/short payment/non-payment/erroneous refund of Service Tax.

13. The **power to arrest in Service Tax** is being restricted only to situations where the tax payer has collected the tax but not deposited it to the exchequer, and **that too above a threshold of Rs 2 crores**. The monetary limit for launching prosecution is being increased from Rs.1 crore to Rs.2crores of Service tax evasion.

14. The finance act 2016 has also introduces annual returns for service tax and Cenvat credit which will be submitted to the department by 30th November of the following year



Direct Tax Dispute Resolution Scheme Rules, 2016

In exercise of the powers conferred by sub-sections (1) and (2) of section 211 of the Finance Act, 2016, (28 of 2016), the Central Government hereby makes the following rules, namely :

1. Short title and commencement.-

(1) These rules may be called the **Direct Tax Dispute Resolution Scheme Rules, 2016**.

(2) They shall come into force on the 1st day of June, 2016.

2. Definitions.- In these rules, unless the context otherwise requires, -

(a) "Scheme" means the Direct Tax Dispute Resolution Scheme, 2016, specified under Chapter X of the Finance Act, 2016 (28 of 2016);

(b) "section" means section of the Finance Act, 2016 (28 of 2016);

(c) "Form" means the Forms appended to these rules;

(d) all other words and expressions used in these rules but not defined in these rules

and defined in the Scheme under Chapter X of the Finance Act, 2016 (28 of 2016), shall have the same meanings respectively as assigned to them in that Scheme.

3. Form of declaration and undertaking under section 203.-

(1) The declaration under sub-section (1) of section 203 shall be made in duplicate in Form-1 to the designated authority and verified in the manner specified therein.

(2) The undertaking referred to in sub-section (4) of section 203 shall be furnished in Form-2 alongwith the declaration and verified in the manner specified therein.

(3) The declaration under sub-rule (1) and the undertaking under sub-rule (2), as the case may be, shall be signed by the declarant or any person competent to verify the return of income on his behalf in accordance with section 140 of the Income-tax Act, 1961.

(4) The designated authority on receipt of declaration shall issue a receipt in acknowledgement thereof.

4. Form of certificate under sub-section (1) of section 204.-

The designated authority shall issue a certificate referred to in sub-section (1) of section 204 in Form-3.

5. Intimation of payment.-

The detail of payments alongwith proof thereof, made pursuant to the certificate issued by the designated authority shall be furnished by the declarant to the designated authority in Form-4.

6. Order under sub-section (2) of section 204.-

The order by the designated authority under sub-section (2) of section 204 in respect of tax arrear shall be in Form-5 and in respect of specified tax shall be in Form-6.



"The Application under Direct Tax Dispute Resolution Scheme is to be made in Form 1"

Clarifications on Income Declaration Scheme, 2016

The Income Declaration Scheme, 2016 (hereinafter referred to as 'the Scheme') incorporated as Chapter IX of the Finance Act, 2016 provides an opportunity to persons who have not paid full taxes in the past to come forward and declare the undisclosed income and pay tax, surcharge and penalty

totaling in all the 45% of such undisclosed income declared. The Income Declaration Scheme Rules, 2016 (hereinafter referred to as 'the Rules') have been notified. In regard to the scheme queries have been received from the public about the scope of the scheme and the procedure to be followed. The

Board has considered the same and decided to clarify the points raised by issue of a circular in the form of questions and answers as follows.-

1: Where an undisclosed income in the form of investment in asset is declared under the Scheme and tax, surcharge and penalty is paid on the fair market value of





the asset as on 01.06.2016, then will the declarant be liable for capital gains on sale of such asset in the future? If yes, then how will the capital gains in such case be computed?

Answer: Yes, the declarant will be liable for capital gains under the Income-tax Act on sale of such asset in future. As per the current provisions of the Income-tax Act, the capital gains is computed by deducting cost of acquisition from the sale price. However, since the asset will be taxed at its fair market value the cost of acquisition for the purpose of Capital Gains shall be the fair market value as on 01.06.2016 and the period of holding shall start from the said date (i.e. the date of determination of fair market value for the purposes of the Scheme).

2: Where a notice under section 142(1)/ 143(2)/ 148/ 153A/ 153C of the Income-tax Act has been issued to a person for an assessment year will he be ineligible from making a declaration under the Scheme?

Answer: The person will only be ineligible from declaration for those assessment years for which a notice under section 142 (1)/143(2)/148/153A/153C is issued and the proceeding is pending before the Assessing Officer. He is free to declare undisclosed income for other years for which no notice under above referred sections has been issued.

3: As per the Scheme, declaration cannot be made where an undisclosed asset has been acquired during any previous year relevant

to an assessment year for which a notice under section 142, 143(2), 148, 153A or 153C of the Income-tax Act has been issued. If the notice has been issued but not served on the declarant then how will he come to know whether the notice has been issued?

Answer: The declarant will not be eligible for declaration under the Scheme where the undisclosed income relates to the assessment year where a notice under section 142, 143(2), 148, 153A or 153C of the Income-tax Act has been issued and served on the declarant on or before 31st day of May, 2016. The declarant is required to file a declaration regarding receipt of any such notice in Form-1.

4: In a case where the undisclosed income is represented in the form of investment in asset and such asset is partly from income that has been assessed to tax earlier, then what shall be the method of computation of undisclosed income represented by such undisclosed asset for the purposes of the Scheme?

Answer: As per sub-rule (2) of rule 3 of the Income Declaration Scheme Rules, 2016, where investment in any asset is partly from an income which has been assessed to tax, the undisclosed income represented in form of such asset will be the fair market value of the asset determined in accordance with sub-rule (1) of rule 3 as reduced by an amount which bears to the value of the asset as on the 1.6.2016, the same proportion as the assessed income bears to the total cost of the asset. This is illustrated by an example as under:

Investment in acquisition of asset in previous year 2013-14 is of Rs. 500 out of which Rs. 200 relates to income assessed to tax in A.Y. 2012-13 and Rs. 300 is from undisclosed income pertaining to previous year 2013-14. The fair market value of the asset as on

01.06.2016 is Rs. 1500.

The undisclosed income represented by this asset under the scheme shall be:

1500 minus $(1500 \times 200 / 500) =$ Rs. 900

5: Can a declaration be made of undisclosed income which has been assessed to tax and the case is pending before an Appellate Authority?

Answer: As per section 189 of the Finance Act, 2016, the declarant is not entitled to re-open any assessment or reassessment made under the Income-tax Act. Therefore, he is not entitled to avail the tax compliance in respect of such income. However, he can declare other undisclosed income for the said assessment year which has not been assessed under the Income-tax Act.

6: Can a person against whom a search/survey operation has been initiated file declaration under the Scheme?

Answer: (a) The person is not eligible to make a declaration under the Scheme if a search has been initiated and the time for issuance of notice under section 153A has not expired, even if such notice for the relevant assessment year has not been issued. In this case, however, the person is eligible to file a declaration in respect of an undisclosed income in relation to an assessment year which is prior to assessment years relevant for the purpose of notice under section 153A.

(b) In case of survey operation the person is barred from making a declaration under the Scheme in respect of an undisclosed income in which the survey was conducted. The person is, however, eligible to make a declaration in respect of an undisclosed income of any other previous year.

7: Where a search/survey operation was conducted and the as-

“Incase of survey operation the person is barred from making a declaration under the scheme”





assessment has been completed but certain income was neither disclosed nor assessed, then whether such unassessed income can be declared under the Scheme?

Answer: Yes, such undisclosed income can be declared under the Scheme.

8: What are the consequences if no declaration under the Scheme is made in respect of undisclosed income prior to the commencement of the Scheme?

Answer: As per section 197(c) of the Finance Act, 2016, where any income has accrued or arisen or received or any asset has been acquired out of such income prior to the commencement of the Scheme and no declaration is made under the Scheme, then such income shall be deemed to have been accrued, arisen or received or the value of the asset acquired out of such income shall be deemed to have been acquired in the year in which a notice under section 142 / 143 (2)/148/153A/153C is issued by the Assessing Officer and the provisions of the Income-tax Act shall apply accordingly.

9: If a declaration of undisclosed income is made under the Scheme and the same was found ineligible due to the reasons listed in section 196 of the Finance Act, 2016, then will the person be liable for consequences under section 197(c) of the Finance Act, 2016?

Answer: In respect of such undisclosed income which has been duly declared in good faith but not found eligible, then such income shall

not be hit by section 197(c) of the Finance Act, 2016. However, such undisclosed income may be assessed under the normal provisions of the Income-tax Act, 1961.

10: If a person declares only a part of his undisclosed income under the Scheme, then will he get immunity under the Scheme in respect of the part income declared?

Answer: It is expected that one should declare all his undisclosed income. However, in such a case the person will get immunity as per the provisions of the Scheme in respect of the undisclosed income declared under the Scheme and no immunity will be available in respect of the undisclosed income which is not declared.

11: Can a person declare under the Scheme his undisclosed income which has been acquired from money earned through corruption?

Answer: No. As per section 196(b) of the Finance Act, 2016, the Scheme shall not apply, inter-alia, in relation to prosecution of any offence punishable under the Prevention of Corruption Act, 1988. Therefore, declaration of such undisclosed income cannot be made under the Scheme. However, if such a declaration is made and in an event it is found that the income represented money earned through corruption it would amount to misrepresentation of facts and the declaration shall be void under section 193 of the Finance Act, 2016. If a declaration is held as void, the provisions of the Income-tax Act shall apply in respect of such income as they apply in relation to any other undisclosed income.

12: Whether at the time of declaration under the Scheme, will the Principal Commissioner/Commissioner do any enquiry in respect of the declaration made?

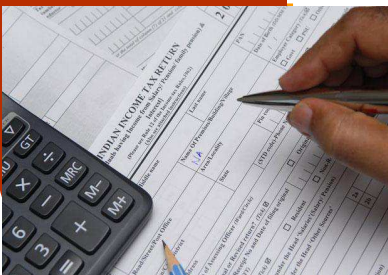
Answer: After the declaration is made the Principal Commissioner/Commissioner will enquire whether any proceeding under section 142 (1)/143(2)/148/153A/153C is pending for the assessment year for which declaration has been made. Apart from this no other enquiry will be conducted by him at the time of declaration.

13: Will the declarations made under the Scheme be kept confidential?

Answer: The Scheme incorporates the provisions of section 138 of the Income-tax Act relating to disclosure of information in respect of assessee. Therefore, the information in respect of declaration made is confidential as in the case of return of income filed by assessee.

14: Is it necessary to file a valuation report of an undisclosed income represented in the form of investment in asset along with the declaration under the Scheme?

Answer: It is not mandatory to file the valuation report of the undisclosed income represented in the form of investment in asset along with the declaration. However, the declarant should have the valuation report. While e-filing the declaration on the departmental website a facility for uploading the documents will be available.



E-filing of CIT appeals – Due Date Extension to 15.06.2016

Rule 45 of the Income Tax Rules, 1962, mandates compulsory e-filing of appeals before Commissioners of Income Tax (Appeals) with effect from 1-3-2016 in respect of persons who are required to furnish return of income electronically. It has come to the notice of the Central Board of Direct Taxes (hereinafter referred to as the Board) that in some cases the taxpayers who were required to e-file Form 35, were unable to do so due to lack of knowledge about e-filing procedure and/or technical issues in e-filing. Also, the EVC functionality for verification of e-appeals was made operational from 12-5-2016 for individuals and from 19-5-2016 for other

persons. Word limit for filing grounds of appeal and mapping of jurisdiction of Commissioners of Income Tax (Appeals) were also a cause of grievance in some cases.

The matter has been examined by the Board. While the underlying issues relating to e-filing of appeals have since been addressed and resolved, in order to mitigate any inconvenience caused to the taxpayers on account of the new requirement of mandatory e-filing appeals, it has been decided to extend the time limit for filing of such e-appeals. E-appeals which were due to be filed by 15-5-2016 can be filed up to 15-6-2016. All e-appeals filed within this extended period would be treated as ap-

peals filed in time.

In view of the extended window for filing e-appeals, taxpayers who could not successfully e-file their appeal and had filed paper appeals are required to file an e-appeal in accordance with Rule 45 before the extended period i.e. 15-6-2016. Such e-appeals would also be treated as appeals filed within time.



Bad Debt admissible if written off as irrecoverable in books

Proposals have been received by the Central Board of Direct Taxes regarding filing of appeals/pursuing litigation on the issue of allowability of bad debt that are written off as irrecoverable in the accounts of the assessee. The dispute relates to cases involving failure on the part of assessee to establish that the debt is irrecoverable.

Direct Tax Laws (Amendment) Act, 1987 amended the provisions of sections 36(1)(vii) and 36(2) of the Income Tax Act 1961, (hereafter referred to as the Act) to rationalize the provisions regarding allowability of bad debt with effect from the 1st April, 1989.

The legislative intention behind the amendment was to eliminate litigation on the issue of the allowability of the bad debt by doing

away with the requirement for the assessee to establish that the debt, has in fact, become irrecoverable. However, despite the amendment, disputes on the issue of allowability continue, mostly for the reason that the debt has not been established to be irrecoverable. The Hon'ble Supreme Court in the case of TRF Ltd. In CA Nos. 5292 to 5294 of 2003 vide judgment dated 9.2.2010 (available in NJRS 2010-LL-0209-8), has stated that the position of law is well settled. *"After 1.4.1989, for allowing deduction for the amount of any bad debt or part thereof under section 36(1) (vii) of the Act, it is not necessary for assessee to establish that the debt, in fact has become irrecoverable; it is enough if bad debt is written off as irrecoverable in the books of accounts of assessee."*

In view of the above, claim for any debt or part thereof in any previous year, shall be admissible under section 36(1)(vii) of the Act, if it is written off as irrecoverable in the books of accounts of the assessee for that previous year and it fulfills the conditions stipulated in sub section (2) of sub-section 36(2) of the Act.

Accordingly, no appeals may henceforth be filed on this ground and appeals already filed, if any, on this issue before various Courts/Tribunals may be withdrawn/not pressed upon.





LLB & Co.

Office No.: 5, Barsana, Salasar Brij Bhoomi,
Bhayandar (West),
Thane - 401101
Maharashtra, India

Upcoming Office:
525, The Summit Business Bay,
Near Western Express Highway,
Andheri (East), Mumbai - 400069

Phone: +91 - 22 - 28180400
+91 - 22 - 28040048
E-mail: admin@bajajit.com



Innovate Create Lead

Due Dates for filing Form 15G/H

Representations have been received by CBDT for clarification on the following issues:

(a) Due date for quarterly uploading of 15G/H declarations by payers on e-filing portal.

(b) The manner for dealing with Form 15G/15H received by payer during the period from 01.10.2015 to 31.03.2016.

4. In this regard, it is hereby specified that:

(a) The due date for quarterly furnishing 15G/15H declarations received by payer from 01.04.2016 onwards shall be as given below:

- Quarter ended 30th June:- 15th July
- Quarter ended 30th September:- 15th October
- Quarter ended 31st December:- 15th January

- Quarter ended 31st March:- 30th April

(b) The payer shall furnish 15G/15H declarations received during the period from 01.10.2015 to 31.03.2016 on e-filing portal in the given format on or before 30th June, 2016.

Disclaimer:

This newsletter is prepared strictly for private circulation and personal use only. This newsletter is for general guidance on matters of interest only and does not constitute any professional advice from us. One should not act upon the information contained in this newsletter without obtaining specific professional advice. Further, no representation or warranty (expressed or implied) is given as to the accuracy or completeness of the information contained in this newsletter.