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Brief Summary

Through the New Year celebrations, we will eventually be entering into the mood of festivals and a new era of adaptations in our indirect taxation system via GST.

Income Tax

1. **Section 10A, read with Section 10AA of the Income Tax Act, 1961 - FTZ-Clarification on allow ability of deduction under Sec 10A/10AA on transfer of technical manpower in case of software industry**

   In supersession of the Circular No. 12/2014 dated 18th July, 2014, it has now been decided that the transfer or re-deployment of technical manpower from existing unit(s) to a new unit located in SEZ, in the first year of commencement of business, shall not be construed as splitting up or reconstruction of an existing business, provided the number of technical manpower so transferred as at the end of the financial year does not exceed 50 per cent instead of 20 per cent of the total technical manpower actually engaged in development of software or IT enabled products in the new unit.

   [CIRCULAR NO. 14/2014 [F. NO.178/84/2012-ITA.I], DATED 8/10/2014]

2. **Commissioner of Income-tax (Exemptions) to be prescribed Authority – Section 10(23C)(iv)/(v)/(vi)/(via) of the Income-tax Act, 1961**

   For the purposes of claiming exemption under Section 10(23C)( iv)/(v)/(vi)/(via), a fund or institution established for charitable purposes and/or a trust or institution wholly for public religious purposes or wholly for public religious and charitable purposes, any university or other educational institution, any hospital or other institution, requires approval of the “prescribed authority”. In pursuance of the such provisions the Income-tax Act, 1961 read with Rule 2C of the Income-tax Rules, 1962 and in supersession of CBDT notification no. SO 851(E)
dated 30.5.2007, the CBDT has, through this notification, authorized the Commissioner of Income-tax (Exemptions) to act as prescribed authority for the purpose of Section 10(23C)(iv)/(v)/(vi)/(via) w.e.f. 15th November, 2014.

[Notification No. 75/2014, dated 01-12-2014]

3. Deduction of tax at source from salaries u/s 192 during the financial year 2014-15

The Central Board of Direct Taxes has, through this circular, provided the rates for deduction of income tax from the payment of income chargeable under the head “Salaries” during the financial year 2014-15 and explained certain provisions of the Income-tax Act, 1961 and Income-tax Rules, 1962.

[Circular No. 17/2014, dated 10-12-2014]

http://www.incometaxindia.gov.in/Pages/communications/circulars.aspx
Case Laws Income Tax:

1. S. 4: Transfer Fees received by Housing Society from incoming & outgoing members (even in excess of limits) is exempt on the ground of mutuality

The assessee, a Co-operative Housing Society, received a sum of 39, 68,000 on account of transfer of flat and garage and credited it to ‘general amenities fund’ as well as ‘repair fund’. The assessee claimed that the said receipt is exempted from tax on the ground of mutuality. The AO held that the principles of mutuality will not apply. However, the CIT (A) and Tribunal allowed the Assessee’s claim by relying on Sind Co-operative Housing Society vs. ITO 317 ITR 47. The appeal by the department was dismissed by Bombay High Court. CIT vs. Darbhanga Mansion CHS Ltd.

CIT vs. Ghatge Patil Transports Ltd. Bombay High Court.

2. S. 10B: Approval is mandatory for relief u/s 10B

Assessee not having approval as 100 per cent Export Oriented Undertaking by the Board appointed by the Central Government in exercise of powers under s. 14 of the Industries (Development and Regulation) Act, 1951, was not entitled to relief under s. 10B.


3. S. 12 & 12AA: Trust can apply for registration before commencement of activity

CIT was not justified in rejecting application of trust for registration under s. 12A only on the ground that activities of the trust had not commenced.

[CIT vs. Kutch DasaOswal Moto PariwarAmbama Trust (2014) 271 CTR (Guj) 595.]

4. S. 37(1): Interest on late payment of service tax is allowable

Assessee having failed to collect service tax from recipients of service, discharge of said liability by assessee along with interest for late payment is not penalty for infraction and is allowable business expenditure.

Kaypee Mechanical India (P) Ltd. (2014) 271 CTR (Guj.) 591..
5. **S. 37(1): Franchise fee – Revenue vs Capital Expenditure**

Assessee did not acquire any right in the trademark, which it was using for the purpose of selling their products/goods; trademark was not owned and did not belong to the assessee and therefore entire franchise fee was allowable as revenue expenditure.

**CIT vs. Jubilant Foodwork (P) Ltd. (2014) 271 CTR (Del.) 227.**

6. **S 43(1), Explanation 7 & 43(6); Income Tax Rules 1962, rr. 5 & 10. Calculation of WDV pursuant to amalgamation**

Depreciation on fixed assets taken over by the assessee company under the scheme of amalgamation, ought to be granted by taking the written down value of the fixed assets as WDV in the scheme of amalgamation and not at either the actual cost of assets or by allowing depreciation on a notional basis when in fact depreciation was not actually allowed earlier while computing profits as per r. 10.

**Rhone Poulenc (India) Ltd. vs. CIT (2014) 271 CTR (Bom.) 636.**

7. **S 54F: Meaning of construction**

Assessee purchasing fully built up property, demolishing the same and constructing new property, the same constitutes “Construction” within the meaning of S. 54F and such construction having been carried out within three years from the date of sale of capital asset qualifies for exemption under S. 54F.

**CIT vs. Ashok Kumar Ralhan (2014) 272 CTR (Del.) 71.**

8. **S 54F: Exemption available for purhase of multiple flats prior to amendment**

Prior to the amendment of s. 54F by Finance (No. 2) Act, 2014, which will come into effect from 1st April, 2015 the words “a residential house” include multiple flats/residential units; assessee having entered into an agreement with a developer for development of her land whereby she was entitled to receive 43.75 per cent of the built-up area which was eventually translated into five flats after the development, exemption under s.54F was allowable in respect of all the five flats.
Service Tax:

1. Clarification on scrutiny of records by the audit party deputed by the Commissioner.

Verification of records mandated by the statute is necessary to check the correctness of assessment and payment of tax by the assessee in the present era of self-assessment. Rule 5A(2), which is made in exercise of rule-making powers U/s.94(2)(k) of the Finance Act,1994, provides for scrutiny of records by the audit party deputed by the Commissioner. Such scrutiny essentially constitutes audit by the audit party consisting of departmental officers.

CBEC vide Circular No.181/7/2014-ST dated 10th December, 2014

2. Clarification on temporary transfer of copyright and service tax liability

The activity of temporary transfer of copyright was given exemption with effect from 1st July, 2012 hence for the period after 1st July, 2012, in cases involving temporary transfer of copyright, service tax is not leviable on the distributors/sub-distributors for providing such service. Moreover exhibitors/ theatre owners are also not leviable to service tax for exhibiting such movies on their own account under support service. In case of revenue sharing arrangements between the theatre owners (service provider) and the distributors/sub-distributors/joint venture (service recipient), as the case may be, service tax will be leviable in accordance with the Circular No.148/17/2011-ST dated 13th December, 2011. For determining the Levi ability of service tax on film industry with regard to the distribution & exhibitions of the films, the facts and circumstances in each case should be examined in the light of said circular dated 13th December, 2011 and action taken accordingly.

Service Tax Case Laws:

1. **Rate of tax as on rendition of service relevant**
The rate of tax applicable shall be the rate prevailing at the time of rendition of the taxable service and not the rate in force on date of receipt of payment of services.
[[CST vs. Lea Associates South Asia P. Ltd. (2014)36 STR 909 (Tri.-Del.)].]

2. **Commercial or Industrial Construction Service**
The appellant’s service of laying long distance pipeline /conduit for Gujarat Industrial Development Corporation was held to be for commercial or industrial purpose and accordingly liable for Service Tax under the category of ‘commercial or industrial construction services’
[Graphite India Ltd. vs. CCE (2014)36 STR 948(Tri.-Mumbai)]

3. **Real Estate Agent Services**
The appellant was engaged in acquiring/ obtaining lease land by its associate company and subsequently selling or sub-leasing the lands to the customers of its associate company. The agreement between the appellant and Associate Company mentioned that on sale/ sub-lease of land by associate company to its customers appellant would recover the cost of acquisition of land and the incidental expenses incurred by it along with commission of 11% on cost, which in fact was the profit that would be earned by it on sale/ sub-lease. The department sought to tax the said commission on the ground that the appellant had rendered Real Estate Agent Services to its associate Company. On appeal, the Hon’ble Tribunal observed that since the land was purchased by the appellant in its own name and all the incidental cost thereof was also borne by it and subsequently the same was also sold/ leased by it on which account it earned profit, the appellant was carrying out buying and selling of land and had not rendered any real estate agent services to the associate company. Hence no service tax was payable by it on the profits earned by it under the category of real estate agent’s services.
[Sarjan Realities Ltd. vs. CCE (2014) 36 STR 877 (Tri.-Mum.)].
5. Site Formation and Clearance, Excavation and Earthmoving and Demolition Service

Activities of reclamation of land by constructing diaphragm wall, anchor slab and retention wall along with the banks of the river are in the nature of Site Formation and Clearance, Excavation and Earthmoving and Demolition Service. However, since the activities are in relation to a river (i.e. a water body) it would be specifically excluded from the definition “Site Formation and Clearance, Excavation and Earthmoving and Demolition Service”.

[ITD Cementation India Ltd. vs. CST (2014) 36 STR 897 (Tri.-Mum.)]

6. Delayed payment charges received by stock brokers

Delayed payment charges recovered by stock broker from its customers for delaying its payments by debiting the running account after raising separate debit notes cannot be a consideration received for providing stock broking services and accordingly would not be liable for service tax under the said category

[Religare Securities vs. CST (2014) 36 STR 937 (Tri.-Del.)]

7. Export of service

Where the appellant had entered into an agreement with its foreign principal to undertake marketing of the principal’s products in India including providing technical support services, the Hon’ble Tribunal relying on M/s Paul Merchants vs. CCE (2013) 29 STR 257) held that the services would be considered as export under the Export of Service Rules and accordingly not liable for service tax

[Microsoft Corporation (I) (P) Ltd. vs. CST (2014) 36 STR 766 (Tri.-Del.).]
VAT

1. Goods donated for J&K flood affected people exempted from Central Excise duty

Notification No. 25/2014-CE, Dated: December 11, 2014 has exempted goods donated or purchased out of cash donations, for the relief and rehabilitation of the people affected by the floods in the State of Jammu and Kashmir from the duty of excise leviable thereon under the Central Excise Act, 1944. The conditions for availing the exemptions have been prescribed in the notification.


2. Revised instructions regarding stay in appeal

Trade Circular 1T of 2015 has amended section 26 of the Maharashtra Value added Tax 2002 and clarified that the declarations received up to the date of filling the appeal only would be considered for the purpose of the said section.

[Trade Circular VAT/AMD-2014/1A/20Adm-3, Dated: January 01, 2015]
Excise

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Corporate Laws

1. MCA Notification No. GSR(E) dated 31st December 2014 – Amendment to Companies (Cost Records and Audit) Rules 2014

MCA has amended the Companies (Cost Records and Audit) Rules 2014 with the aforesaid notification certain amendments have been made to the criteria for applicability of cost records, cost audit, the particulars of cost those should be included in the cost records and the format of the cost audit report.

http://www.mca.gov.in/Ministry/pdf/Amendment_Rules_01012014.pdf

2. MCA Notification No. GSR(E) dated 16th January 2015 Amendment to Companies (Accounts) Rules 2014

MCA has amended the Companies (Accounts) Rules 2014 with the aforesaid notification. Certain amendments have been made regarding the notice for address at which books of account may be kept and the form AOC-5


3. MCA Notification No. GSR (E) dated 19th January 2015 Amendment to Companies (Appointment and Qualification of Directors) Rules 2014

MCA has amended the Companies s (Appointment and Qualification of Directors) Rules' 2014 with the aforesaid notification certain amendments have been made regarding the signing of DIR 11 and 12 for the resigning Director.

1. Remittance of Assets—Submission of Auditor’s Certificate


http://rbidocs.rbi.org.in/rdocs/notification/PDFs/FEMA324FL011214.pdf

2. Review of FDI policy –Sector Specific conditions

The Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce & Industry, Government of India, had notified the latest FDI policy changes vide Consolidated FDI Policy Circular of 2014 on April 17, 2014. Accordingly, in order to bring uniformity in the sectorial classification/conditionality for FDI as notified under the said Circular issued by DIPP with the FEMA Regulations, RBI amended Annex B of Schedule 1 to Notification No. FEMA. 20/2000-RB dated 3rd May 2000, as amended from time to time by issue of Notification No. FEMA. 312/2014-RB dated July 2, 2014, dated November 13, 2014.


http://rbidocs.rbi.org.in/rdocs/notification/PDFs/312FEMA011214.pdf

3. Overseas Investments by Alternative Investment Funds

RBI has amended Regulation 2 and Regulation 26 of FEMA Notification No. 120/RB-2004 dated July 07, 2004 by issue of Notification No. FEMA.326/RB-2014 dated November 12, 2014 and has
decided to permit an Indian Alternative Investment Fund (AIF), registered with the SEBI, to invest overseas in terms of the provisions issued under A. P. (DIR Series) Circular No. 49 and 50 dated April 30, 2007 and May 04, 2007 respectively.


The Union Cabinet issued a Press Note notifying the changes proposed by the Union Cabinet in the existing FDI Policy on ‘Construction Development Sector’. Highlights of changes in FDI Policy on Construction sector as proposed by cabinet are as under:
December 2014 are as under:

a) The condition of three year lock in from final date of investment for exit has been removed. The investor will be permitted to exit on completion of project or after development of trunk infrastructure.

b) The clause for combination of project has been removed. Therefore, in case of combination project, minimum development of 20,000 sq. meters of floor area will be required.

c) Minimum 40 percent of the FAR/FSI to be utilized for dwelling units of floor area not more than 140 sq. meters as against 60 percent FAR/FSI and carpet area of 60 sq. meters. At least 25 % of affordable housing FSI should be used for houses of floor area not more than 60 sq. meters.

5. Change in the quantum of security classified as HTM
RBI has directed that the quantum of securities that can be classified as HTM will be reduced from 200% to 100% of the audited NOF of the PD as at the end of the preceding financial year. The new limits will come into effect from December 31, 2014. PDs are allowed to effect one additional transfer from HTM for the current quarter ending December 31, 2014 to enable them to comply with the new norms.

[Circular IDMD.PDRD.No.7/03.64.00/2014-15 dated 15th December 2014]

http://rbi.org.in/scripts/NotificationUser.aspx?id=9403&Mode=0