

# Adukia & Associates

## Chartered Accountants



## Newsletter July 2015

“Black money is so much a part of our white economy, a tumour in the centre of the brain - try to remove it and you kill the patient.” Rohinton Mistry

The government of India introduced a new legislation, Black Money (undisclosed foreign income and assets) and Imposition of Tax Act, 2015, with stringent provisions on tax, interest, penalty and prosecution with an intention to track down and bring back undisclosed foreign income and assets held by Indian tax residents and to lay down the procedure for levying tax on such assets and income.

Any asset or income overseas that does not have a satisfactory explanation as to the source of investment and not reported/offered for India taxation will be considered as undisclosed asset/income. The Act is applicable for individuals who qualify as ordinarily residents (OR) during the relevant tax year. At present, an ordinarily resident has to offer his/her global income for India taxes and report the details of the overseas assets in the India tax return.

As per the provisions of this act, 30 per cent of the undisclosed income or fair market value (FMV) of the undisclosed foreign asset as on April 1 has to be paid as taxes; penalty could be up to three times the tax liability. Further, the individual will not be entitled for any deduction/relief (including credit for foreign taxes).

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# THE BLACK MONEY (UNDISCLOSED FOREIGN INCOME AND ASSETS) AND IMPOSITION OF TAX ACT, 2015



## Introduction

THE BLACK MONEY (UNDISCLOSED FOREIGN INCOME AND ASSETS) AND IMPOSITION OF TAX ACT, 2015 as passed by the Parliament received the assent of the President on the 26th of May 2015. The Act contains provisions to deal with the menace of black money stashed away abroad. It, inter alia, levies tax on undisclosed assets held abroad by a person who is a resident in India at the rate of 30 percent of the value of such assets, provides for a penalty equal to 90 percent of the value of such asset, and also provides for rigorous imprisonment of three to ten years for wilful attempt to evade tax in relation to a undisclosed foreign income or asset.

Considering the stringent nature of the provisions of the new law, Chapter VI of the Act, comprising sections 59 to 72, provides for a one-time compliance opportunity for a limited period to persons who have any foreign assets which have hitherto not been disclosed for the purposes of Income-tax. This circular explains the substance of the provisions of the compliance window provided for in the said Chapter VI of the Act.

## Scope of compliance window

A declaration under the aforesaid chapter can be made in respect of undisclosed foreign assets of a person who is a resident other than not ordinarily resident in India within the meaning of clause (6) of section 6 of the Income-tax Act.

A declaration under the aforesaid Chapter may be made in respect of any undisclosed asset located outside India and acquired from income chargeable to tax under the Income-tax Act for any assessment year prior to the assessment year 2016-17 for which he had, either failed to furnish a return under section 139 of the Income-tax Act, or failed to disclose such income in a return furnished before the date of commencement of the Act, or such income had escaped assessment by reason of the omission or failure on the part of such person to make a return under the Income-tax Act or to disclose fully and truly all material facts necessary for the assessment or otherwise.

## Rate of tax and penalty

The person making a declaration under the provisions of the chapter would be liable to pay tax at the rate of 30 percent of the value of such undisclosed asset. In addition, he would also be liable to pay penalty at the rate of 100% of such tax (i.e., a further 30% of the value of the asset as on the date of commencement of the Act). Therefore, the declarant would be liable to pay a total of 60 percent of the value of the undisclosed asset declared by him. This special rate of tax and penalty specified in the compliance provisions will override any rate or rates specified under the provisions of the Income-tax Act or the annual Finance Acts.



### **Time limits for declaration and making payment**

A declaration under the Act can be made anytime on or after the date of commencement of the Act but before a date to be notified by the Central Government. As regards the commencement of the Act, section 1 provides that the Act shall come into force on the 1st of April, 2016. However, section 3 which specifies the charge of tax, lays down that tax shall be charged for every assessment year commencing on or after the 1st day of April, 2016. Hence, under the Act, tax is also chargeable for assessment year 2016-17 for which the relevant previous year is 2015-16. In exercise of its power to remove difficulties under section 86 of the Act, the Central Government by an order has clarified that the Act shall come in to force on 1st July, 2015. Accordingly, the compliance provisions under Chapter VI shall also come into force with effect from the date of commencement of the Act i.e. 1st of July, 2015.

The Central Government has further notified 30th September, 2015 as the last date for making the declaration before the designated Principal Commissioner or Commissioner of Income Tax (PCIT/CIT) and 31st December, 2015 as the last date by which the tax and penalty mentioned in para 5 above shall be paid. Accordingly, a declaration under Chapter VI

in Form 6 as prescribed in the Rules may be made at any time before 30.09.2015. After such declaration has been furnished, the designated Principal CIT/CIT will issue an intimation in the proforma annexed to the Circular to the declarant by 31.10.15 whether any information in respect of the declared asset had been received by the Competent Authority on or before 30th June 2015, under an agreement entered into by the Central Government under section 90 or 90A of the Income-tax Act. Where any such information had been received, the declarant shall file a revised declaration in Form 6 excluding such asset. The declarant shall not be liable for any consequences under the Act in respect of, any asset which has been duly declared but has been found ineligible for declaration as the Central Government had prior information on such asset. However, such information may be used under the provisions of the Income-tax Act. The revised declaration shall be filed within 15 days of receipt of intimation from the designated Principal Commissioner /Commissioner i.e. if a declarant has received the intimation on 10th October 2015, he can file a revised declaration on or before 25th October, 2015. However, in all cases, the declarant is required to pay the requisite tax and penalty on the assets eligible for declaration latest by 31.12.2015. After the intimation of payment by the declarant, the Principal CIT/CIT will issue an acknowledgement in Form 7 of the accepted declaration within 15 days of such intimation of payment by the declarant.

### **Form for declaration**

As per the Act, declaration under the chapter is to be made in such form and shall be verified in such manner as may be prescribed. The form prescribed for this purpose is Form 6 which has been duly notified. The table below mentions the persons who are authorized to sign the said form:

Sl. No	Status of the declarant	Declaration to be signed by
1	Individual	Individual; where individual is absent from India, person authorized by him; where the individual is mentally incapacitated, his guardian or other person competent to act on his behalf.
2	HUF	Karta; where the karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of the HUF
3	Company	Managing Director; where for any unavoidable reason the managing director is not able to sign or there is no managing director, by any director.
4	Firm	Managing partner; where for any unavoidable reason the managing partner is not able to sign the declaration, or where there is no managing partner, by any partner, not being a minor.
5	Any other association	Any member of the association or the principal officer.
6	Any other person	That person or by some other person competent to act on his behalf.

The declaration may be filed with the Commissioner of Income-tax, Delhi. The declaration may also be filed online on the e-filing website of the Income Tax Department using the digital signature of the declarant.

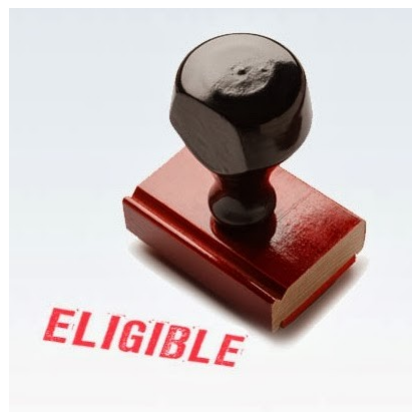
#### Declaration not eligible in certain cases

As per the provisions of section 71 of the Act no declaration under the compliance window can be made in respect of any undisclosed foreign asset which has been acquired from income chargeable to tax under the Income-tax Act for assessment year 2015-16 or any earlier assessment year in the following cases—

- i) where a notice under section 142 or section 143(2) or section 148 or section 153A or section 153C of the Income-tax Act has been issued in respect of such assessment year and the proceeding is pending before the Assessing Officer. For the purposes of declaration under section 59 it is clarified that the person will not be eligible under the compliance window if any notice referred above has been served upon the person on or before 30th June 2015 i.e. before the date of commencement of this Act. (In the form

of declaration (Form 6) the declarant will verify that no such notice has been received by him on or before 30th June 2015).

- ii) where a search has been conducted under section 132 or requisition has been made under section 132A or a survey has been carried out under section 133A of the Income-tax Act in a previous year and the time for issuance of a notice under section 143 (2) or section 153A or section 153C for the relevant assessment year has not expired. In the form of declaration (Form 6) the declarant will also verify that these facts do not prevail in his case.



iii) where any information has been received by the competent authority under an agreement entered into by the Central Government under section 90 or section 90A of the Income-tax Act in respect of such undisclosed asset. For the purposes of declaration under section 59 it is clarified that the person will not be eligible under the compliance window if any information referred above has been received by the competent authority on or before 30th June 2015 i.e. before the date of commencement of this Act.

A person in respect of whom proceedings for prosecution of any offence punishable under Chapter IX (offences relating to public servants) or Chapter XVII (offences against property) of the Indian Penal Code or under the Unlawful Activities (Prevention) Act or the Prevention of Corruption Act are pending shall not be eligible to make declaration under Chapter VI.

### **Circumstances where declaration shall be invalid**

In the following situations, a declaration shall be void and shall be deemed never to have been made:

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(a) If the declarant fails to pay the entire amount of tax and penalty within the specified date, i.e., 31.12.2015;

(b) Where the declaration has been made by misrepresentation or suppression of facts or information.

Where the declaration is held to be void for any of the above reasons, it shall be deemed never to have been made and all the provisions of the Act, including penalties and prosecutions, shall apply accordingly.

Any tax or penalty paid in pursuance of the declara-

tion shall, however, not be refundable under any circumstances.

### **Effect of valid declaration**

Where a valid declaration as detailed above has been made, the following consequences will follow:

(a) The amount of undisclosed investment in the asset declared shall not be included in the total income of the declarant under the Income-tax Act for any assessment year;

(b) The contents of the declaration shall not be admissible in evidence against the declarant in any penalty or prosecution proceedings under the Income-tax Act, the Wealth Tax Act, the Foreign Exchange Management Act, the Companies Act or the Customs Act;

(c) The value of asset declared in the declaration shall not be chargeable to Wealth Tax for any assessment year or years.

(d) Declaration of undisclosed foreign asset will not affect the finality of completed assessments. The declarant will not be entitled to claim re-assessment of any earlier year or revision of any order or any benefit or set off or relief in any appeal or proceedings under the Act or under Income-tax Act in respect of declared undisclosed asset located outside India or any tax paid thereon.



## INCORPORATION OF CHARITABLE COMPANIES



Any person or an association of persons intending to be registered as a limited company for charitable purpose can apply for registration under section 8 of Companies Act, 2013. Its objects include promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment. The company on incorporation intends to apply its profits, if any, or other income in promoting such object. A section 8 company has a distinct legal entity, entirely independent of its members and has a perpetual succession. No member can independently or jointly claim ownership rights in the assets of the company during its existence. As per Rule 3(5) of Companies (Incorporation) Rules, 2014 'One Person Company' cannot be incorporated or converted into a company under Section 8.

### **Section 8 Company has to ensure that its:**

- objects clause in the Memorandum can be altered only after seeking the written approval from Central Government.
- profit and all other incomes are utilized only for the purpose of promoting its objects and not for any other purpose.
- profits are not distributed as dividend among its members.

### **Procedure for registration of Non Profit making Company**

Procedure for getting License under section 8 for new companies with charitable objects is given in rule 19 of Companies (Incorporation) Rules, 2014.

#### **Preliminary:**

- Obtain Digital Signatures:

It is essential to obtain a Class II Digital Signature Certificate from authorized DSC issuing Company for at least one director to sign the E-forms related to incorporation viz. Form INC.1 and other documents.

- Obtain Director Identification Number:

As per Section 153 of the Companies Act, 2013, every individual intending to be appointed as director of a company shall make an application for allotment of Director Identification Number in form DIR.3 to the Central Government. Therefore, before submission of e-Form INC.1 for availability of name, all the directors of the proposed company must ensure that they are having DIN and if they are not having DIN, it should be first obtained.

#### **Application Procedure for New Companies:**

- Apply for reservation of name to Registrar of Companies (ROC): Application for the reservation/availability of name shall be in Form no. INC.1 along with prescribed fees. In selection of Company name should be in accordance with name guidelines given in Rule-8 of Companies (Incorporation) Rules, 2014.

- File an application to ROC for getting registration under this act, along with following documents:
  - Draft Memorandum of Association in Form No. INC-13.
  - Draft Articles of Association.
  - Declaration by an Advocate, a Chartered Accountant, Cost Accountant or Company Secretary in practice in Form No. INC-14.
  - Estimate of three years future financial statements of the company.
  - Declaration by each of the desirous person making application in Form No. INC-14.
- The Registrar, after satisfying himself about the correctness of the application may issue a licence in Form No. INC – 16. Registrar is having power to include in the licence such other conditions as may be deemed necessary by him.

**Application Procedure for Existing Companies:**

- File an application to ROC for getting registration under this act, along with following documents:
  - Memorandum and Articles of Association.
  - Declaration by an Advocate, a Chartered Accountant, Cost Accountant or Company Secretary in practice in Form No. INC-14.
  - Financial statements, Boards Report and Audit report for the last 2 years immediately preceding the date of application. If the company has functioned for only one financial year, then

these are required only for last year.

- Estimate of three years future financial statements of the company.
- Certified copy of resolutions passed in general or board meeting approving registration under this act.
- Declaration by each of the desirous person making application in Form No. INC-14.
- The Registrar, after satisfying himself about the correctness of the application may issue a licence in Form No. INC – 17. Registrar is having power to include in the licence such other conditions as may be deemed necessary by him.

**Revocation of licence:**

The Central Government has the power to revoke licence granted under section 8.

The licence can be revoked only if the company:

- contravenes any of the requirements of this section ; or
- contravenes the conditions subject to which licence is issued; or
- affairs are conducted in a fraudulent manner or in violation of object of the company or prejudicial to the interest of the public.

Further, the Central Government may direct the company to change its status from section 8 company to either private or public limited company. And also direct it to change its name to include the word “Limited” or words “Private Limited”. However, before making such an order, the Central Government shall give reasonable opportunity of being heard to the company.

Further, after revocation the company shall intimate and apply to the Registrar for converting its status

**Effects of revocation of licence:**

Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section.

However, before making such an order, the Central Government shall give a reasonable opportunity of being heard to the company.

**Exemptions:**

- 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.
- The provisions in respect of appointment of independent directors (IDs) and Nomination and Remuneration Committee will not be applicable to such companies.
- The audit committees of such companies need not have Independent Directors.
- The restrictions on number of directorships have also been exempted for these companies.
- These companies are allowed to hold board meetings once in six months instead of four meetings in a year, as prescribed for other companies.
- 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.
- 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 has also been

provided.

**Taxability:**

Sec.8 are regarded as a 'company' within the meaning of Income Tax Act, 1961 and consequently taxable according to the applicable rates similar to those applying to other companies. Section 8 companies can also get registration under Section 12A of Income Tax Act, 1961 to claim various exemptions given under sections 11, 12 and 10(23C) of Income Tax Act.

**Penalty:****For company:**

- punishable with fine which shall not be less than rupees ten lakhs but which may extend to rupees one crore.

**For directors and every officer of the company:**

- punishable with imprisonment for a term which may extend to three years; or
- punishable with fine which shall not be less than rupees twenty five thousand but which may extend to rupees twenty five lakhs; or
- with both, imprisonment and fine.





**List of forms for Section 8 Companies:**

<b>Form No.</b>	<b>Rule</b>	<b>Subject</b>
INC-1	8 of the Companies (Incorporation) Rules, 2014	Application for the reservation of a name
INC-12	19 & 20 of the Companies (Incorporation) Rules, 2014	Application for grant of licence under Section 8
INC-13	19(2) of the Companies (Incorporation) Rules, 2014	Memorandum Of Association
INC-14	19(3)(b) of the Companies (Incorporation) Rules, 2014	Declaration by an Advocate, Chartered Accountant, Cost Accountant or a Company Secretary in practice.
INC-15	19(3)(d) of the Companies (Incorporation) Rules, 2014	Declaration by each person desirous of incorporating company under Section 8
INC-16	20 of the Companies (Incorporation) Rules, 2014	Licence is issued under Section 8(1)
INC-17	20 of the Companies (Incorporation) Rules, 2014	Licence is issued under Section 8(5)
INC-18	21(3) of the Companies (Incorporation) Rules, 2014	Application to Regional Director for conversion of Section 8 company into company of any other kind.
INC-19	22 of the Companies (Incorporation) Rules, 2014	Notice that application has been made to registrar for grant of licence under Section 8(5).
INC-20	23 of the Companies (Incorporation) Rules, 2014	Intimation to registrar of revocation/ surrender of licence issued under Section 8.

## RECENT NOTIFICATIONS & CIRCULARS

### Direct Tax



#### **Clarifications on Rollback Provisions of Advance Pricing Agreement Scheme—Circular No. 10/2015, dated 10-06-2015**

The Advance Pricing Agreement provisions were introduced in 2012 through insertion of Sections 92CC and 92CD in the Income-tax Act, 1961 by the Finance Act,

2012. Subsequently, the Advance Pricing Agreement Scheme was notified vide Notification No. 36/2012, dated 30/8/2012, thereby inserting Rules 10F to 10T and Rule 44GA in the Income-tax Rules, 1962.

Rollback provisions in the APA Scheme were introduced through sub-Section (9A) inserted in section 92CC by the Finance (No. 2) Act, 2014 and the relevant rules, namely, Rules 10MA and 10RA, have been notified recently vide Notification No. 23/2015 dated 14th March, 2015 and Notification No. 33/2015 dated 1st April, 2015. Subsequent to the notification of the rules, the CBDT has received requests for clarification regarding certain issues. Accordingly, the CBDT has, through this circular, given the clarifications through a Question and Answer format adopted for the said purpose.

### Customs

#### **Appointment of Common Adjudicating Authority**

CBEC vide Notification No. 60/2015-Customs (N.T.), dated 04.06.2015, in terms of section 152 of the Customs Act, 1962, has delegated its power to Principal Director General of Directorate of Revenue Intelligence (DRI), New Delhi for appointing officers of the rank of Commissioner of Customs or Additional Director General of the said Directorate for the purpose of adjudication of cases investigated by that Directorate.

In this regard, CBEC vide Circular No. 18/2015-Cus, Dated: June 09, 2015 has further clarified that all

cases of appointment of common adjudicating authority in respect of cases investigated by DRI will be handled by Principal DG, DRI with regards to the guidelines notified therein. However, all other cases of appointment of common adjudicator would continue to be dealt by the Board and all the pending cases where common adjudicating authorities have not been appointed so far or where the common adjudicating authorities have been appointed but adjudications have not been done would be disposed of expeditiously subject to guidelines and consideration of facts.

## RECENT NOTIFICATIONS & CIRCULARS

### FEMA

#### Foreign Currency (Non-Resident) Accounts–FCNR(B) Scheme

It has come to the notice that AD banks insist on different requirements at the time of closure of FCNR (B) deposits and subsequent remittance of funds such as submission of Form A2, insisting on physical presence of the account holder, asking the purpose of remittance etc.

In this connection, it is clarified that A2 form is to be

filed at time of purchase of foreign exchange using rupee funds and hence is not applicable while remitting FCNR (B) funds. Further, banks with help of technology will have to devise better alternatives/methods for ensuring bonafides of the transaction rather than insisting on physical presence of the account holder in order to ensure hassle free remittance of funds to the account holder.

#### External Commercial Borrowings (ECB) denominated in Indian Rupees (INR)–Mobilisation of INR

In terms of A. P. (DIR Series) Circular No. 25 dated September 3, 2014, recognised non-resident ECB lenders may extend loans in Indian Rupees subject to, inter alia, the lender mobilising Indian Rupees through a swap undertaken with an AD Cat-I bank in India.

To facilitate ECB lending denominated in INR by overseas lenders, it has now been decided that such lenders may enter into swap transactions with their overseas bank which shall, in turn, enter into a back-to-back swap transaction with any AD Cat-I bank in India as per the procedure given below:

- i. The NR lender approached overseas bank with appropriate documentation evidencing INR denominated ECB with request for swap rate for mobilising INR for onward lending to Indian borrower.
- ii. The overseas bank in turn approaches AD Cat-I bank for swap rate.
- iii. KYC certification on end client shall also be taken

by AD bank in India from overseas bank.

- iv. AD bank must satisfy itself about the existence of underlying ECB in INR and offer an indicative swap rate to the overseas bank which in turn will offer the same to non-resident lender on back-to-back basis.
- v. The continuation of the swap shall be subject to the existence of the underlying ECB at all times.
- vi. On the due date, settlement may be done through the Vostro account of the overseas bank maintained with its correspondent bank in India.
- vii. All other Operational Guidelines, Terms and Conditions as contained in the annex to A. P. (DIR Series) Circular No.63 dated December 29, 2011 governing hedging of ECBs denominated in INR shall apply, mutatis mutandis.
- viii. The concerned AD Cat-I bank shall keep on record all related documentation for verification by Reserve Bank.

## CASE LAWS

### Direct Tax



- **INCOME FROM HOUSE PROPERTY**

Where the assessee let out the terrace of his building to two companies for installation of mobile antennas thereon and received rent, the rental income was assessable as 'income from house property' since rent was for the space provided for installation of antennas opined the Delhi 'E' Bench in *Manpreet Singh v. ITO* (2015) 168 TTJ (Del) 502.

- **BUSINESS EXPENDITURE**

In *DCIT v. Jaipur Vidyut Vitran Nigam Ltd.* (2015) 167 TTJ (Jp) (UO) 24, the Jaipur Bench held that the front end fees paid by the assessee to Housing & Urban Development Corporation Ltd. as a precondition for sanction of loan by the latter to the assessee to be utilised for improvement in transmission, network and infrastructure is deductible as a revenue expenditure in toto in the year of payment even though the assessee has written off the amount over a period of five years in its books of accounts.

- **PENALTY**

In *Mitsuba Systems (India) (P) Ltd. v. DCIT* (2015) 168 TTJ (Mum) 507 where the assessee-company had claimed deduction of interest paid under

sections 234A, 234B & 234C as a business expenditure in its return of income and agreed to the disallowance on being queried during the course of assessment proceedings, the Mumbai 'B' Bench held that the assessee-company was liable for penalty under section 271(1) (c) as it consciously claimed the said deduction which cannot be treated as a mere mistake.

#### **Shoreline Hotel Pvt. Ltd vs. CIT (ITAT Mumbai)**

**Bogus purchases:** Manner of computing profits in the case of bogus purchases by an assessee who is not a dealer in the goods but has consumed the goods in his business explained

As per our considered view, since the purchases so made were not sold by the assessee, the AO was not justified in estimating 15% profit on such bogus purchases. However, such bogus purchases/expenses were going to reduce the assessee's profits by the equal amount of such expenses and not only by 15% as taken by the AO. It was not a case where purchases so made were actually sold by the assessee. Where assessee is found to have sold the goods out of the bogus purchases, under those circumstances it is reasonable to estimate profit out of such sales so as to make appropriate addition. However, in the instant case the assessee was engaged in the business of hotel wherein the expenditure alleged to be incurred on plumbing, electrical items, furniture, printing and stationary etc appears to have reduced directly the profit earned by assessee .

## CASE LAWS

### Direct Tax

- **SECTION 40(a)(i)**

The Pune 'A' Bench in Gera Developments (P) Ltd. v. JCIT (2015) 169 TTJ (Pune) 181 where the facts were that the assessee company paid architectural fees to a nonresident which was not debited to the profit & loss account but was capitalised as work-in-progress and shown in the balance sheet and the fees paid was not claimed as a deduction from the business profits, took the view that the fees paid could not be disallowed under section 40(a)(i) as it was not claimed as a revenue expenditure.

- **KLR Industries Ltd vs. DCIT (ITAT Hyderabad)**

S. 68: If the assessee has furnished the details of the creditors with their PAN, the onus is on the AO to examine their credit-worthiness and source of payment to assessee

If at all the A.O. or CIT(A) had any doubt with regard to creditworthiness of the creditors, it should have triggered an enquiry by the A.O. to find out the real facts. When the identity of the creditors along with their income tax particulars including PAN and assessment details were available with the A.O. it would not have been difficult on the part of the A.O. to verify their bank accounts and other details to ascertain whether the advances were from explained sources. Even the A.O. could have taken up the issue with the concerned A.Os with whom the creditors are assessed

- **WEALTH TAX**

In Shah Rukh Khan v. ACWT (2015) 167 TTJ (Mum) 73 where the wife of the assessee purchased a house for Rs. 1,65,95,000 and jewellery for Rs. 62,93,530 out of the interest-free loan given by him and she had repaid a part of the loan, the Mumbai 'H' Bench expressed the view that Interest-free loan cannot be said to be a transfer and, therefore, it could not be included in the net wealth of the assessee under section 4 (1)(a)(i).

- **CIT vs. DLF Commercial Project Corp (Delhi High Court)**

S. 40(a)(ia): The obligation to deduct TDS is only with respect to "income". As amounts paid as "reimbursement of expenses" do not have the character of income, there is no obligation to deduct TDS

Section 194C (TDS for "work") and Section 194J (TDS of income from "professional services"- the latter expression defined expansively by Section 194J (3) Explanation (a)). Neither provision obliges the person making the payment to deduct anything from contractual payments such as those made for reimbursement of expenses, other than what is defined as "income". The law thus obliges only amounts which fulfil the character of "income" to be subject to TDS in such cases; for other payments towards expenses, the deduction to those entitled (to be made by the payee) the obligation to carry out TDS is upon the recipient or payee of the amounts.

## CASE LAWS

### Indirect Tax

#### **Coal Handlers Pvt Ltd V. CCE, 2015 (38) STR 897 (SC)**

The Supreme Court held that when the assessee has no role in (a) getting goods cleared from supplier, (b) movement of the goods, (c) loading/unloading of the goods, (d) warehousing the goods, (e) dispatching goods as per direction of principal, (f) maintaining records of receipt & dispatch, (g) preparing invoice on behalf of principal, then the activity rendered by the assessee does not fall under C&F agent service(S.65(25)). The activity of mere supervising and liaising with the coal company (supplier) as well as railways (carrier), without taking possession of goods and to see that materials required by principal is loaded as per schedule does not fall under C& F agent service. Note: Above decision applies to prenegative regime service tax law. Consideration for mere liaising and supervising would fall within ambit of Service u/s 65B(44) and may be liable to tax in the negative regime from 1.7.12. Aforesaid SC decision also approves Larsen & Toubro Ltd V. CCE, 2006 (3) STR 321 (Tribunal – Larger Bench) decision.

#### **ICICI Bank Ltd V. UOI, 2015 (38) STR 907 (Bom)**

The High Court held that revenue cannot threaten assessee with recovery action when assessee declares a particular service as not liable to service tax. The department had to assess the tax and pass an adjudication order either u/s 72 or u/s 73 for such service declared as not tax-

able by assessee. Further held that when assessee has paid tax for such service under duress/ coercion, the revenue cannot argue that SCN need not be issued since tax has already been paid by assessee. Additionally, High Court held that tax becomes payable only after determination/ adjudication thereof u/s 72/ 73 of FA, 44.

#### **Reliance Infratel Ltd V. CST, 2015 (38) STR 984 (T)**

The Tribunal held that credit availed on steel structures, cables, pre-fabricated buildings used in erection/ fabrication of telecom towers would be available for assessee providing 'passive telecom infrastructure' to telecom companies under 'Business Support Service'. The assessee had availed the aforesaid credit as capital goods but since credit was not available under capital goods, credit was granted under inputs for the self-same goods. Note: Cenvat Credit on Towers/ Prefabricated buildings were not allowed credit as capital goods in Bharti Airtel Ltd case, 2014 (35) STR 865 (Bom). The Tribunal supra has distinguished Bharti Airtel case on the ground that output service rendered in Reliance Infratel case was 'Business Support Service' whereas output service was 'telecommunication service' in Bharti Airtel case. Reliance has been placed by Tribunal on GTL Infrastructure Ltd case, 2015 (37) STR 577 (T), where credit on similar items was allowed and similar service albeit classified under 'Business Auxiliary Service'.

## CASE LAWS

### Indirect Tax

- **Greater Noida Industrial Development Authority V. CCE, 2015 (38) STR 1062 (T)**

The Tribunal held that: (1) Vacant land given on lease or license for construction of a building or a temporary structure at a later stage for furtherance of business as per clause (v) of S.65(105) (zzzz) would be liable to service tax under 'renting of immovable property service' from 1.7.10 though renting of immovable property service was amenable to tax from 1.6.07 since clause (v) was inserted only from 1.7.10. (2) Lease whether for a short period or for a long term or perpetuity would be amenable to service tax. (3) Service tax would not be payable on 'premium' received over and above rent received for long term leases since premium is in the nature of 'salami' i.e. a capital receipt paid by lessee to lessor for transfer of interest in the immovable property and not for continuous enjoyment of property (rent is for continuous enjoyment of property). – Reliance on CIT V. Panbari Tea Co Ltd, (1965) 3 SCR 811 for distinction between rent and premium on rent. (4) Processing charges of application for land allotment is liable to service tax since 'activities in relation to renting of immovable property' is also a taxable service. (5) Processing and approval of building plan, map revision, malba charges connected with construction of structures on land allotted by assessee does not have any nexus with renting and hence not taxable. (6) Restoration charges or penalty is amount collected for violation of conditions of lease and hence not liable to

service tax. (7) Rent/ License fee received by appellant from their staff, to whom residential units have been let out is not renting in the course of furtherance of business and commerce and hence not liable to service tax.

- **CCE Vs Puissance DE DPK**

Central Excise - Valuation - Transportation charges up to the buyer's premises and unloading charges are not includable in the assessable value.

Erection and Commissioning charges - No change in position after introduction of transaction value - There is nothing in the definition to include expenses for the service of erection and commissioning in the value of excisable goods - Excise duty is chargeable at the stage of removal of goods as it is at the stage of removal and not after its attachment to the earth - Not includable in the value.

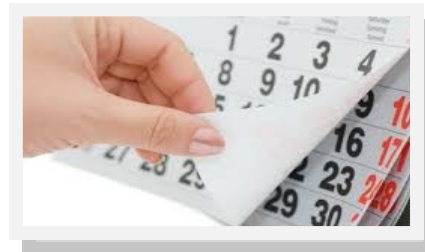
Value of acoustic enclosures - If the goods like acoustic enclosure is manufactured in the factory of respondent and cleared, excise duty is payable on it whether it is cleared along with DG sets or separately - Since the respondents are not in a position to demonstrate that the items in question were not manufactured by them the appeal filed by Revenue in this respect is allowed. - Appeal disposed of : CHENNAI CESTAT



## DUE DATES FOR STATUTORY PAYMENTS – JULY 2015

Sl. No	Due Date	Act	Description
1	06-07-2015	Central Excise	Payment of Excise Duty for all Assesses (including SSI Units)
2	06-07-2015	Service Tax	Service Tax Payment for Month June (Companies)
3	06-07-2015	Service Tax	Service Tax Payment for Quarter April- June ( Other than Companies)
4	07-07-2015	TDS/TCS	TDS/TCS payment for June
5	07-07-2015	TDS/TCS	
6	07-07-2015	Income Tax	Form 15G/H submission received in June
7	10-07-2015	Central Excise	Filing ER-1 Return (Other than SSI Units)
8	10-07-2015	Central Excise	Filing ER-2 monthly return by 100% EOU (removing goods in domestic tariff area)
9	10-07-2015	Central Excise	Filing monthly ER-6 Return by specified class of Assesses regarding principal inputs.
10	10-07-2015	Central Excise	Exports – Procurement of specified goods from EOU for use in manufacture of Export goods in Form Ann-17B for DTA units, procuring specified goods from EOU for manufacture of export goods.
11	10-07-2015	Central Excise	– Proof of Exports in form Ann.-19, once in a month for all exporters, exporting goods under Bond
12	10-07-2015	Central Excise	– Export detains in Form Ann.-20, for Manufacturing following simplified export procedure
13	10-07-2015	Central Excise	– Removal of excisable goods for specified use at concessional rate of duty in terms of Rules described
14	15-07-2015	ESIC	Monthly – EPF – Return of Employees qualifying for membership to the EPF for the first time during previous month





## DUE DATES FOR STATUTORY PAYMENTS – JULY 2015

Sl. No	Due Date	Act	Description
15	15-07-2015	ESIC	Monthly – EPF – Return of member leaving service during the previous month
16	15-07-2015	ESIC	Exempted establishment – EPS/ EDLIS – Monthly Return of members joining service during the previous month.
17	15-07-2015	ESIC	Exempted establishment – EPS/EDLIS – Monthly Return of Members Leaving Service During the previous Month
18	15-07-2015	Provident Fund (includes EDLI)	PF Payment for June(5 days grace allowed)
19	15-07-2015	Income Tax	Quarterly statement of TDS/TCS deposited for the quarter ending June 30, 2015 when tax is deducted/collected by a person other than an office of Government
20	21-07-2015	ESIC	ESIC Payment and Return for June
21	22-07-2015	Income Tax	Due date for issue of TDS Certificate for tax deducted under Section 194-IA in the month of June, 2015
22	25-07-2015	ESIC	Monthly – Consolidated Statement of dues and remittance under EPF Scheme, 1952, EPS 1995 and Employees' Deposit Linked Insurance Scheme, 1976 of the previous month to which the dues relate.
23	25-07-2015	Provident Fund (includes EDLI)	PF Return filing for June (including pension and insurance scheme forms)
24	30-07-2015	Income Tax	Quarterly TDS certificate (in respect of tax deducted for payments other than salary by a person not being an office of the Government) or quarterly TCS certificate (in respect of tax collected by any person) for the quarter
25	31-07-2015	Income Tax	Quarterly return of non-deduction of tax at source by a banking company from interest on time deposit in respect of the quarter ending June 30, 2015
26	31-07-2015	Income Tax	Quarterly statement of tax deducted if the deductor is an office of the Government for the quarter ending June 30, 2015

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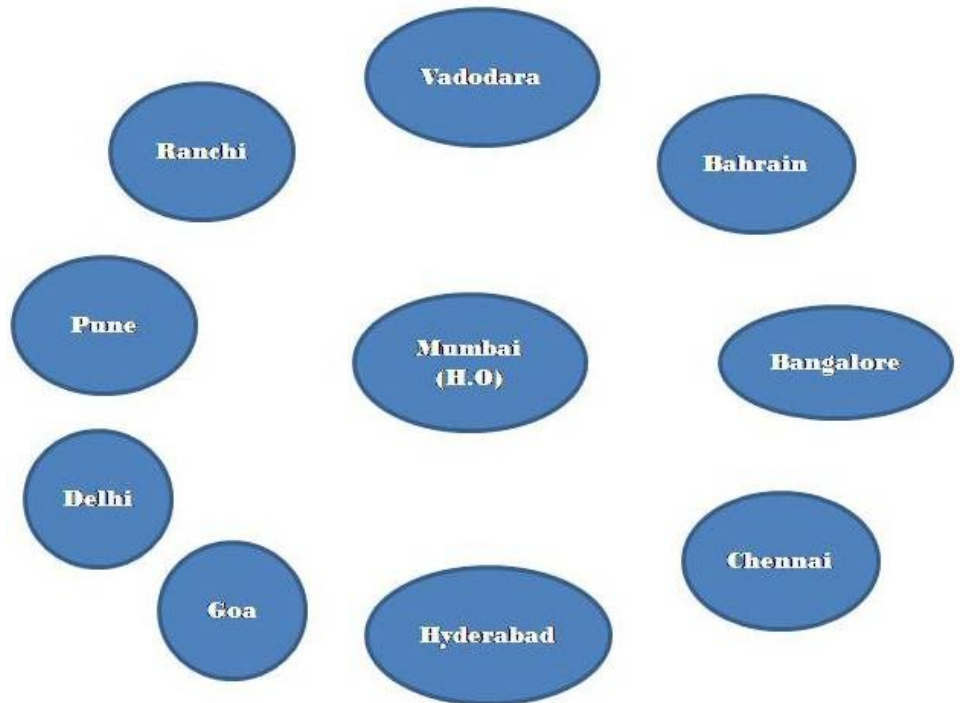
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