

NIHAR A MEHTA & CO.

SUTARIA ASSOCIATES

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Dear Professional Colleague,

In our pursuit to keep ourselves updated with various notification, circulars, we are making an attempt to connect our fellow Chartered Accountants in practice as well as Professionals those in corporate to various legal update through the our Legal Archive, a monthly publication jointly carried out by Nihar A. Mehta & Co. And Sutaria Associates meant for private circulation only.

Hope you all find our Fifth Journal endeavor fruitful for your practice and area of work.

The Journal contains 6 amendments of Income tax, 5 in relation to FEMA, 1 International Tax Amendments, 1 Service tax and 1 MVAT amendments

Hope you find it an interesting read 😊

With warm regards,

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Income Tax

1. Income from unlisted share sale to be taxed as capital gain

F.No. 225/12/2016/ITA.II

- In order to have a uniform approach and avoid litigations, Income from sale of **unlisted shares** would be treated as capital gains and taxed at a lower rate than business income
- CBDT said that for determining the tax treatment of income arising from transfer of unlisted shares for which no formal market exists for trading, a need was felt to have a consistent view in assessments pertaining to such income.
- Therefore from now onwards Capital gain on sale of unlisted securities attracts a LTCG tax at the rate of 20 % with indexation benefit or STCG at 15 %.
- However, CBDT carves out three exceptions wherein this clarification shall not apply
 - genuineness of transactions in unlisted shares itself is questionable;
 - transfer of unlisted shares is related to an issue pertaining to lifting of corporate veil
 - transfer of unlisted shares is made alongwith the control and management of underlying business.

2. Changes in due date of Filing TDS statement w.e.f 01.06.2016

Notification No. 30/2016 Dated: 29.04.2016

- To provide deductors sufficient time in filing of TDS Statement CBDT has revised due date for filing above referred TDS statements for Government and non-government deductors w.e.f 01.06.2016 to as follows:

Quarter	New Dates
Q1	31st July of the financial year
Q2	31st October of the financial year
Q3	31st January of the financial year
Q4	31st May of the financial year immediately following the financial year in which the deduction is made".

- Further, CBDT has also extended due date for payment of TDS on transfer of immovable property u/s 194IA to 30 days from existing 7 days.
- CBDT has also specified a specific format for Salaried Employees to furnish a declaration in Form 12BB to their employers in respect of Tax Deduction they are eligible under various provisions of Income Tax Act, 1961 ('Act') alongwith Supporting.
- All sums collected in accordance with the provisions of sub-section (1) or sub-section (1C) of section 206C by collectors other than an office of the Government shall be paid to the credit of the Central Government within one week from the last day of the month in which the collection is made.

3. Implementation of Ind AS & its impact on calculation of MAT

- Since, the provision related to adoption of Ind AS has come into picture; it has been a matter of debate that how much it will impact the MAT liability of the company.
- The recommendation of Lohia Committee to CBDT put a light on this scenario and also suggests that how this matter can be take care. After adoption of Ind AS, an Ind AS compliant company shall be required to bifurcate its profit and loss into the following two parts:
 - Net Profit/(loss) for the year.
 - Net other comprehensive income (OCI).
- The OCI includes certain items that will permanently be recorded in reserves and hence never be reclassified to the statement of profit & loss account. The committee recommends that this item should be included in Book Profit for MAT purposes at an appropriate point of time. The following examples has been given in the report:
 - Changes in revaluation surplus – to be included in book profits at the time of realization/disposal/retirement.
 - Re-measurements of defined benefit plans – to be included in book profits every year as the re-measurements gains and losses arise.

- Gains and losses from investments in equity instruments designated at fair value through other comprehensive income – to be included in book profits at the time of realization.
- Further all the adjustment which are required to make first time while transition to Ind AS would directly accounted in retained earnings/reserves and would otherwise **never subsequently be reclassified to the profit and loss account**, should be included in book profits in the year of first time adoption of IND- AS.

4. Method of determination of period of holding of capital assets in certain cases

Notification No. 18/2016, dated 17-03-2016

- As per Section 47(x) of the Act, any transfer by way of conversion of bonds or debentures, debenture-stock or deposit certificates in any form of a company into shares or debentures of that company shall not be regarded as transfer for the purposes of levy of capital gains tax.
- CBDT has expended the method of determination of period of holding of capital assets specifically by including the period for which the bond, debenture, debenture-stock or deposit certificate, as the case may be, was held by the assessee prior to the conversion, in the above case

5. Request to taxpayers to avail facility for online rectification

Press Release, dated 01-04-2016

- The e-filing portal of the Income Tax Department provides the utility for online filing and tracking of rectification requests. Taxpayers who are not satisfied with the outcome of processing of their Income Tax Return by the CPC, Bengaluru can avail of the facility of online filing and tracking of rectification requests available on website.
- In case of any mistake in data entry of Tax payment or TDS details, taxpayer can select the “Rectification Request Type->Taxpayer is correcting data for Tax Credit mismatch only” and use the option of pre-filling the correct details for the relevant Assessment Year while submitting the rectification request.

- In case of data entry mistake in any other Schedule or omission of any details, taxpayer can select the option “Taxpayer is correcting Data in Rectification” and the reason for seeking rectification.

6. Release of new functionality to taxpayers to secure their E-filing account

Press Release, dated 04-04- 2016

- In order to ensure that taxpayers are able to secure their E-filing account against any fraudulent attempts, the Income Tax Department has introduced a new facility called the “E-filing Vault”.
- In order to use this facility, taxpayers can log in to their E-filing Account and under their profile page select “E-filing Vault–higher security”.
- Taxpayers can then select to login with any one or multiple options of the higher security methods namely–using Aadhaar linkage to generate OTP, Login through Net-Banking or Login using Digital Signature Certificate (DSC).

SERVICE TAX

1. Point of Taxation in case of change in the liability or extent of liability under Reverse Charge to be Date of Invoice

Notification No. 21/2016-Service Tax, Dated: March 30, 2016

- CBEC vide has inserted a proviso in Rule 7 of Point of Taxation Rules, 2011 to provide that where there is a change in provisions relating to the services taxed under reverse charge/partial reverse charge (service taken out of reverse charge application or change in % payable by recipient under reverse charge) but the service has already been provided, invoice has been issued and the payment has not been received, then in such cases the point of taxation would be the date of issuance of invoice.

MVAT

1. Small MVAT Changes but A Big Effect on Small Dealers

- Dealers covered under composition scheme are those, who have small businesses like retailers having annual turnover of less than Rs.1 Crore, bakers, restaurant dealers etc are **not required** to maintain books of account,
- Further Set-off on Purchases would not be allowed and also cannot issue tax invoice and calculation of VAT in such cases is simple and easy, along with further conditions.
- Now the limit of annual turnover of Rs 50 Lakhs has been increased to Rd 1 Crore for the dealer being a retailer who has an option to opt for the composition scheme
- Further, If annual turnover in previous year is Rs 3 Crore then VAT rate would be 5%. If the annual turnover is more than 3 Crore then the VAT rate applicable would be 8% and for unregistered dealer rate of VAT is 10%.
- Every dealer covered under the composition scheme will have to file MVAT return quarterly.
- Under the new return, dealers covered under composition scheme shall be liable to fill the purchase annexure but are not required to fill the sales annexure.
- Dealers under composition scheme shall file return under the FORM 232. Separate annexure of it needs to be filed. It cannot be merged with other return types in new return excel file template.

FEMA

1. Reporting Mechanism for Diamond Dollar Account

A.P. (DIR Series) Circular No. 54 dated March 23, 2016

- With a view to liberalise the procedure, the requirement of AD Bank to submit quarterly reports giving details of the name and address of the firm/ company in whose name the Diamond Dollar Account is opened, along with the date of opening/ closing the Diamond Dollar Account to Reserve Bank of India, Trade Division and requirement to submit fortnightly statements giving data on DDA balances to Reserve Bank in terms of Part IX, Para 1(f) of Master Direction have been dispensed with immediate effect.
- AD banks may however, maintain the above database at their own end and make available the same as and when called upon by the Reserve Bank of India.

2. Investment by Foreign Portfolio Investors (FPI) in Government Securities

A.P. (DIR Series) Circular No. 55 dated March 29, 2016

- As announced in the MTF, the limits for investment by FPIs in Central Government Securities for the next half year are proposed to be increased in two tranches, i.e., by Rs 105 billion from April 4, 2016 and by Rs 100 billion from July 5, 2016 respectively.

3. Revised framework of External Commercial Borrowings

A.P. (DIR Series) Circular No. 56 dated March 30, 2016

- Taking into account prevailing external funding sources for long term lending and the critical needs of infrastructure sector of the country, the extant ECB guidelines have been reviewed in consultation with the Government of India.
- Accordingly, it has been decided to make the following changes in the ECB framework:
 - Companies in infrastructure sector, NBFC-IFCs, NBFC-AFCs, Holding Companies and CICs will also be eligible to raise ECB under Track I of the framework with minimum average maturity period of 5 years, subject to 100% hedging.

- Companies in infrastructure sector shall utilise the ECB proceeds raised under Track I for the end uses permitted for this Track. NBFCs-IFCs and NBFCs-AFCs will, however, be allowed to raise ECB only for financing infrastructure.
- Holding Companies and CICs shall use ECB proceeds only for on-lending to infrastructure Special Purpose Vehicles (SPVs).
- The individual limit of borrowing under the automatic route for aforesaid companies shall be as applicable to the companies in the infrastructure sector (currently USD 750 million).
- Companies in infrastructure sector, Holding Companies and CICs will continue to have the facility of raising ECB under Track II of the ECB framework subject to the conditionality's prescribed thereof.

4. Import of Rough, Cut and Polished Diamonds

A.P. (DIR Series) Circular No. 57 dated March 31, 2016

- AD Category - I banks were permitted to approve Clean Credit from any Indian financial institution for import of Rough, Cut and Polished Diamonds, for a period not exceeding 180 days from the date of shipment.
- With a view of easing the operational difficulties faced by the importers, it has been decided, in consultation with the Government of India, to delegate the powers for permitting such clean credit for a period exceeding 180 days from the date of shipment to the AD banks, subject to the following conditions:
 - AD banks being satisfied of the genuineness of the reason and bonafide of the transaction and also that no payment of interest is involved for the additional period.
 - The reasons for such extension are due to financial difficulties and/or quality disputes, as in the case of normal imports (for which such extension of time period for delayed payments has already been delegated to the AD banks).
 - The importer requesting for such extension is not under investigation/no investigation is pending against the importer
 - The importer seeking extension is not a frequent offender.

- AD banks may allow such extension of time up to a maximum period of 180 days beyond the prescribed period/due date, beyond which they may refer the cases to respective Regional Office of the Reserve Bank AD banks may submit a half yearly report of such extensions allowed customer-wise, to the respective Regional Office of the Reserve Bank.

5. Guidelines for Foreign Direct Investment (FDI) on E-commerce

DIPP Press Note No. 3 (2016 Series) dated March 29, 2016

- In accordance with the extant guidelines, 100% FDI under automatic route is permitted in market place model of e-commerce.
- FDI is not permitted in inventory based model of e-commerce.
- Definition
 - E-Commerce means buying and selling of goods and services including digital products over digital and electronic network.
 - E-commerce entity means a company incorporated under Companies Act 1956 or Companies Act 2013 or a foreign company under Section 2(42) of the Companies Act 2013 or an office or branch or agency in India as provided in Section 2(v) (iii) of FEMA 1999, owned or controlled by a person resident outside India and conducting the e-commerce business.
 - Inventory based model of e-commerce means an e-commerce activity where inventory of goods and services is owned by e-commerce entity and is sold to the customers directly.
 - Market place based model of e-commerce means an providing of an information technology platform by an e-commerce entity on a digital and electronic network to act as facilitator between buyer and seller.
- Further, certain conditions have also been prescribed to be fulfilled by an e-commerce entity for market place model which are enumerated below:
 - Digital and electronic network will include network of computers, television channels and any other internet application used in automated manner such as web pages, extranets, mobiles etc.

- entity will be permitted to enter into transactions with sellers registered on its B2B platform.
- They may provide support services to sellers in respect of warehousing, logistics, order fulfilment, call centre, payment collection and other services.
- They won't be able to exercise ownership over the inventory.
- An e-commerce entity will not permit more than 25% of the sales affected through its marketplace from one vendor or their group companies.
- goods/services made available for sale electronically on website should clearly provide name, address and other contact details of the seller. Post sales, delivery of goods to the customers and customer satisfaction will be responsibility of the seller.
- payments for sale may be facilitated by the e-commerce entity in conformity with the guidelines of the RBI.
- Any warranty/guarantee of goods and services sold will be the responsibility of the seller.
- E-commerce entities providing market place will not directly or indirectly influence the sale price of goods or services and shall maintain level playing field.
- Guidelines for cash and carry wholesale trading of the FDI Policy will apply on B2B e-commerce.

International Taxation

1. Commission paid outside India to a non-resident for services rendered outside India is not chargeable to tax in India and is not liable for TDS

CIT vs. Farida Leather Company (Madras High Court)

A welcome ruling from Madras High Court for Agents rendering serviced outside India on behalf of Indian. Important part of the rulings is stated as follow:

- Merely because a person has not deducted tax at source or a remittance abroad, it cannot be inferred that the person making the remittance has committed a default in discharging his tax withholding obligations because such obligations come into existence only when the recipient has a tax liability in India.
- The tax withholding liability of the payer is inherently a vicarious liability on behalf of the recipient. This vicarious tax withholding liability cannot be invoked, unless primary tax liability of the recipient/foreign agent is established
- The non-resident agents were only procuring orders abroad and following up payments with buyers. No other services are rendered other than the above. Sourcing orders abroad, for which payments have been made directly to the non-residents abroad, does not involve any technical knowledge or assistance in technical operations or other support in respect of any other technical matters. Thus, by no stretch of imagination, it cannot be said that the transaction partakes the character of “fees for technical services” as explained in the context of Section 9 (1) (vii) of the Act.
- In this case, the commission payments to the non-resident agents are not taxable in India, as the agents are remaining outside, services are rendered abroad and payments are also made abroad.
- **When the transaction does not attract the provisions of Section 9 of the Act, then there is no question of applying Explanation 4 to Section 9 of the Act. Therefore, the Revenue has no case and the Tax Case Appeal is liable to be dismissed.**