



Legal Archive

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Sutaria Associates

Nihar A Mehta & Co.

Income Tax

1. TDS and TCS statement can now be submitted online

Notification No.6/2016, dated 4-5-2016

- In exercise of power conferred by Rule 31A(5) and rule 31AA(5) of Income tax Rules, the Principal Director General of Income-tax (Systems) has laid down the following procedures of registration in the e-filing portal, the manner of the preparation of the statements and submission of the statements as follows:
- The deductors/collectors will have the option of online filing of e-TDS/TCS returns through e-filing portal or submission at TIN Facilitation Centres. Procedure for filing e-TDS/TCS statement online through e-filing portal is as under:
- **Registration** – The TAN number of the deductor / collector is required to be registered on the e-filing website
- **Preparation** – Prepare the TDS / TCS statement and upload as a zip file and submit using a DSC. The signature file for the zipped file will be generated using the DSC management Utility.
- **Submission** - Upload the "Zip" file along with the signature file and the status of the statement shall be shown as "Uploaded". The uploaded file shall be processed and validated at the e-filing portal. Upon validation the status shall be either "Accepted" or "Rejected" which will reflect within 24 hours from the time of upload. In case the submitted file is "Rejected", the reason for rejection shall be displayed.

2. Procedure for submission of Form 15G/15H under section 197A(1)/(1A) read with Rule 29C

Notification No.7/2016, dated 4-5-2016

- In exercise of the powers delegated by the CBDT under rule 29C(7), the Principal Director General of Income-tax (Systems) has laid down the following procedures

- **Registration** - The TAN number of the deductor / collector is required to be registered on the e-filing website
- **Preparation:** The prescribed schema for Form 15G/15H and utility to prepare XML zip file is available on the e-filing website. The declaration is required to be submitted using a DSC.
- **Submission** - Once uploaded, the file shall be processed and validated at the e-filing portal. Upon validation, the status shall be either "Accepted" or "Rejected" which will reflect within 24 hours from the time of upload. In case it is "Rejected", the reason for rejection shall be displayed and the corrected statement can be uploaded again.

3. Submit Form 15CC by an authorised dealer in respect of remittances under section 195(6) read with Rule 37BB

Notification No.8/2016, dated 4-5-2016

- Person responsible for paying to a non-resident or a foreign company any sum, whether or not chargeable to tax, is required to furnish the information relating to payment of such sum, in such form and manner, as may be prescribed.
- The Principal Director General of Income-tax (Systems) has laid down the procedure for submission of Form 15CC as follows:
 - **Generation of ITDREIN** – The reporting entity if already registered for ITR filing can use the same for filing Form 15CC. In case of others, register using TAN number.
 - **Submission of details of authorised person** - Once the details of authorised person are entered by the reporting entity, the authorised person will need to confirm through activation link on e-mail by entering the OTP sent on the mobile of the authorised person and generate the password.
 - **Submission of Form 15CC** - The prescribed schema for the report under Form 15CC and a utility to prepare XML file is available. The form is required to be submitted using DSC.

4. Limitation for penalty proceedings under sections 271D and 271E in the hands of Assessing Officer

Circular No. 09/2016, Dated 26-04-2016

- The CBDT Circular clarifies that the Assessing Officers (below the rank of Joint Commissioner of income-tax) have to make a reference to the Range Head, regarding any violation of the provisions of section 269SS and section 269T, as the case may be, in the course of the assessment proceedings (or any other proceedings under the Act).
- The Assessing Officer (below the rank of Joint Commissioner of Income-tax) shall not issue the notice in this regard. The Range Head will issue the penalty notice and shall dispose/complete the proceedings within the limitation prescribed under section 275(1)(c)
- the limitation period for the imposition of penalty under these provisions would be
 - the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or
 - six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later.

5. Interest on refund u/s 244A on excess TDS deposited under section 195

Circular No 11/2016, Dated 26-04-2016

- The Supreme Court of India, in Tata Chemical Limited Civil Appeal No. 6301 of 2011 vide order dated 26.02.2014, held that refund due and payable to the assessee is debt-owed and payable by the Revenue.
- Though there is no express statutory provision for payment of interest on the refund of excess amount/tax collected by the Revenue, the Government cannot shrug off its apparent obligation to reimburse the deductors lawful monies with the accrued interest for the period of undue retention of such monies. Thus the refund amount should be paid along with interest u/s 244A of ITA.

6. Verification of tax-returns for Assessment Years 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15 through EVC

Circular No. 13/2016, Dated 09-05-2016

- In case of returns for Assessment Years 2009- 10, 2010-11, 2011-12, 2012-2013, 2013-2014 and 2014-2015 which were efiled by the taxpayer within the time allowed u/s 139 of ITA and which have remained incomplete due to non-submission of ITR-V for verification, has permitted verification of such returns also through EVC. Such verification process must be completed by **31.08.2016**.
- The CBDT has also relaxed the time-frame for issuing the intimation as provided in second proviso to section 143(1) and directed that such returns shall be processed by 30.11.2016 and intimation of processing of such returns shall be sent to the taxpayer concerned as per the laid down procedure.
- In refund cases, while determining the interest, provision of section 244A(2) would apply.
- In situations where the taxpayer concerned had submitted the ITR-V after the permitted time and evidence of same is available with the Department, the same shall be treated as valid compliance.
- However, this relaxation shall not apply in those cases, where during the intervening period department has already taken recourse to any other measure for ensuring filing of tax return by the taxpayer.

7. Amendment in India - Mauritius DTAA

Press Release, dated 10-05-2016

- **Source-based taxation of capital gains on shares** - With this Protocol, India gets taxation rights on capital gains arising from alienation of shares acquired on or after 1st April, 2017 in a company resident in India while simultaneously protection to investments in shares acquired before 1st April, 2017 has been grand fathered and will not be subject to capital gain taxation.

Further, in respect of such capital gains arising during the transition period from 1st April, 2017 to 31st March, 2019, the tax rate will be limited to 50% of the domestic tax rate of India, subject to the fulfillment of the conditions as specified in the Article.

- **Limitation of Benefits (LOB):** The benefit of 50% reduction in tax rate during the transition period from 1st April, 2017 to 31st March, 2019 shall not be available to Shell company who fails to maintain purpose and bonafide business test.

- **Source-based taxation of interest income of banks:** Interest arising in India to Mauritian resident banks will be subject to withholding tax in India at the rate of 7.5% in respect of debt claims or loans made after 31st March, 2017.

MVAT

1. Increase in the turnover limit for opting Retailers Composition Scheme & other provisions

Trade Circular No. 9T of 2016 dated 22nd April, 2016

- The sales turnover limit for the eligibility of dealer to opt for Retailers Composition Scheme has been increased from R50 lakhs to R1 crores from 01.04.2016.

2. Amendments made to the Maharashtra Value Added Tax Act, 2002

1. Section 16: Rejection/Cancellation of Registration Certificate

- The prescribed authority may pass a rejection order without giving an opportunity of being heard but after intimating the applicant, if the
 - registration application is: -
 - not complete or
 - documents have not been uploaded on www.mahavat.gov.in or
 - documents are inconsistent or
 - prescribed conditions are not fulfilled
- Further, if the applicant complies with all the discrepancies intimated within 30 days from the date of intimation of rejection order and if such compliance is approved by the prescribed authority then the application so rejected, shall stand restored.
- If any person has obtained registration by fraud or by misrepresentation of facts then the Commissioner may cancel the registration certificate with effect from such date as he may deem fit after giving a reasonable opportunity of being heard to the dealer.

2. Section 20 (Returns & Self-assessment)

- A revised return for any omission or incorrect statement may be furnished at any time before a notice of assessment is served or before the expiry of a period prescribed for furnishing the audit report i.e. within 9 months and 15 days of the end of the year (earlier 10 Months) to which the report relates to, whichever is earlier.

3. Section 23 (Assessment)

- Returns for the period commencing on or after 01.04.2012 and filed within the due date would be assessed on the basis of such return. Further if assessment order is not made within 4 years from the end of the year to which such returns relate then such returns shall be deemed to have been accepted.
- An intimation of assessment proceeding shall be communicated to the dealer within 6 months before the date of expiry of the period of limitation for assessment.
- If the dealer agrees with the intimation and files the return or revised return along with full payment of tax and interest, then a confirmation order shall be passed and the assessment proceedings shall be deemed to have been closed.

4. Section 26 (Appeals)

- An appeal can also be preferred against the order of Advance Ruling Authority.
- A new **Section 28A (Determination of tax liability as per fair market price)** has been inserted by providing that during the course of any proceedings if any transaction is entered for a sale price which is below the fair market price (FMP) so as to pay less tax, then the Commissioner shall determine the tax liability as per the FMP while passing an order in such cases.

5. Section 31 (Deduction of tax at source)

- It has been provided to transfer the credit of TDS by the contractor to the subcontractor for the TDS deducted by principal on payment made to a contractor.
- Further, the employer awarding the contract shall be liable to obtain registration for TDS & such TDS return shall be filed by him.
- No registration is required to be obtained by an employer if he is already registered under the Act.
- Penalty upto the amount of tax deductible may be imposed for not obtaining such registration. A further penalty of upto Rs 5,000 may be imposed for failure to submit the return. The employer may also furnish a revised return on or before the expiry of a period of 9 months from the end of the year to which the return relates.

3. Amendments made to Maharashtra Value Added Tax Rules, 2005

Rule 17 (Submission of Returns)

- From 01.04.2016 returns are to be submitted electronically on the website.
- Sub-rule (4A) has been inserted stating that for the period commencing from 01.04.2016, a monthly return is to be filed within 21 days by the registered dealers if during the previous year his-
 - tax liability had exceeded R10 lakhs or,
 - refund had exceeded Rs 1 crore.
- Other registered dealers shall file a quarterly return within 21 days.
- Dealers who have not opted for the composition scheme and are not required to file Audit Report shall file the return along with other details of the entire year in Annexures appended to Form 704 (Audit Report).

4. Designation of Wednesday as Taxpayers' Day

[Trade Circular No. 17T of 2016 dated 9th May, 2016]

- The Maharashtra Government has designated Wednesday (2 pm to 5 pm) as Taxpayers' Day wherein Zone/Divisional/Unit heads of all offices will meet the taxpayers/other stakeholders in their chambers without any prior appointment to address their grievances relating to Sales Tax expeditiously.
- Further, it is declared that Service Cell Meeting of all dealers and their representatives will be held on first Saturday of third month of even quarter (i.e. June, September, December and March) at all the divisional levels.

FEMA

1. Acceptance of deposits by Indian Companies from a person resident outside India for nomination

Director A.P. (DIR Series) Circular No. 59 dated April 13, 2016

- In terms of Regulation 3 of Notification No. FEMA 5(R), no person resident in India shall accept deposit from, or make any deposit with, a person resident outside India.
- Under section 160 of the Companies Act, 2013, it is provided that a person who intends to nominate himself or any other person as a director in an Indian company is required to place a deposit with the said company.
- It is hereby clarified that such deposits with Indian companies in accordance with Section 160 of Companies Act, 2013 is a current account transaction and as such does not require any approval from Reserve Bank. Further, all refunds of such deposits, arising in the event of selection of the person as director or getting more than 25% votes, shall be treated similarly.

2. Overseas Direct Investment – Submission of Annual Performance Report (APR)

A.P. (DIR Series) Circular No. 61 dated April 13, 2016

- In order to provide greater capability to track submission of APRs of AD Banks and also improve compliance level in matter of submission of APRs by the IPs/RIs, it is now advised as under:
 - The online OID application has been suitably modified to enable nodal office of the AD bank to view outstanding position of all the APRs pertaining to the applicant including those of JV/WOS for which it is not the designated AD.
 - Accordingly, AD before undertaking/facilitating any ODI related transaction on behalf of the eligible applicant, should necessarily check with its nodal office to confirm that all APRs in respect of all JV/WOS of the applicant has been submitted.

- Certification of APRs by the Statutory Auditor or Chartered Accountant need not be insisted upon in the case of Resident Individuals. Self certification may be accepted;
- In case multiple IPs/RIs have invested in the same overseas JV/WOS, the obligation to submit APR shall lie with the IP/RI having maximum stake in the JV/WOS. Alternatively, the IPs/ RIs holding stake in the overseas JV/WOS may mutually agree to assign the responsibility for APR submission to a designated entity which may acknowledge its obligation to submit the APR in terms of Regulation 15 (iii) of Notification, *ibid*, by furnishing an appropriate undertaking to the AD bank; d.
- An IP/RI, shall submit, to the AD bank every year, an APR in Form ODI Part II in respect of each JV/WOS outside India and other reports or documents by 31st of December each year or as may be specified by the Reserve Bank from time to time.
- The APR, so required to be submitted, shall be based on the latest audited annual accounts of the JV/WOS unless specifically exempted by the Reserve Bank.
- Any non-compliance with the instruction relating to submission of APR shall be treated as contravention of Regulation 15 of the Notification No. FEMA 120/RB-2004 dated July 07, 2004 as amended and viewed seriously.

3. Changes in ODI Forms

A.P. (DIR Series) Circular No. 62 dated April 13, 2016

- In order to capture all data pertaining to the IP undertaking ODI as well as the related transaction, it has been decided to subsume Form ODI Part II within Form ODI Part I.
- Thus the Form ODI will have five sections instead of six.
- The revised Form ODI will now comprise the following parts:
 - Part I–Application for allotment of Unique Identification Number (UIN) and reporting of Remittances/Transactions:
 - Section A – Details of the IP/RI.
 - Section B – Capital Structure and other details of JV/WOS/ SDS.
 - Section C - Details of Transaction/Remittance/ Financial Commitment of IP/ RI.
 - Section D – Declaration by the IP/ RI.

- Section E – Certificate by the statutory auditors of the IP/self-certification by RI.
 - Part II - Annual Performance Report (APR)
 - Part III – Report on Disinvestment by way of
 - Closure / Voluntary Liquidation / Winding up / Merger / Amalgamation of overseas JV/WOS;
 - Sale/Transfer of the shares of the overseas JV/ WOS to another eligible resident or non-resident;
 - Closure/Voluntary Liquidation/Winding up/ Merger/Amalgamation of IP; and
 - Buy back of shares by the overseas JV/WOS of the IP/RI.
- A new reporting format has also been introduced for VCF/AIF, Portfolio Investment and overseas investment by Mutual Funds
- In case of reporting purchase and repurchase of ESOPs, the AD banks may continue to report the same in the existing format.
- Any post investment changes subsequent to the allotment of the UIN are required to be reported as indicated in the operational instructions on submission of Form ODI Part I
- AD banks before executing any ODI transaction must obtain the Form ODI Part I from the applicant in terms of Regulation 6 (2) (vi) of the Notification.
- Further, the AD bank should report the relevant Form ODI in the online ODI application and obtain UIN while executing the remittance

4. Revision of Remittance of Assets Regulations

A.P. (DIR Series) Circular No. 64/2015-16[(1)/13R] dated April 28, 2016

The salient features of the Remittance of Assets regulations are given as under:

- Remittance of capital assets in India held by a person whether resident in or outside India would require the approval of the RBI except to the extent provided in the Regulations.
- AD banks may allow remittance of assets, up to USD one million **per financial year**, by a foreign national (not being a PIO or a citizen of Nepal or Bhutan), on submission of documentary evidence, in case:
 - the person has retired from employment in India;

- the person has inherited the assets from a person referred to in section 6(5) of the Act;
 - the person is a non-resident widow/ widower and has inherited assets from the person's deceased spouse who was an Indian citizen resident in India.
- In case the remittance is made in more than one instalment, the remittance of all instalments should be made through the same AD.
- ADs may allow remittance of balance amount, held by a foreign student in a bank account in India, after completion of his/her studies/training in India.
- ADs may allow NRIs and PIOs, on submission of documentary evidence, to remit up to USD one million, per financial year:
 - out of balances held in their NRO accounts/sale proceeds of assets/assets acquired in India by way of inheritance/legacy;
 - out of assets acquired under a deed of settlement made by either of his parents or a relative as defined in Companies Act, 2013.
- Further an undertaking from the account holder is required stating that “the said remittance is sought to be made out of the remitter's balances held in the NRO account arising from his/her legitimate receivables in India and not by borrowing from any other person or a transfer from any other NRO account and if such is found to be the case, the account holder will render himself/herself liable for penal action under FEMA.”
- ADs may allow remittances by Indian companies under liquidation on directions issued by a Court in India.
- ADs may permit remittance of assets on closure or remittance of winding up proceeds of branch office/ liaison office (other than project office) as per RBI directions from time to time.
- Any transaction involving remittance of assets under these regulations are subject to the applicable tax laws in India.