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INCOME TAX

Income Tax
Central Excise
Service Tax
FEMA

- + **Double Taxation Avoidance Agreement (DTAA) entered into with Bhutan and Columbia:** The Government of India has entered into DTAA with Royal Government of Bhutan and the Republic of Columbia. The provisions of the said DTAA shall have effect in India from April 01, 2015.

(Notification No 42 dated 05.09.2014, Notification No. 44 dated 23.09.2014)

- + **Amendment to the DTAA between Government of India and Government of Poland:** The Central Government has notified the Protocol to the India-Poland Double Taxation Avoidance Agreement ('Poland DTAA') which seeks to amend certain provisions of the Poland DTAA. The key amendments undertaken to the DTAA vide the Protocol are summarized below:

- The scope of the term 'permanent establishment' (PE) has been widened to provide for the service PE, i.e., a PE would be constituted for an Indian / Polish tax resident if services are provided by such resident in Poland / India through employees or other personnel for a period exceeding six months within any 12-month period.
- The rate of withholding tax on dividend and interest has been reduced to 10% from existing 15%.
- The rate of withholding tax on 'royalties' or 'fees for technical services' has been reduced to 15% from existing 22.5%.
- By inserting a new article on 'Limitation of Benefits', it is sought to restrict benefits of the DTAA to an enterprise (not being an individual) whose the main purpose of is to obtain the benefits under this Agreement or the main purpose of the transaction which such enterprise has entered into is to obtain the benefits under this Agreement.

(Notification No 47 dated 24.09.2014)

- + **Certificate for lower and no deduction of tax at source (TDS):** The extant rules on issuance of certificate for lower TDS or no TDS, have been amended to provide that while the certificate for lower TDS would be issued to the person who made an application for issue of such certificate, the certificate for no TDS shall be issued direct to the person responsible for deducting the tax under advice to the person who made an application for issue of such certificate.

(Notification no. 46/2014, dated 24-9-2014)

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+ Extension of depreciation allowance benefit: Under the Income-tax Act, 1961 ('Act') read with the Income-tax Rules, 1962, renewable energy devices in the nature of: (a) windmills and any specially designed devices which runs on wind mills; and (b) any other devices including electric generators and pumps running on wind energy were eligible for depreciation allowance at 80% if the same was installed on or before March 31, 2012. The Central Board of Direct Taxes (CBDT) has now provided that such depreciation allowance would also be available to wind mills and wind mill driven devices installed on or after April 01, 2014.

(Notification No.43 dated 16.09.2014)

+ Transfer pricing tolerance limit and 'wholesale trading': The Finance Act 2012 had prescribed that where an international transaction or specified domestic transaction (SDT) was within the prescribed 'tolerance limit/range', the international transaction / SDT would be regarded as being at arm's length. For the FY 2012-13, the 'tolerance limit/range' was prescribed at 1% for 'wholesale trading' and 3% for other international transactions or SDT. The CBDT has now continued the above tolerance limit/ range for the FY 2013-14 as well. Further, for the purpose of applying the relevant tolerance limit/range, the term 'wholesale trading' has now been defined, to mean an international transaction or SDT of trading in goods that satisfies following conditions:

- i. purchase cost of finished goods is 80% or more of the total cost pertaining to such trading activities; **and**
- ii. average monthly closing inventory of such goods is 10% or less of sales pertaining to such trading activities.

(Notification No.45 dated 23.09.2014)

+ Extension of due date for furnishing of return of income to November 30, 2014 in tax audit cases: The CBDT had earlier extended the due date for furnishing of the tax audit report under section 44AB of the Act from September 30, 2014 to November 30, 2014. However, the due date for filing of the income-tax return in cases where the taxpayer is required to file the tax audit report was not extended. The CBDT received numerous representations in this regard. Writ petitions were also filed in various High Courts for directing the CBDT to extend the due date for furnishing of return of income. In this backdrop, the CBDT has extended the due date for filing of the income-tax return in the case of:

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- a company or any other person who is required to get its accounts audited under section 44AB of the Act;
- a working partner of a firm whose accounts are required to be audited under section 44AB.

However, taxpayers would remain liable for payment of interest under section 234A, if the tax payable is not remitted by 30th September.

(F.No.153/53/2014-TPL dated 26.09.2014)

CENTRAL EXCISE:

+ Clarification with regard to mandatory pre deposit made while preferring an appeal: Effective 06.08.2014, the Central Government has made it mandatory to pre-deposit a prescribed percentage of amount while preferring an appeal. In this regard, the CBEC has issued certain clarifications. Gist of the same is provided herein below:

- Payment made during investigation – Payment made during the course of investigation or audit (conducted by the department) prior to the date on which appeal is filed can be considered to be pre deposit made while preferring an appeal. The date of filing of appeal shall be considered as the date of deposit of such amounts for the limited purposes of computing interest. Further, any amount paid over and above the stipulated percentage shall not be treated as pre-deposit.
- Procedure and manner of making pre deposit
 - Deposit can be made by using E – payment facility
 - A self - attested copy of the document showing proof of payment shall be submitted as proof of payment before the appellate authorities
 - The deposited amount shall be indicated in column 7 of EA – 1(Excise), column 6 of CA – 1 (Customs) and Column 6 of ST – 4 (Service tax) for filing an appeal before Commissioner (Appeals) and in case of appeal before tribunal, it shall be indicated in column 14(i) of EA-3 (Excise) and CA-3 (Customs)
- No coercive measures – It is clarified that no coercive measures for the recovery of the amount in excess of 7.5% or 10% deposited, as the case may be, shall be taken during the pendency of an appeal where assessee shows the following to jurisdictional authorities:
 - Proof of payment of mandatory pre-deposit
 - The copy of appeal memo filed with appellate authority

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- Refund of pre-deposit
 - Where an appeal is decided in favour of the assessee, the assessee will be entitled to refund of the amount deposited along with interest from the date of making of deposit to the date of refund.
 - A simple letter addressed to Jurisdictional Assistant Commissioner/Deputy Commissioner requesting for return of the deposited amount is sufficient to claim refund. The following documents must be submitted along with the letter:
 - a self-attested photo copy of the order – in – appeal or the CESTAT order consequent to which deposit becomes returnable and
 - self-attested photo copy of proof of payment of deposit
 - Refund should be made along with interest to the assessee within 15 days of the receipt of the letter of assessee seeking refund.
 - In cases of a remand, refund of the pre-deposit shall be payable along with interest.
 - In cases of partial remand, the duty due to the government on the portion of order in favour of revenue may be adjusted with the deposit made.
 - Refund of deposit should not be withheld on the premise that the department is proposing to file an appeal, unless a stay has been obtained.

(Circular No 984/08/2014 – CX dated 16.09.2014)

SERVICE TAX

+ Clarification on levy of Service Tax in case of Joint Venture (JV) transactions:

CBEC has clarified certain aspects on the applicability of service tax respect to cash calls or capital contribution in case of Joint Venture transactions:

- Transactions between members of JV - JV and the members of the JV are distinct persons and therefore services provided by JV to its members or vice and between members of the JV would be taxable.
- Cash calls – These are capital contributions made by the members of the JV to the JV. If cash calls are merely transactions in money, then the same is excluded from the definition of 'service'. Whether cash call is merely a transaction in money which may or may not tantamount to service will be dependent on the terms of the JV agreement.
- The Circular provides certain illustrations:

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- **Taxable services provided by JV to its Members:** The JV may provide some taxable service in the form of agreeing to do something for direct benefit of a member or for the benefit of the third party on behalf of a member such as granting rights, reserving production capacity or providing an option on future supplies, for which the JV might receive cash calls in the nature of advance payments. Cash calls of such nature would be liable to service tax.
- **Taxable services received by a JV from its members or third party:** Payments made out of pooled cash calls by a JV towards the taxable services received from a member / third party would form part of consideration received for the taxable services and would be liable to service tax.
- **Taxable services provided by members to JV:** Where a member of the JV is providing taxable services to the JV in his individual capacity (on a contractual agreement) such as management of cash calls, support service such as administrative services, management of project office etc. and the JV pays such member in cash or in kind (i.e. goods, rights, services etc.), such services provided by member to the JV would be liable to service tax.

(Circular No. 174/5/2014-ST dated 24.09.2014)

FEMA

- + **External Commercial Borrowings (ECB) in Indian Rupees:** Presently, a resident in India is allowed to raise foreign currency loans from non-residents subject to prescribed conditions. Further, all eligible borrowers are eligible to raise ECB in Indian Rupees from foreign equity holders as per the extant ECB guidelines. In order to provide greater flexibility for structuring of ECB arrangements, it has been now been decided to permit the recognised non-resident ECB lenders to extend loans in Indian Rupees, subject to following conditions:
 - a. The lender should mobilise Indian Rupees through swaps undertaken with an Authorised Dealer Category-I bank in India.
 - b. The ECB contract should comply with all other conditions applicable to the automatic and approval routes as the case may be.
 - c. The all-in-cost of such ECBs should be commensurate with prevailing market conditions.

(A.P. (DIR Series) Circular No.25 dated 03.09.2014)

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+ Issue of equity shares under the Foreign Direct Investment (FDI) Scheme against legitimate dues:

Presently, an Indian company is permitted to issue shares / convertible debentures to a person resident outside India against lump-sum technical know-how fee, royalty External Commercial Borrowings (ECBs) and import payables of capital goods by units in Special Economic Zones subject to certain conditions like entry route, sectoral cap, pricing guidelines and compliance with the applicable tax laws. The extant guidelines for issue of shares / convertible debentures under the automatic route have been reviewed and the RBI has now decided to permit issue of equity shares against any other funds payable by the investee company, remittance of which does not require prior permission of the Government of India or Reserve Bank of India under FEMA, 1999 or any rules/ regulations framed or directions issued, provided that :

- a. The equity shares shall be issued in accordance with the extant FDI guidelines on sectoral caps, pricing guidelines etc. as amended by Reserve bank of India, from time to time;

Explanation: Issue of shares/convertible debentures that require Government approval in terms of paragraph 3 of Schedule 1 of FEMA Notification No. 20/2000 or import dues deemed as ECB or trade credit or payable against import of second hand machinery shall continue to be dealt in accordance with extant guidelines.

- b. The issue of equity shares under this provision shall be subject to tax laws as applicable to the funds payable and the conversion to equity should be net of applicable taxes.

All the other conditions for issuance of equity shares under the automatic route shall remain unchanged.

(A.P. (DIR Series) Circular No.31 dated 17.09.2014)



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