

Adukia & Associates

Chartered Accountants

Newsletter May 2015

“Indian economy is now clearly on a recovery path with a 7.4 per cent growth in the first three quarters and the new Government is committed to maintain overall macroeconomic conditions on a sustained basis”, Finance Minister Arun Jaitley has said.

Relaxation of FDI policies and business formalities in India have started positive environment in the country. Foreign direct investment or FDI into India through the approval route shot up 162 per cent to \$1.91 billion in the first ten months of the ongoing fiscal year, indicating that government's effort to improve ease of doing business and relaxation in FDI norms may be yielding results. The finance ministry is likely to announce more measures to take the sting out of the minimum alternate tax (MAT) row that has got foreign investors up in arms, building on the positive response to the government decision to set up a panel to resolve the issue.

As a primary measure of easiness to setup business in India, MCA has introduced an integrated form - INC 29 replacing eight forms used for incorporation of a company as introduced by the companies act 2013. As per MCA, now it will take only 24 hours to complete the incorporation formalities.

Based on the industry experts opinion Foreign investors are very positive about India. Sentiments are also improving. There is lot of positivity in the business environment.

In this newsletter we are covering articles on Financial Reporting-Indian Accounting Standards, Relaxation in powers to be exercised by Board of directors, Auditor's Report on Consolidated Financial Statement under the companies Act, 2013, important notifications, recent Case Laws and due dates for statutory payment for easy reference.

We believe, this newsletter will be helpful for your knowledge updation and professional activities. We request your feedback, suggestions and recommendations for making this newsletter more effective and qualitative in the upcoming editions.



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SPECIAL POINTS OF INTEREST

- Financial Reporting - Indian Accounting Standards
- Relaxation in Powers to be Exercised by Board of Directors
- Auditor's Report on Consolidated Financial Statements Under the Companies Act, 2013
- Rendering Help to the Victims of Nepal Earthquake

FINANCIAL REPORTING - INDIAN ACCOUNTING STANDARDS



With the world shrinking at a rapid pace and globalization being the ruling theme, it is the need to follow homogeneity in the reporting standards in the financial sector so as to ensure ease of comparison, universality, removal of redundancy, comprehensiveness etc. In rise of changing business models and different accounting policies across the globe IFRS have taken birth in accounting history. International Financial Reporting Standards (IFRS) are designed as a common global language for business affairs so that company accounts are understandable and comparable across international boundaries. They are a consequence of growing international shareholding and trade and are particularly important for companies that have dealings in several countries. Approximately 122 nations and reporting jurisdictions permit or require IFRS for domestic listed companies.

The financial reporting standards until now followed in India were a combination of the standards notified by the Ministry of Corporate Affairs, guidance issued by the Securities Exchange Board of India (SEBI), guidance from the Institute of Chartered Accountants of India (ICAI), and industry-specific guidance from regulators. Analyzing the benefits of IFRS, it becomes all the more pertinent for a country like India to adopt it as soon as possible so as to maintain investors' positive sentiments and also strengthen their faith and credibility in the Indian Market.

After months of active and engaging deliberation, the Ministry of Corporate Affairs (MCA) has come

out with the Companies (Indian Accounting Standards) Rules, 2015 on , which mandates certain classes of companies to prepare financial statements as per IFRS converged Indian Accounting Standards (Ind AS). The notification states that the the 'Companies (Ind AS) Rules 2015' would come into force from April 1, 2015. Corporates are given the option to follow the Ind AS from April 1 this year on a voluntary basis.

Ind AS would be mandatory for “companies whose equity and/or debt securities are listed or are in the process of listing on any stock exchange in India or outside India and having net worth of Rs 500 crore or more,” from April 1, 2016. The deadline would be applicable for other entities having networth of Rs 500 crore or more. It would also apply for holding, subsidiary, joint venture or associate companies of these two class of entities.

Ind AS would be mandatory from April 1, 2017, for companies — whose equity and/or debt securities are listed or are in the process of being listed within India or outside — having a networth of less than Rs 500 crore. Other companies, that are unlisted having a networth of Rs 250 crore or more but less than Rs 500 crore, also would have to start implementing Ind AS from April 1, 2017.

Holding, subsidiary, joint venture or associate companies of these entities would have to comply with this deadline.

Companies whose securities are listed or in the process of listing on SME exchanges would not be required to apply Ind AS. Such companies shall continue to comply with the existing accounting standards unless they choose otherwise.

Any company opting to apply the Ind AS voluntarily for its financial statements will be required to prepare its financial statements as per the Ind AS consistently. Once the Ind AS are applied voluntarily, it shall be irrevocable.

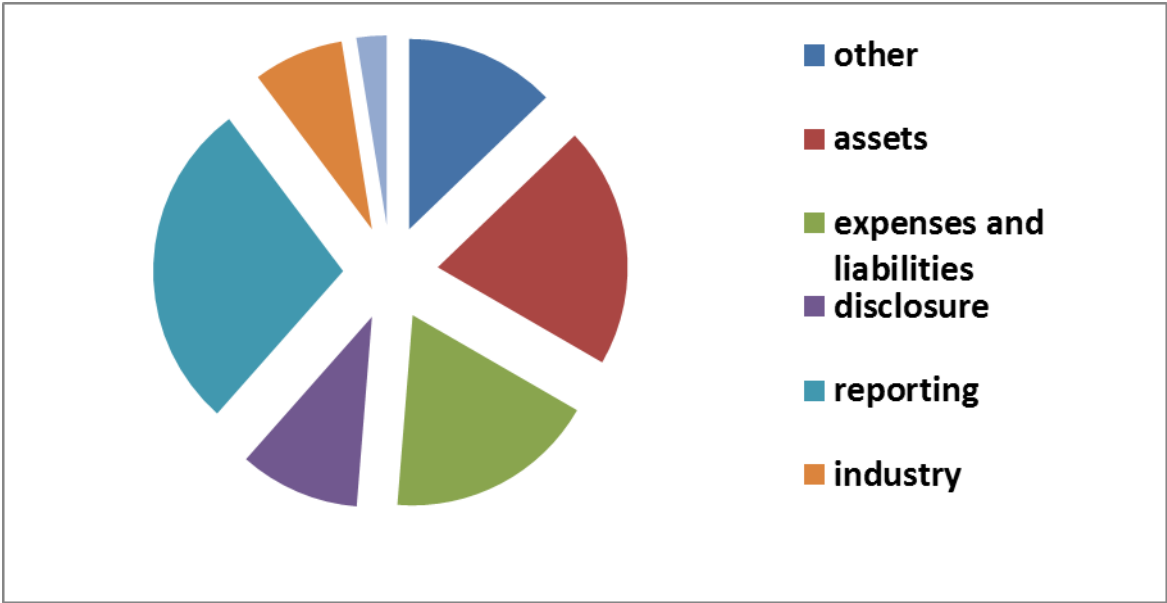
ROADMAP TO IND AS

<i>w.e.f. 1.04.2016</i>	<i>w.e.f. 1.04.2017</i>
<i>Cos. whose equity / debt securities are listed or are in the process of being listed on any stock exchange in India or outside India and having net worth of Rs. 500 Crs. or more</i>	<i>Cos. whose equity / debt securities are listed or are in the process of being listed on any stock exchange in India or outside India and having net worth of less than Rs. 500 Crs. except on SME Exchange</i>
<i>Unlisted Cos. having net worth of Rs. 500 Crs. or more</i>	<i>Unlisted companies having net worth of Rs. 250 Crs. or more but less than Rs. 500 Crs.</i>
<i>Holding, subsidiary, joint venture or associate companies of above companies</i>	<i>Holding, subsidiary, joint venture or associate companies of above companies</i>

	<i>List of Ind AS notified by Ministry of Corporate Affairs</i>	
<i>Ind AS 101</i>	<i>First-time Adoption of Indian Accounting Standards</i>	
<i>Ind AS 102</i>	<i>Share-based Payment</i>	
<i>Ind AS 103</i>	<i>Business Combinations</i>	
<i>Ind AS 104</i>	<i>Insurance Contracts</i>	
<i>Ind AS 105</i>	<i>Non-current Assets Held for Sale and Discontinued Operations</i>	
<i>Ind AS 106</i>	<i>Exploration for and Evaluation of Mineral Resources</i>	
<i>Ind AS 107</i>	<i>Financial Instruments: Disclosures</i>	
<i>Ind AS 108</i>	<i>Operating Segments</i>	
<i>Ind AS 109</i>	<i>Financial Instruments</i>	
<i>Ind AS 110</i>	<i>Consolidated Financial Statements</i>	
<i>Ind AS 111</i>	<i>Joint Arrangements</i>	
<i>Ind AS 112</i>	<i>Disclosure of Interests in Other Entities</i>	
<i>Ind AS 113</i>	<i>Fair Value Measurement</i>	
<i>Ind AS 114</i>	<i>Regulatory Deferral Accounts</i>	
<i>Ind AS 115</i>	<i>Revenue from Contracts with Customers</i>	
<i>Ind AS 1</i>	<i>Presentation of Financial Statements</i>	
<i>Ind AS 2</i>	<i>Inventories</i>	
<i>Ind AS 7</i>	<i>Statement of Cash Flows</i>	
<i>Ind AS 8</i>	<i>Accounting Policies, Changes in Accounting Estimates and Errors</i>	

Ind AS 10	<i>Events after the Reporting Period</i>	
Ind AS 12	<i>Income Taxes</i>	
Ind AS 16	<i>Property, Plant and Equipment</i>	
Ind AS 17	<i>Leases</i>	
Ind AS 19	<i>Employee Benefits</i>	
Ind AS 20	<i>Accounting for Government Grants and Disclosure of Government Assistance</i>	
Ind AS 21	<i>The Effects of Changes in Foreign Exchange Rates</i>	
Ind AS 23	<i>Borrowing Costs</i>	
Ind AS 24	<i>Related Party Disclosures</i>	
Ind AS 27	<i>Separate Financial Statements</i>	
Ind AS 28	<i>Investments in Associates and Joint Ventures</i>	
Ind AS 29	<i>Financial Reporting in Hyperinflationary Economies</i>	
Ind AS 32	<i>Financial Instruments: Presentation</i>	
Ind AS 33	<i>Earnings per Share</i>	
Ind AS 34	<i>Interim Financial Reporting</i>	
Ind AS 36	<i>Impairment of Assets</i>	
Ind AS 37	<i>Provisions, Contingent Liabilities and Contingent Assets</i>	
Ind AS 38	<i>Intangible Assets</i>	
Ind AS 40	<i>Investment Property</i>	
Ind AS 41	<i>Agriculture</i>	

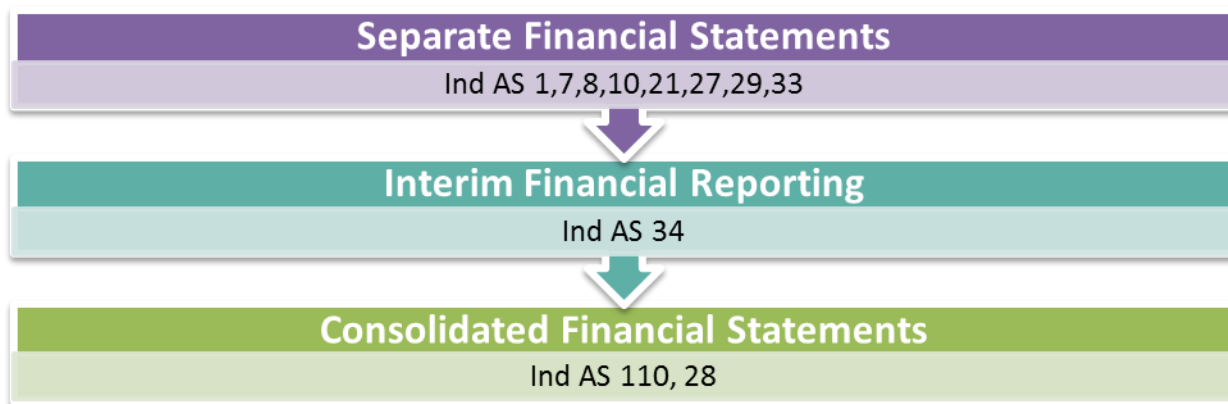
GROUPING OF IND AS



IND AS ON ASSETS

<i>Ind AS</i>	<i>Name</i>
<i>Ind AS 105</i>	<i>Non-current Assets Held for Sale and Discontinued Operations</i>
<i>Ind AS 113</i>	<i>Fair Value Measurement</i>
<i>Ind AS 2</i>	<i>Inventories</i>
<i>Ind AS 16</i>	<i>Property, Plant and Equipment</i>
<i>Ind AS 17</i>	<i>Leases</i>
<i>Ind AS 36</i>	<i>Impairment of Assets</i>
<i>Ind AS 38</i>	<i>Intangible Assets</i>
<i>Ind AS 40</i>	<i>Investment Property</i>

IND AS ON REPORTING (SFS & CFS)



IND AS ON INDUSTRY

<i>Ind AS</i>	<i>Name</i>
<i>Ind AS 104</i>	<i>Insurance Contracts</i>
<i>Ind AS 106</i>	<i>Exploration for and Evaluation of Mineral Resources</i>
<i>Ind AS 41</i>	<i>Agriculture</i>

IND AS ON DISCLOSURE

<i>Ind AS</i>	<i>Name</i>
<i>Ind AS 108</i>	<i>Operating Segments</i>
<i>Ind AS 112</i>	<i>Disclosure of Interests in Other Entities</i>
<i>Ind AS 20</i>	<i>Accounting for Government Grants and Disclosure of Government Assistance</i>
<i>Ind AS 24</i>	<i>Related Party Disclosures</i>

IND AS ON EXPENSES & LIABILITIES

<i>Ind AS</i>	<i>Name</i>
<i>Ind AS 102</i>	<i>Share-based Payment</i>
<i>Ind AS 107</i>	<i>Financial Instruments: Disclosures</i>
<i>Ind AS 109</i>	<i>Financial Instruments</i>
<i>Ind AS 12</i>	<i>Income Taxes</i>
<i>Ind AS 19</i>	<i>Employee Benefits</i>
<i>Ind AS 23</i>	<i>Borrowing Costs</i>
<i>Ind AS 32</i>	<i>Financial Instruments: Presentation</i>

IND AS ON INCOME & OTHERS

<i>Ind AS</i>	<i>Name</i>
<i>Ind AS 101</i>	<i>First-time Adoption of Indian Accounting Standards</i>
<i>Ind AS 103</i>	<i>Business Combinations</i>
<i>Ind AS 111</i>	<i>Joint Arrangements</i>
<i>Ind AS 114</i>	<i>Regulatory Deferral Accounts</i>
<i>Ind AS 115</i>	<i>Revenue from Contracts with Customers</i>
<i>Ind AS 37</i>	<i>Provisions, Contingent Liabilities and Contingent Assets</i>

The notification of the Ind AS by the Ministry of Corporate affairs is a step in line with India's commitment to convergence with International Financial Reporting Standards ("IFRS"). The adoption might lead to short term investments and initial challenges but the long term benefits are strong enough to justify the initial hassles of implementation and adoptability.

COMPANIES ACT UPDATE

RELAXATION IN POWERS TO BE EXERCISED BY BOARD OF DIRECTORS



After commencement of various provisions of the Companies Act, 2013 and rules thereunder, various issues received from Industry Chambers and stakeholders were examined in consultation with stakeholders. In order to address the issues received, certain rules have been amended. The compliance norms, wherever changed have been done keeping in view the need to strike a balance between regulatory requirements and ease of doing business and without compromising on the Board's accountability to the members of the company. The objective behind the amendment of Rule 8 of the Companies (Meetings of Board and its Powers) Rules, 2014 is to allow the Board to pass resolutions to take note of appointments or removal of one level below the Key Managerial Personnel, to take note of disclosure of director's interest and shareholding, etc. as contained in sub-rule (3), (5), (6), (7), (8) and (9) of the said Rule without holding a meeting.

Extract of Rule 8 of the Companies (Meetings of Board and its Powers) Rules, 2014.

8. Powers of Board.- In addition to the powers specified under sub-section (3) of section 179 of the Act, the following powers shall also be exercised by the

Board of Directors only by means of resolutions passed at meetings of the Board.-

- (1) to make political contributions;
- (2) to appoint or remove key managerial personnel (KMP);
- ~~(3) to take note of appointment(s) or removal(s) of one level below the Key Management Personnel;~~
- (4) to appoint internal auditors and secretarial auditor;
- ~~(5) to take note of the disclosure of director's interest and shareholding;~~
- ~~(6) to buy, sell investments held by the company (other than trade investments), constituting five percent or more of the paid up share capital and free reserves of the investee company;~~
- ~~(7) to invite or accept or renew public deposits and related matters;~~
- ~~(8) to review or change the terms and conditions of public deposit;~~
- ~~(9) to approve quarterly, half yearly and annual financial statements or financial results as the case may be.~~

Rules Shown as strike off were omitted vide Companies (Meetings of Board and its Powers) Amendment Rules, 2015 Dated-18th March, 2015.



AUDITOR'S REPORT ON CONSOLIDATED FINANCIAL STATEMENTS UNDER THE COMPANIES ACT, 2013

The Auditing and Assurance Standards Board, under the authority of the Council, has already issued the illustrative formats of the auditor's report on stand-alone financial statements of a company under the Companies Act 2013 in December 2014. While reporting on the consolidated financial statements (CFS) of a company under the Companies Act 2013, the auditors may draw guidance from the aforementioned formats and suitably reword the same, as required, to meet the circumstances of audit of CFS. The auditors of CFS, while reporting in respect of the provisions of, inter alia, section 143(3) and section 143(11) of the Companies Act, 2013 in their report on CFS, are also advised to:

- Consider the observations and comments as given in this regard in the auditors' reports of the component auditors.
- Include in their report or draw suitable reference to, negative/adverse comments, if any, in respect of section 143(3) and section 143(11) of

the Act relating to a component, as appearing in the component auditors' report.

The auditors of CFS are also advised to apply concept of materiality and professional judgment as provided in the Standards on Audit while reporting on the Consolidated Financial Statements.

The illustrative formats of an auditors' report on CFS, covering some of the clauses of section 143(3) of the Companies Act, 2013 (and where the auditor does not have the responsibility for reporting on internal financial controls over financial reporting under section 143(3)(i) of the Companies Act, 2013), are being issued herewith just to provide a broad guidance on how such a report may be prepared. These formats may be applied for the FY 2014-15 and until further announcement. It is reiterated that the auditors of CFS may suitably reword/redraft these formats to suit the circumstances of their audit engagement.

LOAN FROM DIRECTOR UNDER SECTION 179(3) AND 180

As per Rule 2 sub rule 1 clause vii of the Companies (Acceptance of Deposits) Rules, 2014 "Any amount received from a person who, at the time of receipt of the amount, was director of the Company, will be out of preview of Deposits".

Condition: The director from whom money is received furnishes to the company at the time of giving the money, a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others

- Loan accepting from director along with borrowing already made by Company is within the limit of "Paid up share capital + Free Reserve" then Board Resolution required to be filed u/s 179(3) and form MGT-14 required to be filed with ROC.

- There is no need every time to pass resolution for acceptance of money from director. Company can pass a resolution with higher limit at a time whether in
 - 1) Board Meeting – if higher limit doesn't exceed "paid up share capital + free reserve
 - 11) General Meeting- if higher limit exceed "paid up share capital + free reserve
- A deposit in joint names of director and another person, who may or may not be director, should be permissible, if name of director is first depositor, though there is no specific provision.

DIRECT TAX UPDATE

RENDERING HELP TO THE VICTIMS OF NEPAL EARTHQUAKE

Permission u/s 11(1)(c) of the Income-tax Act, 1961 for rendering help to the victims of Nepal Earthquake

The Central Board of Direct Taxes has decided to fast track all applications made u/s 11(1)(c) of the Income Tax Act, 1961 seeking approval for rendering help to the victims of earthquake in Nepal. It will be the endeavor of the Department to process these applications within two working days of receiving the completed applications.

The applications seeking approval u/s 11(1)(c) may be submitted in the office of Member(IT), Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, North Block, New Delhi.

Document required to be furnished while seeking exemption u/s 11(1)(c) of the Income-tax Act,

1. Certified Copies of Trust Deed, Articles of Association, Memorandum of Association (as applicable) and PAN Card
2. Copy of order granting registration u/s 12AA of the Income Tax Act

3. Amount in INR and year in which it is proposed to be remitted/ incurred
4. In case money is to be remitted, a note on the purpose for remitting the money giving the details of remittee and the manner in which the sum remitted is generally proposed to be utilized
5. Copies of the latest IT Return along with Account Statements
6. Copy of the latest Assessment orders, if any in last five years
7. Details of pending prosecution launched by Income Tax Department, if any
8. Details of any proceeding initiated/pending for violation of FCRA regulations, if any

The applicant may give his e-mail id, phone number, fax number and complete address for correspondence.

DISCLOSE DETAILS OF FOREIGN TRAVEL IN INCOME TAX RETURN (ITR)

CBDT has vide Notification No. 41/2015 requires Assessee to Disclose in Schedule FT of ITR Details of foreign travel and expenses incurred during the year by the Assessee.

This schedule is required to be filled if the assessee has undertaken any foreign travel during the previous year. The countries visited and the number of times it was visited during the previous year is to be filled up. Further, mention the expenses incurred from own sources of income in such trip i.e. other than expenses incurred by the employer or any other person being a sponsor.

Schedule Requires Following Details :-

1. Passport Number of the Assessee
2. Place of Issue of Passport
3. Country visited during the year
4. Number of times visited
5. In case of a resident, expenses incurred from own sources, if any, in relation to such travel

INDIRECT TAX UPDATE

Excise Duty - Dealer Registration NOT mandatory for transit sale

Vide Notification No. 8/2015-C.E. (N.T.), dated March 1, 2015, the following provisos were added to Rule 11(2) of the Central Excise Rules, 2002 (the Excise Rules) "Provided also that if the goods are sent directly to any person on the direction of the Registered dealer, the invoice shall also contain the details of the registered dealer as the buyer and person as the consignee, and that person shall take Cenvat credit on the basis of the registered dealer's invoice.

Provided also that if the goods imported under the cover of a bill of entry are sent directly to buyer's premises, the invoice issued by the importer shall mention that goods are sent directly from the place or port of import to the buyer's premises."

In view of the newly inserted provisos, some field officers took the view that whoever orders goods to the Manufacturer and directs the Manufacturer to send the goods to ultimate user directly are required to take "Dealer's" Registration. They insisted that Cenvat credit will not be allowed on the strength of Manufacturer's invoice when the goods are sold through a Non-Registered Dealer. This view was also endorsed recently by the Joint Commissioner, Office of the Principal Chief Commissioner of Central Excise, Mumbai Zone-I, who clarified that since Cenvat credit will be available on Registered Dealers' Invoice, hence registration of Dealer with Central Excise is must from March 1, 2015.

Laudable Clarification issued by the CBEC:

The Central Board of Excise and Customs ("the CBEC" or "the Board") vide Circular No. 1003/10/2015-CX dated May 5, 2015 ("the Circular") has clarified that the new provisos are meant to improve the ease of doing business by providing an additional facility to the Registered Dealer or Importer for direct dispatch of goods from the manufacturer to the consignee, when he is issuing Cenvatable invoice. They do not withdraw any past facility. These amendments should therefore be harmoniously interpreted with the existing Rules

and Circulars in conformity with the legal provisions, keeping the intention of the Government in mind.

The Board has clarified as under:

"(i) Where a registered dealer negotiates sale of an entire consignment from a manufacturer or a registered importer and orders direct transport of goods to the consignee, credit can be availed by the consignee on the basis of invoice issued by the manufacturer or the registered importer. In such cases no Cenvatable invoice shall be issued by the registered dealer in favour of the consignee though commercial invoice can be issued. Where a registered dealer negotiates sale of goods from the total stock ordered on a manufacturer or an importer to multiple buyers and orders direct transportation of goods to the consignees and the manufacturer or the importer is willing to issue individual invoices for each sale in favour of the consignees for such individual sale, the same procedure shall apply.

(ii) Where a registered dealer negotiates sale by splitting a consignment procured from a manufacturer or a registered importer and issues Cenvatable invoices for each of the sale, it would now be possible for the dealer to order direct transport of the consignments as per the individual sales to the consignee without bringing the goods to his godown. This would save time and transportation cost for the dealer adding to ease of doing business. This is a new facility which flows from the amended provisions. Procedure as prescribed in the third proviso of rule 11(2) shall be applicable in such case.

(iii) Where a un-registered dealer negotiates sale of an entire consignment from a manufacturer or a registered importer and orders direct transport of goods to the consignee, credit can be availed by the consignee on the basis of invoice issued by the manufacturer or the registered importer. As the dealer is not registered, there is no question of issuing any Cenvatable invoice by him. Such dealers as in the past can continue to be un-registered.

(iv) Where goods are sold by the registered importer to an end-user (say a manufacturer) who would avail credit on the basis of importer's invoice and the goods are transported directly from the port or warehouse at the port to the buyer's premises, the amendment prescribes that for such movement the factum of such direct transport to the buyer's premises needs to be

recorded in the invoice."

The above stated clarification has not only brought a sigh of relief for the Dealers, but has also granted additional benefits like direct transport in case of split consignments, an appreciating move of the CBEC towards "Ease of doing business".

CUSTOMS

Usage of Digital Signature Certificates in Remote EDI filing (RES) of Customs Documents

In order to prioritise trade facilitation and creating an environment for ease of doing business CBEC vide Circular No. 10/2015-Cus dated March 31, 2015 has allowed the electronic submission of digitally signed Customs process documents viz. Bills of Entry, Shipping Bills, Import General Manifest (IGM), Export General Manifest (EGM) and Consol General Manifest (CGM) with effect from 1st April 2015 by importers, exporters, customs brokers, shipping lines, airlines or their agents. This facility of digitally signing the documents that are filed electronically would provide the necessary assurance regarding the integrity and non-repudiation of these documents. This shall also enhance the acceptability of such documents by other agencies. It has also been clarified that when Customs process documents are digitally signed, the Customs will not insist on the user

physical signing the said documents thereby reducing the need of hard copies. It is important to note that the importers recognized under the Accredited Client Programme (ACP), shall be required to mandatorily file Bills of Entry with digital signature w.e.f. 01.05.2015 in line with *Circular No.42/2005- Cus., dated 24.11.2005* which emphasises the same. The process for operationalizing the facility to use Digital Signature Certificate for filing the Customs process documents has been given on <https://www.icegate.gov.in> & <http://www.cca.gov.in>. In case of any technical difficulty in digitally signing the said documents, the users may contact (i) icegate.helpdesk@icegate.gov.in (phone no. 1800 301 1000) and (ii) dscsupport@ncode.in from 10 a.m. to 6 p.m. on working days (phone no. 1800 233 1010).

FEMA

Acquisition/transfer of immovable property—Prohibition on citizens of certain countries

As per FEMA Notification No. 21/2000-RB dated 3rd May, 2000, no person being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan without prior permission of the Reserve Banks shall acquire or transfer immovable property in India, other than lease, not exceeding five years. It has been observed that Macau and Hong Kong are the two Special Administrative Regions of China. As they

are notified separately, it has been decided in consultation with the Government of India, that the citizens of Macau and Hong Kong will also be included in the list of countries which are prohibited to acquire/transfer immovable property in India in terms of Regulation 7 of FEMA.

Reserve Bank has amended the principal regulations vide Notification No. FEMA 335/2015-RB dated February 4, 2015.

RECENT NOTIFICATIONS & CIRCULARS

Income Tax Act

CBDT notifies 'IIT, Bhubaneswar' as scientific research association U/s. 35(1)(ii)

Indian Institute of Technology Samantapuri Bhubaneswar (PAN – AAAAI2760A) has been approved by the Central Government for the purpose of clause (ii) of sub-section (1) of section 35 of the Income-tax Act, 1961 (said Act), read with Rules 5C and 5E of the Income-tax Rules, 1962 (said Rules), from Assessment year 2014-2015 and onwards under the category of "University College or other Institution", engaged in scientific research activities subject to the following conditions, namely:-

- i. The sums paid to the approved organization shall be utilized only for scientific research; and not for other streams;
- ii. The approved organization shall carry out scientific research through its faculty members or its enrolled students;
- iii. The approved organization shall maintain separate books of accounts in respect of the sums received by it for scientific research, reflect therein the amounts used for carrying out research, get such books audited by an accountant as defined in the explanation to sub-section (2) of section 288 of the said Act and furnish the report of such audit duly signed and verified by such accountant to the Commissioner of Income-tax or the Director of Income-tax having jurisdiction over the case, by the due date of furnishing the return of income under sub-section (1) of section 139 of the said Act;
- iv. The approved organization shall maintain a separate statement of donations received and amounts applied for scientific research and a copy of such statement duly certified by the auditor

Excise Duty

Education Cess & SHEC can be used for payment of Excise Duty by Manufacturers

W.e.f 01.03.2015 education cess and Higher education cess has been withdrawn on excise duty. However in many cases manufacturer has received the goods dispatched by their vendors prior to 01.03.2015 and as a result the manufacturer was required to make payment of education cess and SHEC to such vendors.

In order to clarify the above situation, CBEC has issued notification No. 12/2015-Central Excise (N.T.) dated 30.04.2015, whereby it has clarified that a manufacturer can take CENVAT credit of Education cess and SHEC paid on input as well input services against their output excise duty liability. Notification No. 12/2015-Central Excise (N.T.) dated 30.04.2015

Service Tax

Exemption to taxable services provided against scrip issued under SEIS/ MEIS under FTP 2015-2020

CBEC vide Notification No. 10/2015-ST and 11/2015-ST, Dated: April 8, 2015 has exempted the taxable services provided or agreed to be provided by a person, located in the taxable territory from the whole of the service tax leviable thereon under Section 66B, against a duty credit scrip issued to an exporter by the Regional Authority un-

der Merchandise Exports from India Scheme (MEIS) or Service Exports from India Scheme (SEIS) of the Foreign Trade Policy 2015, subject to the conditions listed in the notification. Any amount due to the Central Government under this notification shall be recoverable under the provisions of the said Act and the rules made there under.

CASE LAWS

Income Tax

In Dawn Educational Charitable Trust v.CIT (2015) 370 ITR 724 (Ker) where the assessee-trust was running a school for the benefit of children of non-resident Indians in a building with air-conditioned class rooms providing the students breakfast & lunch and collecting huge amount towards fees, the Kerala High Court ruled that it was not entitled to registration under section 12A as it was run on commercial lines under the clad of charitable purpose.

For invoking reassessment proceedings, reasons has to be recorded & not conclusions: Hon'ble Delhi ITAT has in the case of ACIT V/s M/s Responsible Builders Pvt. Ltd in ITA No. 2726/Del /2011 has held that it is trite law that in order to determine whether there are reasons to believe that the income got escaped the assessment, one has to look at the reasons recorded by the Assessing Officer before the issuance of notice under Section 148 of the Act. For before invoking the re-assessment proceedings the A.O has to record the reason as to how income has escaped assessment and not conclusions.

In the case the assessee was engaged in the business of investments and finance, Regular assessment u/s 143 (3) was done than the A.O initiated re-assessment proceedings to reassess the short term capital gains as business income. The re-assessment proceedings were quashed by the Hon'ble Tribunal and while looking in the facts of the case the Hon'ble Tribunal observed that the reasons recorded for initiating re-assessment were not reasons but the conclusions as under

In the present case, we are required to adjudicate

upon whether the reassessments proceedings are properly launched by the Assessing Officer or vitiated by mere change of the opinion. We find from the material available on record that the very same issue was considered by the Assessing Officer at the time of original assessment. The Assessing Officer had raised a specific query, as to why the short term capital gains should not be treated as business income.

After consideration of reply filed by the assessee, the Assessing Officer accepted the claim. Further, it is trite law that in order to determine whether there are reasons to believe that the income got escaped the assessment, one has to look at the reasons recorded by the Assessing Officer before the issuance of notice under Section 148 of the Act. In this case, the reasons recorded by the Assessing Officer are as follows:

“The assessment of M/s Responsible Builders (P) Ltd. for the A.Y. 2006-07 was completed after scrutiny in September, 2008, determining an income of Rs. 30637449, as short term capital gain. The assessee is a non banking financial company engaged in the business of investment. Thereafter it was observed that the assessee did not maintain any separate stock-in-trade account and entire sale/purchase of shares had been classified as investment. Since the only business activity of the assessee was ‘investment for earning capital gains from the market’ , the sale/purchase of shares by the assessee was actually accretion/depletion in its stock-in-trade (camouflaged by the assessee as investments) and consequently any proceeds out

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of sale/purchase of these shares was business income of the assessee. Hon'ble Supreme Court had held in the case of G. Venkata Swami Naidu & Co. Vs. CIT(1959) 35 ITR 594 (SC) that in cases where the purchase has been made solely and exclusively with the intention of resale at a profit and the purchaser has no intention of holding the property for himself or otherwise enjoying it or using it the presence of such intention would raise a strong presumption that the transaction is in the nature of trade. In the instant case, the assessee is basically an investor and the purchase and sale of shares are very much allied to its usual business. The shares have been purchased in very large quantities, which eliminate the possibility of investment for personal use possession or enjoyment. Further, the share purchase/sale transactions are repetitive in nature in the case of assessee. In view of the above facts, I have reasons to believe that income of Rs. 3,06,37,449/- has escaped assessment by virtue of either omission or failure on the part of the assessee to disclose fully or truly all material facts necessary for assessment in this year in this case and the same is to be brought to tax under Section 147/148 of the I. Tax Act."

On perusal of above reasons, it is clear that the Assessing Officer had not referred any material which made him to believe that income got escaped assessment. We also find that what the Assessing Officer recorded is only the conclusion not the reasons, inasmuch as, the reasons recorded does not indicate as to how income got escaped assessment. Therefore, what is mentioned as reasons cannot be called the reasons, but only conclusions.

Penalty not justified on voluntary surrender of unexplained income

Heranba Industries Ltd. Vs. DCIT (ITAT Mumbai), I.T.A. No. 2292 of 2013, Date of Pronouncement: 08.04.2015

Where assessee surrendered unexplained income voluntarily even after receiving notice u/s 143(2) and the AO had not brought any evidence on record to prove

that there was concealment of income, whether levy of penalty u/s 271(1)(c) is not justified.

From the record we found that at the very first instance share application money was surrendered by assessee with a request not to initiate any penalty proceedings. The AO passed order u/s.143(3) adding surrendered amount u/s.69A on the plea that assessee has surrendered amount only after issue of notice. It is not disputed by the department that sum which was added u/s.69A was one which was surrendered by the assessee himself. Neither there was any detection nor there was any information in the possession of the department except for the amount surrendered by the assessee and in these circumstances it cannot be said that there was any concealment. In case of CIT vs. Suresh Chandra Mittal 251 ITR 9 (SC), Hon'ble Supreme Court observed that if the assessee has offered the additional income to buy peace of mind and to avoid litigation penalty u/s.271(1)(c) of the Act cannot be levied. In the instant case, there was no mala fide intention on the part of the assessee and the AO had not brought any evidence on record to prove that there was concealment of income. At the time of surrender itself contention of not initiating any penalty proceedings was there. No additional matter was discovered to prove that there was concealment of income. The AO has included the amount of share capital in the total income of assessee merely on the basis of assessee's declaration/surrender. The AO did not point out or refer any evidence or material to show that the amount of share capital received by the assessee was bogus. It is also not the case of the revenue that material was found at the assessee's premises to indicate that share application money received was an arranged affair to accommodate assessee's unaccounted money. Thus there was no detection by the AO that share capital was not genuine. The surrender of share capital after issue of the notice u/s.143(2) could not lead to any inference that it was not voluntary. Admittedly the assessee has offered the amount of share capital for taxation voluntarily and it was not the case of revenue that the same

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was done after its detection by the department. It is quite clear from the record that this entire transaction was not detection of the AO that the share capital was not genuine and that the assessee had offered the amount without any specific query. Even surrender of amount by the assessee after receipt of questionnaire could not be lead to any inference that it was not voluntary, in the absence of any material on record to suggest that it was bogus or untrue. The contention that in every case where surrender is made inference of concealment of income must be drawn under S.58 of Evidence Act, cannot be accepted in view of the decision of Punjab & Haryana High Court in the case of Careers Education & Infotech (P) Ltd., (2011) 336 ITR 257 (P&H). Not an iota of evidence was narrated to support the addition made except the surrender made by the assessee itself. When no concealment was ever detected by the AO, no penalty was impossible. Recently, Hon'ble Punjab & Haryana High Court in the case of Siddharth Enterprises vide order dt. 14th July, 2009 held after considering the decision of Hon'ble Supreme Court in the case of Union of India & Ors. vs. Dharamendra Textile Processors & Ors. (2008) 306 ITR (SC) 277 that the judgment of Hon'ble Supreme Court in the case of Dharmendra Textiles (supra) cannot be read as laying down that in every case where particulars of income are inaccurate, penalty must follow. What has been laid down is that qualitative difference between criminal liability under s. 276C and penalty under s. 271 (1)(c) had to be kept in mind and approach adopted to the trial of a criminal case need not be adopted while considering the levy of penalty. Even so, concept of penalty has not undergone change by virtue of the said judgment. It was categorically observed that penalty should be imposed only when there is some element of deliberate default and not a mere mistake. This being the position, the furnishing of inaccurate particulars was simply a mistake and not a deliberate attempt to evade tax Hon'ble Supreme Court in the case of CIT vs. Suresh Chandra Mittal 251 ITR 9 (SC) observed that where assessee has surrendered the income after persistence queries by the AO and where revised return has been regularized by the Revenue, explanation of

the assessee that he has declared additional income to buy peace of mind and to come out of waxed litigation could be treated as bona fide, accordingly levy of penalty under s. 271 (1)(c) was held to be not justified.

Service Tax

Srinivasa Enterprises Vs. Office of the Joint Commissioner of Commercial Taxes, Bangalore [2015] 56 taxmann.com 143 (Karnataka)

Facts of the case are that, Srinivasa Enterprises ('the Petitioner' or 'the Assessee') rented out its property to State VAT Department and collected Service tax thereon and paid same to Service Tax Department. Later on, the Assessee and State VAT Department came to know that renting of immovable property to State Government (VAT Department) was not taxable. Therefore, VAT Department issued letter to the Assessee deducting wrong payment of Service tax from out of rent payable to Assessee and advising Assessee to file refund claim. Assessee argued that Service recipient viz. VAT Department should file refund claim for Service tax wrongly paid by it. While, VAT Department submitted that since Service tax was paid by the Assessee, refund claim should be filed by the Assessee and it would co-operate with the Assessee.

The Hon'ble Karnataka High Court held that both the Assessee and VAT Department shall make appropriate representation addressed to Service Tax Department and Service tax would be refunded, if it is found to have been wrongly paid.



DUE DATES FOR STATUTORY PAYMENTS – MAY 2015

S.No	Event Date	Act	Applicable Form	Obligation
1	06-May-15	Service Tax	Challan No.GAR-7	E-Payment of Service Tax for April by Companies
2	07-May-15	Income Tax	Form No.15G, 15H, 27C	Submission of Forms received in April to IT Commissioner
3	07-May-15	Income Tax	Challan No.ITNS- 281/17	Payment of TDS/TCS deducted/collected in April
4	10-May-15	Excise	ER-1	Return for Non SSI assessees for April
5	10-May-15	Excise	ER-2	Return for EOUs for April
6	10-May-15	Excise	ER-6	Return by units paying duty > 1 crore (CENVAT + PLA) for April
7	15-May-15	Income Tax	Return 24Q, 26Q, 27Q & 27EQ	Filing of TDS/TCS returns for Mar Quarter by ALL Deductors including Govt.
8	15-May-15	Providend Fund	Electronic Challan cum Return (ECR)	E-Payment of PF for Apr(Cheque to be cleared by 20th)
9	21-May-15	ESI	ESI Challan	Payment of ESI of Apr
10	22-May-15	Income Tax	Form 1 6B	Issue of TDS Certificate u/s 1 94-IA for TDS deducted in April on Purchase of Property
11	30-May-15	Income Tax	Form 1 6A/ 27D	Issue of TDS/TCS certificate for Mar quarter by ALL Deductors
12	30-May-15	Income Tax	Form – 49C	Statement by Non-resident having Liaison Office in India (u/s 285) for 201 4-15
13	30-May-15	LLP Act	Form LLP 11	Annual return of LLP for the year ending March 31, 2015
14	30-May-15	Companies Act		Either refund/allotment of share application money received upto March 31, 201 4
15	31-May-15	Income Tax	Form 1 6 & 1 2BA	Issue of TDS certificate to Employees

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