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Chartered Accountants

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INSIDE THIS ISSUE

IFRS 9 Expected Loss Model..02

Exemption to Private / Government Section 8 Companies and Nidhis....................................06

Income Computation and Disclosure Standards....................08

Tax Changes that will come into effect from June 2015.............09

Service Tax Changes in Finance Bill, 2015................................10

DGFT- Preferential Treatment for Status Holders...................13

FEMA (permissible capital account transactions) (third amendment) regulations, 2015..14

Notifications & Circulars.........15

Case Laws................................17

Due Dates 19

To improve is to change; to be perfect is to change often - Winston Churchill

The Companies amendment bill was assented by the President of India on 25 May 2015. These amendments are called as the Companies (Amendment) Act, 2015 (Amendment Act, 2015) and have been published in the Official Gazette on 26 May 2015. The amended law intended to improve the ease of doing business in India by eliminating the requirements of minimum share capital, optional use of common seal, non- applicability of certain compliances like commencement of business and copies of board resolutions etc.

The first step toward change is awareness and the second step is acceptance. To make awareness about the recent developments, we have included highlights of Companies Amendment Act, 2015 applicable to Private, Government and Section 8 Companies. Other articles covered for easy reference are IFRS 9 – Expected Loss Model, Service Tax Amendments as per Finance Bill 2015, Preferential treatment for Status Holders, Income Computation and Disclosure Standards, recent case laws, Notifications and list of due date for statutory payments for the month of June, 2015.

We hope this edition of our Newsletter will be a medium of awareness about the recent changes and updates happening in various departments and industries which will help our readers to understand and accept the changes towards improvement and perfection.

India's commitment to IFRS convergence has been further strengthened following the announcement by the Ministry of Corporate Affairs in January of a roadmap of phased IFRS convergence which confirmed Finance Minister, Arun Jaitley's earlier comments in his Budget speech. Companies with a net worth of Rs 500 crore or more will be required to prepare their financial statements under IFRS converged Indian Accounting Standards (Ind AS) from 1 April 2016. Banks, insurance and non-banking financial companies (NBFC) are not required to do so. The Reserve Bank of India (RBI) is at an advanced stage of finalisation of a roadmap for banks and NBFCs in consultation with various stakeholders. Companies with a net worth of 250 crore as well as those which are listed on any stock exchange outside of India will be required to prepare their statements under Ind AS from 1 April 2017.

A transition from the incurred loss model in IAS 39 Financial Instruments: Recognition and Measurement to the expected loss model in the recently published IFRS 9 Financial Instruments standard requires financial institutions like banks to recognise not only credit losses that have already occurred (i.e. an event has occurred that will have a negative effect on future cash flows and the effect can be reliably estimated) but also losses that are expected in the future (i.e. an ongoing assessment will be required to predict the possibility of these losses occurring). The primary targets of the new rules are banks and other financial institutions. Following the financial crisis, it was felt that provisioning had been "too little too late".

Financial crisis: The Indian experience

As a consequence of the financial crisis that hit economies around the globe from mid-2008 there was a sharp increase in interbank borrowing rates and thereby deposits started moving out of Indian banks, more importantly private banks. India's private banks experienced a sudden fall in deposits as depositors decided to move their money out of private sector banks to government-operated banks. Public sector banks meanwhile witnessed a significantly faster deposit growth.

As a measure to counter the drastic effect of the global slowdown on the Indian economy, the Indian government responded by providing fiscal stimulus packages in the form of tax relief to boost demand and increased expenditure on public projects to create employment and public assets. The RBI adopted monetary easing and liquidity enhancing measures to channel the flow of funds from the financial system in order to meet the needs of the manufacturing sectors.

The prudential guidelines on which the Indian financial system is based differ in perspective from international accounting norms on some of the critical areas such as the classification of investment valuation, impairment recognition and loan loss provisioning as well as securitisation. This article goes on to look at the differences in terms of classification of investment valuation and impairment recognition and loan loss provisioning.

Investment valuation

Given the absence of capital controls in most countries, investors have choices. Investors behaviour in making these choices will be affected indirectly by the valuation methods used for investments.

What is more - it could be added - that during the financial crisis investors with Indian banks particularly exercised their rights to move their investment dependent on what they saw as the perceived risk. The government and the RBI prescribed stiff valuation rules governing foreign direct investment in unlisted Indian firms. Until 2010, the fair value of an unlisted company was taken as the average of its net asset value and profits-earnings capacity value, the two valuations prescribed by the former Controller of Capital Issues. The existing discounted cash flow method (DCF) was prescribed in 2010. The DCF methodology was faulted on account of its failure to properly value transactions, including investments, in early stage companies. Such entities generated little in the form of cash and created difficulties for strategic investors looking to take a stake. The RBI's April 2014 monetary policy document stated that all the existing guidelines relating to valuation in any acquisition/ sale of shares should be withdrawn and such transactions should instead be based on acceptable market practices. Therefore the RBI no longer prescribes any one valuation method for the entry and exit of foreign investors.

Impairment recognition and loss provisioning

RBI's prudential guidelines prescribed that banks provided for the diminution in the value of non-performing assets based on whether they fell into the "sub-standard", "doubtful" or "loss-making" category. This categorisation of a non-performing asset is based on likely impairment triggers. The guidelines also require banks to provide for assets other than their non-performing assets, referred to as "standard assets".

In December 2009, as the economy had just emerged from the crisis, there were apprehensions about asset quality on account of exuberant lending during the boom phase. Since banks were still making good profits, it was decided to prescribe a Provisioning Coverage Ratio (PCR) of 70 per cent of gross non-performing advances, as a macro-prudential measure, with a view to augmenting the provisioning buffer in a counter-cyclical manner. In March 2012, the RBI released a discussion paper on the introduction of a dynamic loan loss provisioning framework for banks in India. The objective of the dynamic provisioning framework is to smooth the impact of incurred losses on the profit and loss account through the cycle. This aim is shared by IFRS in terms of the use of other comprehensive income (OCI) rather than profit or loss for gains/losses due to changes in an entity's own credit risk. These prudential guidelines by the RBI seem far more conservative than the Basel III and International Accounting Standards Board's (IASB) recommendations, i.e. the expected loss model in IFRS 9. For example, instances of recognition of unrealised gains in investment portfolios are not allowed whereas unrealised losses are to be provided for. In another instance banks are required to provide for standard assets even where there are no signs of impairment.

Transition challenges

System-based changes

The new system of IFRS is expected to have wide-ranging effects at different levels of the IT systems architecture. The updating of the banking information systems will pose a real challenge for their information technology departments. With most of the banking being done on computers, the information technology department of the bank will need to take into account external factors such as local and international regulations, financial consolidation of subsidiaries, stock markets, and external auditors.

Indian banks, in a similar manner to their counterparts around the world, will need a separate provision for meeting out these investments which will have a major impact on their liquidity. Practically the transition to IFRS can take 18-24 months before it is fully embedded and implemented. Excessive disclosure under IFRS requires the use of spreadsheets which may become risky and quite cumbersome to manage information from disparate sources and systems.

Preparation to implement an expected loss impairment model

All banking and non-banking financial companies are required to:

- Develop and strengthen a data capture system to enable the impairment assessment after determining tactically where information will be collected and who will make the impairment assessment templates and information-gathering and storage systems.
- Use and align this process of information-gathering and assessment to strengthen the credit risk management function and feed into other strategic initiatives such as internal ratings, Basel III compliance, and potential application of internal ratings based/advanced approaches.
- Improve and strengthen the loss forecasting mechanisms within the organisation in parallel with fine-tuning risk adjusted pricing for fresh loans being sanctioned by the bank. For example, under the IFRS 9 expected loss model, as soon as the financial asset is recognised 12 month expected credit losses are recognised. The data, by definition, must therefore be available.
- Certain system changes would need to be made for accounting for impairment; for example, the computation of discounted future cash flows to facilitate the booking of the required accounting adjustments.

Providing adequate knowledge and training to human resources

IFRS transition is much wider than merely preparing financial statements. It presents a change well beyond the finance department, which results in bigger human resource issues. The IFRS conversion process will demand trained professional personnel to handle the system and work on it. Obviously, it will increase the cost of wages as a percentage of total expense. This cost of human resource will further increase after the appointment of trained and professional staff well versed with the knowledge of IFRS. The training of personnel should start now if companies are to meet the convergence deadlines suggested by the MCA.

Sorting issues that arise on account of regulatory and accounting frameworks

Banks and capital institutions have to follow a number of regulations prescribed by the RBI. The provisions regarding valuation of loans and advances, capital adequacy, net worth etc are governed by these regulations. Besides this, there are also other laws which affect the Indian banking industry.

Capital adequacy

Transition from an incurred loss to an expected loss model is likely to potentially adversely affect capital adequacy with a massive impact on how banks account for their credit losses on their loan portfolios. Provisions for bad debts will be bigger and likely to be more volatile, and adopting the new rules will require a lot of time, effort and money. How an entity classifies financial assets could affect the way its capital resources and capital requirements are calculated.

This is likely to affect banks and other financial service entities that have to comply with the Basel capital requirements or other national capital adequacy requirements. Banks will need to factor this into their capital planning, and users are likely to be looking for information on the expected capital impact.

FVOCI and volatility in capital flows

Introduction of a fair value through other comprehensive income (FVOCI) category coupled with the removal of the regulatory filters under Basel III may also potentially introduce volatility in the capital. The changes required under FVOCI measurement may have a significant impact on the computation of an entity's capital requirements. For example, assets that an entity may previously have expected to measure at amortised cost may need to be measured at FVOCI with any unrealised fair value losses reducing its regulatory capital.

RBI working group

With a view to addressing challenges in implementation of the expected loss model and to facilitate a "hurdle-free" transition in India, the RBI has already come up with a working group of professionals with experience in IFRS implementation. These include representatives from the Indian Banks' Association, the Institute of Chartered Accountants of India (ICAI) and regulatory and market related departments of the RBI along with professionals with core competence, expertise and experience in IFRS. The group will also facilitate formulation of operational guidelines in the context of IFRS convergence for the Indian banking system. The IASB's IFRS Transition Resource Group for Impairment of Financial Instruments (ITG) also aims to address implementation issues.

Real challenges will unfold slowly requiring increased involvement from all involved - the IASB, RBI, bankers and representatives from other financial institutions in working out issues and enabling compliance with the new requirements.

The major issues that will be addressed by the RBI working group are:

1. classification and measurement of financial assets;
2. classification and measurement of financial liabilities and hedge accounting (including balance sheet issues and implications);
3. amortised cost and impairment;
4. fair value measurement;
5. presentation, disclosures and balance sheet formats;
6. derecognition, consolidation and residuary issues;
7. impairment recognition and measurement.

Meanwhile, the ICAI, who advocated the prudential guidelines which were in place before, have said that the RBI may accept global accounting practices i.e. IFRS but should not give up the prudential guidelines altogether because they saved Indian banks from the global financial meltdown.

EXEMPTION TO PRIVATE / GOVERNMENT / SECTION 8 COMPANIES AND NIDHIS

The Ministry of Corporate Affairs, Government of India issued the final notifications under Section 462 of the Companies Act, 2013 (Act), which provide exemptions under various provisions of the Act to;

1. Private Companies;
2. Government Companies;
3. Section 8 Companies
4. Nidhis

Exemption provided to Private Companies

1. Relax the provisions for entering into related party transactions.
2. Provide a shorter period for offering securities to members through right offers.
3. Provide for approving issue of employee stock option plans through a simple majority and allow an easier procedure and flexibility in holding general meetings.
4. Private companies have also been allowed to accept deposits from members without the requirement of offer circular and creation of deposit repayment reserve etc.
5. Flexibility has also been provided in the types of share capital that can be issued by private companies.
6. Exemption has been given from filing of board resolutions with the registry and giving of notice for standing for directorships.
7. Requirement of mandatory consent of shareholders with regard to certain transactions relating to sale of undertaking, investments, borrowings etc has been omitted.
8. Further, OPCs, dormant companies, small companies and private companies having paid up share capital less than Rs. 100 crore have been excluded for calculating the limit of 20 companies for audit by an auditor.
9. Private companies not having any investment by any body corporate have been allowed to extend loans to directors etc subject to certain conditions relating to bank borrowings and default thereof.
10. An interested director of a private company can now participate in the Board meeting after declaring his interest.

Exemption provided to Government Companies

1. Government Companies have been exempted from the limits pertaining to managerial remuneration.
2. Restriction on maximum number of directorships and disqualification of directors in certain cases.
3. The provisions in respect of Nomination and Remuneration Committee have also been relaxed in respect of their applicability to directors/managerial persons.
4. The provisions relating to loans to directors; loans and investments by companies and related party transactions have been modified to provide flexibility to Government companies in complying with such provisions.

5. The exemption for Government companies to retain the suffix "Limited" even if incorporated as private limited company, has been continued as per the exemption available under Companies Act, 1956.

6. Modifications in the provisions relating to place of holding general meetings have also been made.

7. Provisions in respect of rotation of directors and right of persons to stand for directorship are exempted for wholly owned Government companies.

8. The provisions in respect of forming opinion about integrity, expertise/experience of independent directors have been modified to provide flexibility to concerned Ministry/ Department.

9. For the Government companies engaged in producing defence equipment, the provisions of section 186 (loans and investments by companies) and Accounting Standard – 17 (Segment Reporting) shall not be applicable.

Exemption provided to Charitable or Section 8 Companies

1. For Charitable Companies the provisions in respect of notice for general meeting have been modified to enable such companies to save time and resources in sending notices. The notice for general meeting and financial statements may be circulated at notice of 14 days instead of 21 days.

2. The provisions in respect of appointment of independent directors (IDs) and Nomination and Remuneration Committee will not be applicable to such companies.

3. The audit committees of such companies need not have Independent Directors.

4. The restrictions on number of directorships have also been exempted for these companies.

5. These companies are allowed to hold board meetings once in six months instead of four meetings in a year, as prescribed for other companies.

6. These companies have been exempted from provisions requiring notice to be given for standing for directorship if their articles provide for election of directors by ballot.

7. Flexibility from the provisions on passing of board resolutions in a board meeting only and on disclosure and participation in board meetings by an interested director have also been provided.

Exemption provided to Nidhis

1. In case of Nidhis, provisions relating to serving of documents to members and payment of dividend have been modified to provide more flexibility to such companies.

2. Provisions relating to private placement have been partially relaxed for such companies.

3. These companies have also been exempted from the requirements of section 62 which relates to further issue of share capital.

4. The notice amount of Rs. 1 lakh provided under section 160 has been reduced to Rs. 10,000 for these companies.

5. Provisions of section 185 in respect of loans to directors have been relaxed for these companies with the condition that loan is given to a director or his relative in his capacity as member and the disclosure is made in the accounts.

INCOME COMPUTATION AND DISCLOSURE STANDARDS

What is ICDS

The Ministry of Finance has issued ten Income Computation and Disclosure Standards (ICDS), which is a new framework for computation of taxable income. Notification No. 33/2015[F.No. 134/48/2014-TPL]/SO 892€ on 31st March 2015. This notification is applicable from Assessment Year 2016-17 for both Corporate and Non-Corporate Assessees.

Rationale behind ICDS

Starting this year, Companies in India, depending on their scale and listing status would be following 2 different set of Accounting Standards- Ind As and AS. In order to ensure tax neutrality, it was deemed fit to draw up an independent income computation standard.

These Standards were issued to ensure that regardless of the Financial Reporting framework followed by Companies, tax computation would be guided by a separate set of ICDS.

Applicability

Applies to all assessees in relation to their income under the heads “Profits and gains of business or profession” and “Income from Other Sources” (All assessees following mercantile system of accounting).

ICDS applies to Non- residents also in so far as they have income under the heads “Profits and gains of business or profession” and “Income from Other Sources”.

When is applicable from

These Standards are applicable for the previous year 2015-16 (Assessment Year 2016-17) onwards

Authority for ICDS

The Central Board of Direct Taxes has notified these standards under Section 145(2) of the Income Tax Act,1961 vide Notification No. 33/2015[F.No. 134/48/2014-TPL]/SO 892(e) on 31st March 2015.

Section 145

145(1) Income chargeable under the head “Profits and gains of business or profession” or “Income from other sources “shall, subject to the provisions of subsection (2), be computed in accordance with cash or mercantile system of accounting regularly employed by the assessee.

145(2) The Central Government may notify in the Official Gazette from time to time accounting standards to be followed by any class of assessees or in respect of any class of income.

145(3) Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub section (1) or accounting standards as notified under sub section (2), have not been regularly followed by the assessee, the assessing officer may make an assessment in the manner provided in section 144.

Difference between accounting standards as per section 145 and Income Computation Standards

The Tax Accounting Standards have been renamed as ICDS suggesting that these standards relate to income computation and not accounting in a larger context. However section 145 confers the power for notifying Accounting Standards and not Income Computation standards.

INCOME COMPUTATION AND DISCLOSURE STANDARDS

Impact on Income Tax Computation for Advance Tax for Q1 2015-16

These Standards would have to be considered in computing Advance Tax for quarter ending June 30, 2015.

Impact on MAT

Minimum Alternate Tax (MAT) for corporate tax payers is based on "book profit" determined under current AS, as the case may be. Hence ICDS may not be relevant here except to the extent of determining the tax profit.

Impact on Tax Audit

ICDS has impact on Tax audit as the taxable income is required to be computed in accordance with these standards.

Concerns

The ICDS were first drafted with reference to the Indian Accounting Standards as the base. The proposed convergence to IFRS based IND AS would result in conflicts for entities which are required to adopt Ind AS

The standards all seem to suggest "advancement" or "pull ahead" of revenue as compared to certain established judgments and may have a cash flow impact

The computation of net income as per financial statements and taxable income as computed under ICDS may differ even substantially in certain cases

The impact of judicial pronouncements not in line with the proposed ICDS treatment could be an issue.

While separate books of accounts may not be needed, reconciliation between taxable income as per ICDS and net income as per books would be necessitated causing enhanced paper work

All assessees (not only corporate) will be required to follow these standards in respect of Profits and Gains of business or profession and Income from Other sources

Materiality and prudence are not considered in the ICDS framework

Non Compliance with ICDS

Section 145 (3) speaks of the consequences of non-compliance with ICDS requirement as under:

Where the Assessing officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub section (1) or accounting standards as notified under subsection (2) have not been regularly followed by the assessee, the Assessing Officer may make an assessment in the manner provided in section 144 (Best judgment Assess-

TAX CHANGES THAT WILL COME INTO EFFECT FROM JUNE 2015

There are certain tax changes that will come into effect from June 1, 2015, in accordance with announcements made by Finance Minister Arun Jaitley in his Budget speech for 2015-16.

1. **TDS on interest income from Recurring Deposits** - The interest income earned on Recurring Deposits shall now be subject to TDS @ 10 per cent.
2. **Interest income from all branches of a bank will be summed up for TDS deduction limit** - TDS is deducted when interest income exceeds Rs 10,000 in a financial year.
3. **TDS on withdrawals from EPF** - withdrawals from EPF before completion of 5 years of service will attract a TDS of 10 per cent. Where amount withdrawn from EPF is less than Rs 30,000 no TDS shall be applicable.

SERVICE TAX CHANGES IN FINANCE BILL, 2015

After the Hon'ble President has given assent to the Finance Bill, 2015 on Thursday, May 14,2015, the Ministry of Finance, Department of Revenue vide Notification No. 14/2015-ST dated May 19, 2015 has notified increase in the rate of Service tax from 12.36% to flat 14% (Subsuming Education Cess and Secondary & Higher Secondary Education Cess) to be effective from June 1, 2015.

Swachh Bharat Cess @ 2% on value of taxable services and any Service provided by Government/ Local authority to Business entity to be notified at a later date.

As per TRU Clarification vide D.O.F.No.334/5/2015-TRU dated May 19, 2015, the effective dates in respect of the following shall be notified at later date:

A. Swachh Bharat Cess – Enabling Provision

An enabling provision is being made to empower the Central Government to impose a Swachh Bharat Cess ("SB Cess") on all or any taxable services at a rate of 2% on the value of all or any taxable services. The proceeds from this Cess would be utilized for Swachh Bharat initiatives. The Government will specify the categories of taxable services on which SB Cess would be leviable.

B. Following change in relation to the Negative List – Section 66D of the Finance Act

Section 66D(a): Under clause (iv), the words 'support services' to be substituted by the words 'any service'.

Accordingly, after such amendment, 'Any services' provided by the Government or local authority to a Business Entity would be exigible to Service tax, except for the services that are specifically exempted, or covered by any another entry in the Negative List.

Hence, 'Support services' provided by Government or Local Authority to Business Entity will continue to be taxed under Reverse charge mechanism except (1) renting of immovable property, and (2) services specified in sub clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994.

Gist of changes vides other Service Tax Notifications dated May 19, 2015

A. Notification No. 13/2015-ST

Amend Notification No. 26/2012-ST dated June 20, 2012, thereby removing the entry relating to Chit in the definition part in view of withdrawal of abatement in relation to Chit Fund vide Notification No. 8/2015-ST dated March 1, 2015 (effective from April 1, 2015).

B. Notification No. 14/2015-ST

Increase in the rate of Service tax from 12.36% to flat 14% (Subsuming Education cess and Secondary & Higher Secondary Education cess) to be effective from June 1, 2015;

Following changes in relation to the Negative List – Section 66D of the Finance Act to be effective from June 1, 2015

Section 66D(f): Services by way of carrying out any processes for production or manufacture of alcoholic liquor for human consumption brought under the Service tax net.

Section 66D(i): Explanation inserted whereby the expression "betting, gambling or lottery" shall not include the activity as specified in substituted explanation 2 to Clause (44) of Section 65B of the Finance Act.

Section 66D(j): Omitted, which covers 'admission to entertainment event or access to amusement facilities'.

Consequent to the above changes in the Negative List of services, definition of following terms to be omitted/amended in Section 65B of the Finance Act w.e.f. June 1, 2015:

Definitions of certain terms omitted [Section 65B(9): 'amusement facility', Section 65B(24): 'entertainment event']

Definitions of certain terms amended [Section 65B (40): 'process amounting to manufacture or production of goods' excluding alcoholic liquors for human consumption]

C. Notification No. 15/2015-ST

Effective from June 1, 2015, consequent to the upward revision in Service tax rate, the composition rate to be revised proportionately under Rule 6(7), 6 (7A), 6(7B) and 6(7C) of the Service Tax Rules, 1994 on specified services, namely Air Travel Agent, Life Insurance service, Money changing service provided by banks or authorized dealers and Service provided by lottery distributor and selling agent.

D. Notification No. 16/2015-ST

Following changes in Mega Exemption Notification No. No. 25/2012-ST dated June 20, 2012 made vide Notification No. 6/2015-ST dated March 1, 2015 effective from June 1, 2015

Entry 30: Service tax would be levied on services by way of carrying out of intermediate production process of alcoholic liquor for human consumption on job work, consequent to imposition of Service tax on services by way of manufacture of alcoholic liquor for human consumption.

New Exemption:

Entry 47: Services by way of right to admission to: exhibition of cinematographic film, circus, dance, or theatrical performances including drama or ballet; recognized sporting events; award functions, concerts, pageants, musical performances or any sporting events other than recognized sporting event, where the consideration for such admission is upto Rs. 500 per person.

E. Notification No. 17/2015-ST

Exempts taxable services provided under the Power System Development Fund Scheme of the Ministry of Power from the whole of the Service tax leviable thereon under Section 66B of the Finance Act till April 1, 2017 subject to the conditions specified therein.

Changes in Cenvat Credit Rules – Reversal of Cenvat Credit on Exempted Services:

Notification No. 14/2015-Central Excise (N.T.), Dated: May 19, 2015

In the light of increase in the rate of Service tax from 12.36% to flat 14% (Subsuming Education Cess and Secondary & Higher Secondary Education Cess) to be effective from June 1, 2015, the rate of reversal of CENVAT Credit under Rule 6(3) of the Cenvat Credit Rules, 2004 has also been enhanced from 6% to 7% in case of exempted services with effect from June 1, 2015.

Dilemma of change in effective rate of Service Tax: Rule 4 of the POT Rules vs. S 67A of the Finance Act, 1994:

With the new Service tax rate becoming effective from June 1, 2015, the much hyped hue and cry among the Trade on the presently applicable rate of Service tax would definitely come to an end but there are chances of turmoil being faced by the service provider in respect of the ongoing transactions for which either certain advance payment is received prior to June 1, 2015 but the completion of provision of service may take place post facto thereof or vice versa.

Before taking deeper dive into the area of turmoil, which may crop up pursuant to new rate of Service tax being notified, it is apposite here to have an overview of the Point of taxation as governed under the Point of Taxation Rules, 2011 ("the POT Rules"). With the introduction of the POT Rules, Service tax payment is made on accrual basis in terms of the provisions contained under the POT Rules. The general Rule 3 of the POT Rules stipulates that Point of taxation shall be the earlier one among raising of invoice or date of making the payment. Further, if the invoice is not raised within 30 days (45 days for Banking and financial services) from the date of completion of provision of service, Point of taxation shall be the date of completion of provision of service.

Thus, by applying the provisions of Rule 3 of the POT Rules, the service provider would be liable to pay Service tax on the advance payments received at the prevailing rate of 12.36%. However, the service provider may encounter the issue of adjusting this payment of tax for increase in Service tax rate afterwards when the service will be provided and invoice will be raised for the services rendered, for which advance has been received already.

Point of Taxation (POT) when there is change in effective rate of taxes

Sl No	In case a taxable service has been provided	Invoice has been issued	Payment received for the invoice	Point of taxation shall be	Applicable Rate
1	**BEFORE** the change in effective rate of tax	**AFTER** the change in effective rate of tax	**AFTER** the change in effective rate of tax	Date of issuance of invoice or Date of receipt of payment, whichever is earlier	New Rate
		BEFORE the change in effective rate of tax	**AFTER** the change in effective rate of tax	Date of issuance of invoice	Old Rate
		AFTER the change in effective rate of tax	**BEFORE** the change in effective rate of tax	Date of receipt of Payment	Old Rate
2	**AFTER** the change in effective rate of tax	**BEFORE** the change in effective rate of tax	**AFTER** the change in effective rate of tax	Date of receipt of Payment	New Rate
		BEFORE the change in effective rate of tax	**BEFORE** the change in effective rate of Tax	Date of issuance of invoice or Date of receipt of payment, whichever is earlier	Old Rate
		AFTER the change in effective rate of tax	**BEFORE** the change in effective rate of tax	Date of issuance of Invoice	New Rate

DGFT- PREFERENTIAL TREATMENT FOR STATUS HOLDERS

The new Foreign Trade Policy 2015-20 provides for certain privileges and preferential treatment for the Status Holders. As per sub para (g) of Para 3.24 of FTP, status holders would be entitled to preferential treatment and priority in handling of their consignments by the concerned agencies.

Para 9.10 of Handbook of Procedure 2015-20 provides for time bound disposal of various applications under FTP, in pursuance to the policy at Para 3.24(g) as above, RAs of DGFT should endeavour to extend preferential treatment to the Status Holders in disposal of their applications.

Accordingly, the following shortened time lines are laid down for issue of advance authorisation and its subsequent amendments to the status holders:

Sl No.	**Category of Status Holders**	**Nature of Application (received through electronic mode)**	**Timeline for disposal (in working days)**
1	5 Star and 4 Star Status Holders	1. Advance Authorisation (where input norms are notified) 2. Revalidation of Advance Authorisation 3. Invalidation of Advance Authorisation	1 day
2	3 Star, 2 Star and 1 Star Status Holders	1. Advance Authorisation (where input norms are notified) 2. Revalidation of Advance Authorisation 3. Invalidation of Advance Authorisation	2 days

FOREIGN EXCHANGE MANAGEMENT (PERMISSIBLE CAPITAL ACCOUNT TRANSACTIONS) (THIRD AMENDMENT) REGULATIONS, 2015

In exercise of the powers conferred by sub-section (2) of Section 6, Sub-Section(2) of Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999) the Reserve Bank of India, in consultation with Central Government, makes the following Regulations to amend the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000 via notification No. FEMA. 341/2015-RB.

Amendment to the Regulations

In the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000, in Regulation 4, in sub-regulation (a), for the existing provisos, the following shall be substituted:-

"PROVIDED that –

a) subject to the provisions of the Act or the rules or regulations or directions or orders made or issued thereunder, a resident individual may, draw from an authorized person foreign exchange not exceeding USD 250,000 per financial year or such amount as decided by Reserve Bank from time to time for a capital account transaction specified in Schedule I.

Explanation: Drawal of foreign exchange as per item number 1 of Schedule III to Foreign Exchange Management (Current Account Transactions) Rules, 2000 dated 3rd May 2000 as amended from time to time, shall be subsumed within the limit under proviso (a) above.

b) Where the drawal of foreign exchange by a resident individual for any capital account transaction specified in Schedule I exceeds USD 250,000 per financial year, or as decided by Reserve Bank from time to time as the case may be, the limit specified in the regulations relevant to the transaction shall apply with respect to such drawal.

c) PROVIDED FURTHER that no part of the foreign exchange of USD 250,000, drawn under proviso (a) shall be used for remittance directly or indirectly to countries notified as non-co-operative countries and territories by Financial Action Task Force (FATF) from time to time and communicated by the Reserve Bank of India to all concerned."

RECENT NOTIFICATIONS & CIRCULARS

Companies Act

Govt Relaxes 20 Audit Ceiling Limit on Statutory Audits

MCA has vide Notification dated 05/06/2015 has exempted from Statutory Audit ceiling limit of 20 company audit limit the following Companies :-

1. Other than one person companies
2. Dormant companies,
3. Small companies and private companies having paid-up share capital less than one hundred crore rupees.

So now the Limit of 20 Companies includes:-

a. Public Companies

b) Private Companies having paid up capital of Rs. 100 crore or more

Revised Clause (g) of Section 141 of Companies Act is as follows :-

(g) a person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty companies other than one person companies ,dormant companies, small companies and private companies having

Central Excise

Cenvat credit in respect of input to be claimed within six months from the duty paying document with effect from 01.09.2014

"Provided also that the manufacturer or the provider of output services shall not take CENVAT credit after six months of the date of issue of the documents specified in rule 9(1)".

w.e.f. 1.3.2015 , following amendment have been made in the said rule :

i) CENVAT credit can be taken immediately on receipt of inputs in the premises of job worker, where the inputs are sent directly to the job worker premises on the direction of the manufacturer or to the provider of the output service.

ii) in terms of amended third proviso to rule 4(1) , time limit for availing of input has been increased from 6 months to one year from the date of issue of duty paying documents specified in rule 9(1). [Department clarification – DOF No. 334/5/2015- TRU, dated 28.02.2015.

The documents specified in rule 9(1) are outlined below for instant use:

1. an invoice issued by the manufacturer, importer, first stage dealer; or
2. a supplementary invoice ; or
3. a bill of entry ; or
4. certificate issued by an appraiser of custom in respect of goods imported through Foreign post office ; or
5. a challan evidencing payment of service tax , by the service recipient as the person liable to pay service tax ; or
6. an invoice , bill or challan issued by provider of input service on or after the 10th day of September,2004 ; or
7. an invoice , bill or challan issued by input service distributor under Rule 4A of the Service Tax Rules,1994.

It is important to highlight here that there was no time limit for availing CENVAT for the period 10.9.2004 to 31.8.2014.

It is important to highlight here that there was no time limit for availing CENVAT for the period 10.9.2004 to 31.8.2014.

RBI

Guidelines on Compensation of Non-executive Directors of Private Sector Banks

The need to bring in professionalism to the boards of banks cannot be overemphasized. In order to enable banks to attract and retain professional directors, it is essential that such directors are appropriately compensated. At present, banks in private sector pay only sitting fees to non-executive directors, and no other remuneration is paid to them. The Part-time Chairman however, is being paid a fixed remuneration with the approval of RBI.

Accordingly, Reserve Bank has finalized the guidelines on compensation for non-executive Directors for implementation by private sector banks.

As hitherto, private sector banks would be required to obtain regulatory approval regarding remuneration to Part-time non-executive Chairman in terms of Section 10B(1A)(i) and 35B of the Banking Regulation Act, 1949.

Guidelines on Compensation of Non-executive Directors (Except Part-time Chairman) of Private Sector Banks

Compensation Policy

The Board of Directors, in consultation with its Remuneration Committee, should formulate and adopt a comprehensive compensation policy for the non-executive Directors (other than the part-time non-executive Chairman). While formulating the policy, the Board shall ensure compliance with the provisions of the Companies Act, 2013.

The Board may, at its discretion, provide for in the policy, payment of compensation in the form of profit related commission to the non-executive directors (other than the Part-time Chairman), subject to the bank making profits. Such compensation, however, shall not exceed Rs.1 million per annum for each director.

Sitting fees and reimbursement of expenses

In addition to the directors' compensation mentioned in para 1.2 above, the bank may pay sitting fees to the non-executive directors and reimburse their expenses for participation in the Board and other meetings, subject to compliance with the provisions of the Companies Act, 2013.

Regulatory Approval / Supervisory Oversight

As hitherto, banks in private sector would be required to obtain prior approval of RBI for granting remuneration to the part-time non-executive Chairman under Section 10B(1A)(i) and 35B of the Banking Regulation Act, 1949. The compensation policies of banks would be subject to supervisory oversight including review under the Supervisory Review and Evaluation Process (SREP) under Pillar 2 of Basel II framework. Deficiencies would have the effect of increasing the risk profile of banks with attendant consequences, including a requirement of additional capital if the deficiencies are very significant.

Disclosure

Banks are required to make disclosure on remuneration paid to the directors on an annual basis at the minimum, in their Annual Financial Statements.

CASE LAWS

Income Tax

EXEMPTION UNDER SECTION 10(23C)(iiiad)

In Saraswathi Educational & Welfare Society v. ITO (2015) 152 ITD 527 (Chd)

where the facts were that the assessee society was providing education to girl students through its nursing institute, the annual receipts of the said institute was less than Rs. 1 crore and the assessee-society did not pursue any other object though its Memorandum of Association contained other charitable objects, the Chandigarh 'A' Bench while observing that it could not be said that the assessee-society was not exclusively existing for educational purposes held that the assessee-society was entitled to exemption under section 10(23C)(iiiad).

METHOD OF ACCOUNTING

Where the assessee had credited the gross amount of interest including the interest accrued on non-performing assets in the profit & loss account and simultaneously showed the amount of interest on nonperforming assets on the debit side of the profit & loss account in compliance with section 65 of the Maharashtra Cooperative Societies Act, 1960 and rule 49A of the Maharashtra Co-operative Societies Rules, 1961, the Assessing Officer was not justified in rejecting the claim of the assessee for non-recognition of interest accrued on non-performing assets based on the presentation in the annual financial statements. held the Pune 'B' Bench in Solapur District Central Co-operative Bank Ltd. v. ACIT (2015) 152 ITD 335 (Pune).

TAX DEDUCTION AT SOURCE

In DCIT v. Madison Communication (P) Ltd. (2015) 152 TTJ 759 (Mum), the Mumbai 'B' Bench has expressed the view that section 194C is applicable to a contract for putting up a hoarding as it is in the nature of an advertising contact.

UNABSORBED C/F DEPRECIATION

Seshasayee Paper and Board Limited vs DCIT (Supreme Court of India)

Once the unabsorbed carried forward depreciation has become a part of the depreciation of the current year, it is not open to the assessee to bifurcate the two again and claim depreciation for the current year and not claim the unabsorbed depreciation of previous years thereby contending that it cannot be forced upon the assessee.

The position would have been different if the assessee had not claimed any depreciation at all. Once the depreciation is claimed, while giving deductions, the depreciation is to be set off against profits of the current year prior to the unabsorbed carried forward investment allowance.

The depreciation said above shall be the entire depreciation namely the depreciation of the current year as well as unabsorbed carried forward depreciation. This is because of the fiction created by the Section 32(2) by which carried forward depreciation merges with the depreciation of the current year by partaking the latters character.

CASE LAWS

Indirect Tax

CCE V. Mahendra Engineering Ltd, 2015 (38) STR 233 (All)

The appellant had provided repair services for transformers. The issue was whether service tax was payable on the gross amount charged including the value of consumables like transformer oil and component parts or only on the service portion. In the invoices issued by the appellant, the value of good used and service charges were shown separately. Further in respect of supply of consumables, the appellant has paid VAT. It was held that since value of goods and value of services were shown separately and since VAT had been paid on the goods portion, service tax was payable only on the service/ labour component and that the value of goods would not be includable in the assessable value of service

Punjab National Bank V. CCE, 2015 (38) STR 498 (T)

The short point for consideration was whether commitment charges recovered by bank are to be added to the taxable service of 'Banking and Other Financial Service' or whether these charges are to be treated as interest on which no service tax is leviable. The Honourable Tribunal noted that commitment charges are charges imposed on the client who decide not to draw the amount of loan that is at their disposal. These charges are basically to compensate for the loss of interest that the bank would have earned if the customer had drawn the money from the loan account. The Tribunal held that the charges are related to lending of money and that the charges are integrally connected with the lending, which is a taxable service. Therefore commitment charges cannot be separated from lending service and hence liable to service tax.

Sesa Goa Ltd. Vs. Commissioner of Customs, Goa [2015 (5) TMI 879 – Bombay High Court]

Sesa Goa Ltd. (the Appellant) paid duty under protest in respect of two Bills of Entries for which Nil Assessment Order was passed by the Proper Officer. Thereafter by Order dated December 14, 2007 passed by the Assistant Commissioner of Customs & Central Excise Anti-Smuggling Unit, the amounts paid by the Appellant under protest were ordered to berefunded. However, the same was objected by the Department on the ground that since the Appellant had not challenged the earlier Assessment Order, the question of seeking any refund would not arise.

The Hon'ble High Court of Bombay held that the Appellant cannot be said to be aggrieved by the said Assessment Order and consequently, filling of any appeal would not arise. Accordingly, the

DUE DATES FOR STATUTORY PAYMENTS – JUNE 2015

Sl. No	Due Date	Act	Description	**Applicable Form**
1	6-June-15	Central Excise	e-Payment of Excise Duty by the Non SSI Unit	GAR-7
2	6-June-15	Service Tax	e-Payment of Service Tax by the Assessee other than Individual/ Proprietorship Firm/ Partnership Firm	GAR-7
3	7-June-15	Income Tax	Payment of TCS collected during the month of May	Challan No. ITNS 281
4	7-June-15	Income Tax	Payment of TDS deducted during the month of May	Challan No. ITNS-281
5	10-June-15	Central Excise	Excise Return by Non SSI Unit	ER-1
6	10-June-15	Central Excise	Excise Return by EOUs	ER-2
7	10-June-15	Central Excise	Excise Return by Units paying duty more than Rs. 1 Crore (CENVAT + PLA)	ER-6
8	15-June-15	Income Tax	Payment of Advance Income Tax by the Company	Challan No. ITNS-280
9	15-June-15	Provident Fund	E-Payment of Provident Fund liability	E-Challan cum return
10	21-June-15	ESI	Payment of ESI Liability	ESI Challan

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