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EDITORIAL

COMPOSITION SCHEME FOR SMALL DEALERS

Who can OPT for Composition Scheme

Amendments to the Finance Bill seek to replace certain Tribunals and transfer their functions to existing Tribunals. The rationale behind replacing these Tribunals is unclear. For example, the Telecom Disputes Settlement and Appellate Tribunal (TDSAT) will replace the Airports Economic Regulatory Authority Appellate Tribunal. It is unclear if TDSAT, which primarily deals with issues related to telecom disputes, will have the expertise to adjudicate matters related to the pricing of airport services. Similarly, it is unclear if the National Company Law Appellate Tribunal, which will replace the Competition Appellate Tribunal, will have the expertise to deal with matters related to anti-competitive practices

Subject to turnover limits prescribed a Registered person may opt to pay under composition scheme if:

- He is not engaged in the supply of services other than supplies referred to in clause (b) of paragraph 6 of Schedule II; supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration (food/restaurant services)
- He is not engaged in making any supply of goods which are not leviable to tax under this Act; Hence, suppliers supplying alcoholic liquor for human consumption, petroleum crude, high speed diesel, motor spirit (petrol), natural gas and aviation turbine fuel, or making inter-state outward supply of goods on which tax is levied under IGST Act are apparently not eligible for composition scheme
- He is not engaged in making any inter-State outward supplies of goods;

- He is not engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source under section 52; and
- He is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council
- Where more than one registered persons are having the same Permanent Account Number (issued under the Income-tax Act, 1961), the registered person shall not be eligible to opt for the scheme unless all such registered persons opt to pay tax under composition scheme

Rates of taxes under Composition Scheme

- Manufacturer-other than manufacturer of goods notified by Government 2% (CGST+SGST)
- Food/restaurant services- other than alcoholic liquor for human consumption 5% (CGST+SGST)
- Any other eligible supplier like Trader/agent 1% (CGST+SGST)

Certain more conditions and restrictions

- A taxable person cannot opt under composition scheme, say for supply of one class of goods and opt for regular scheme of payment of taxes for supply of other classes of goods or services. The scheme is qua taxable person and not qua class of goods
- Applicable on all transaction on a single PAN whether registered as separate business vertical or registered in separate State/UT
- A casual taxable person or a non resident taxable person cannot opt for composition scheme

DIRECT TAXATION

1.0 Depreciation under section 32(1)(iii) is available only to power generating units

The High Court of Delhi held that since depreciation allowance under section 32(1)(iii) applies only to undertaking engaged in generation and distribution of power, pharmaceuticals company was not entitled to write off value of assets under said section, it would only be entitled to depreciation under section 32(1)(i)

Commissioner of Income-tax-I v. Brawn Pharmaceuticals Ltd. [2017] 82 taxmann.com 262 (Delhi)*

2.0 No denial of sec. 54 relief just because construction wasn't completed in 3 years

In the ITAT Chennai Bench 'B' held that where capital gains from sale of property are appropriated in new property within period of 3 years, exemption under section 54 was to be granted; condition of completion of construction within 3 years was not mandatory

Kannan Chandrasekar v. Income-tax Officer, Corporate Ward-16(2), Chennai [2017] 82 taxmann.com 284 (Chennai - Trib.)*

3.0 Notice issued u/s 153C based on satisfaction recorded by AO of searched person who also was AO of assessee was valid

The High Court of Delhi held that where satisfaction note was recorded by Assessing Officer of searched person who also happened to be Assessing Officer of assessee (other person) to effect that seized documents belonged to assessee, issuance of notice under section 153C against assessee on basis of said note was justified

Principal Commissioner of Income-tax, Central-3 v. Instronics Ltd. [2017] 82 taxmann.com 357 (Delhi)*

4.0 Royalty paid for technical know-how to set-up new business held as capital expenditure

The Supreme Court of India held that where a new business was set up with technical know-how provided by a Japanese company and lump sum royalty was paid therefor, expenditure in form of royalty paid would be in nature of capital expenditure and not revenue expenditure

Honda Siel Cars India Ltd. v. Commissioner of Income-tax, Ghaziabad [2017] 82 taxmann.com 212 (SC)*

5.0 Loss incurred on sale of foreign cars used in business without claiming dep. would be treated as business loss

The High Court of Madras held that where foreign cars were utilized in business of assessee on which no depreciation was claimed, loss arising out of sale of those cars would be treated as business loss

K.D. Madan v. Income Tax Officer, Business Ward XV(4), Chennai [2017] 82 taxmann.com 27 (Madras)*

6.0 Transfer of shares by a family managed limited company, even if through a family arrangement, is liable to capital gain tax

[2017] 82 taxmann.com 397 (Bombay)

7.0 Time limit to file rectification application couldn't be extended by virtue of any subsequent order

The High Court of Allahabad held that no appeal against original assessment on issue of 'set off of capital loss' being filed while issue of 'quantum of capital gain' was challenged, period of limitation for rectification of order on first issue would not get extended by virtue of subsequent order

[2017] 82 taxmann.com 148 (Allahabad)

8.0 No reassessment solely on basis that director (exemptions) had cancelled registration of trust with retro-effect

The High Court Gujarat held that assessing Officer could not reopen assessment solely on basis of order cancelling registration of development authority under section 12AA(3) retrospectively

Ahmedabad Urban Development Authority v. Deputy Director of Income-tax. (Exemption) [2017] 82 taxmann.com 177 (Gujarat)*

9.0 Assessment set aside as AO failed to timely serve scrutiny notice at correct address

Commissioner of Income-tax-3 v. Abacus Distribution Systems (India) (P.) Ltd. [2017] 78 taxmann.com 321 (Bombay)*

CBDT RELEASES DRAFT TRANSITIONAL POEM PROVISIONS

India introduced the concept of place of effective management ("POEM") into its residential status rules for a company from financial year 2016-17. Broadly speaking, a foreign company will be said to be resident in India if its POEM is in India. POEM has been defined to mean a place where key management and commercial decisions that are necessary for the conduct of business of an entity as a whole are, in substance made. The guiding principles for determination of POEM were issued by the Central Board of Direct Taxes ("CBDT") on 24 January 2017

Under the Indian tax law, companies are divided into domestic companies and foreign companies. Broadly speaking, a company incorporated in India is regarded as a domestic company and a company incorporated outside India is regarded as a foreign company. It may be noted that the concept of a domestic company v. foreign company is distinct from its residential status i.e. a resident company v. non-resident company

If a determination is made that a foreign company is a resident of India due to POEM, there is a need for clarity on the transitional provisions. To that end, section 115JH was introduced in the Income-tax Act, 1961, empowering the CBDT to issue a notification to deal with transitional provisions. Pursuant to this section 115JH, the CBDT has published a draft notification for public comments, on transitional provisions to be adopted by a foreign company when it is treated as a resident for the first time in a financial year ("first financial year") on account of POEM

The draft transitional provisions are as follows:

- Opening WDV for depreciable assets as on the 1st day of first financial year for Indian tax purposes would be the WDV as per the foreign tax records of the foreign company on such date. However, if the foreign company is not assessed to tax in the foreign jurisdiction, WDV would be as per books of account maintained in accordance with the laws of that foreign jurisdiction
- The brought forward loss or unabsorbed depreciation as on the 1st day of the first

financial year as per the foreign tax records of the foreign company (determined year-wise) would be deemed to be the brought forward loss or unabsorbed depreciation on such date. These losses and depreciation would be allowed to be set off and carried forward in accordance with the relevant provisions of the Indian tax law. However, if the foreign company is not assessed to tax in the foreign jurisdiction, brought forward loss or unabsorbed depreciation would be as per books of account maintained in accordance with the laws of that foreign jurisdiction

- For a foreign company whose accounting year does not match with the Indian financial year (1 April to 31 March), the foreign company would be required to draw up its profit and loss account and balance sheet:

-For a period preceding the first financial year, from the first day of the foreign company's accounting year (which precedes the first financial year) till 31 March preceding the first financial year

-For a period of 12 months (1 April to 31 March) starting from the first financial year till the foreign company continues to be treated as a resident of India

- For the purpose of carry forward of loss for a foreign company whose accounting year does not match with the financial year in India, if the period preceding the first financial year referred to in above point is six months or more, it would be treated as a separate accounting year. However, if it is less than six months, it would be included as part of the earlier year
- The tax deduction at source ("TDS") provisions apply in certain situations to residents (example: interest under section 194A), whereas in certain cases the provisions apply to foreign companies (example: interest under section 195). In other words, the payment to a foreign company that is resident in India could attract TDS under two



provisions (in this example, under section 194A as well as section 195). The draft notification provides that the provisions applicable to a foreign company would apply in such situations (i.e. section 195 in this example)

- The tax deduction at source ("TDS") provisions apply in certain situations to residents (example: interest under section 194A), whereas in certain cases the provisions apply to foreign companies (example: interest under section 195). In other words, the payment to a foreign company that is resident in India could attract TDS under two provisions (in this example, under section 194A as well as section 195). The draft notification provides that the provisions applicable to a foreign company would apply in such situations (i.e. section 195 in this example). Consequently, a payer can approach the Indian tax authorities for a nil or lower withholding tax certificate under section 195(2) in case of payments to such a foreign company, even though it is a resident (section 195(2) applies only to an application made for payment to a non-resident)
- The foreign company that is regarded as resident in India on account of its POEM being in India shall be entitled to relief or deduction of taxes paid in the foreign jurisdiction, as per sections 90 (treaty countries) or 91 (non-treaty countries)

As mentioned earlier, it is pertinent to note that the concept of incorporation is distinct from residential status. For instance, in the case of a company, the scope of

income liable to tax in India is based on residence, whereas the tax rate is based on incorporation (i.e. domestic company or foreign company). Accordingly, the CBDT has clarified the following in respect of a foreign company which is regarded as resident of India in the draft notification:

-All transactions of the foreign company with other persons or entities under the Indian tax law would not be altered only on the ground that such foreign company is treated as a resident of India on account of its POEM being in India

-The company will be treated as a foreign company (even if its residential status is resident) and therefore, provisions of the Indian tax law that apply specifically to a foreign company would continue to apply to it

-Provisions of the Indian tax law that apply to a non-resident would not apply to a foreign company which is treated as a resident of India; provisions that apply to a resident would be applicable to such a foreign company

-The rate of tax that applies to a foreign company would apply even if the foreign company is treated as a resident of India.

The determination of residence based on POEM of a foreign company is a landmark development for India. There are bound to be inconsistencies in the Indian tax law when a foreign company is regarded as resident in India, and the draft notification seeks to address these issues

CAPITAL MARKET

1.0 SEBI eases Takeover Code for buying stressed assets

SEBI Board, in its recent meeting held on June 21, 2017, took some significant decisions. The decisions will have an impact on the securities market and listed companies. With an objective to assist Govt. and RBI in tackling bad loans, SEBI resolved to relax the provisions of Takeover Code. With an objective to assist Govt. in its initiative to check the misuse of black money,

SEBI Board also approved of the proposal to tighten norms relating to Participatory Notes by levying fees. On the other side, SEBI Board has eased regulations relating to access norms for investment by Foreign Portfolio Investors ('FPIs'). This article is a compilation and analysis of the significant decisions taken by the SEBI Board and its impact on the securities markets and its intermediaries

2.0 Now promoters can sell their shares within 2 weeks from offer for sale (OFS) transaction

Circular No.Cir/Mrd/Dp/65/2017

COMPOSITION SCHEME....*Contd. from Page 1*

- He shall be liable to pay tax under Reverse Charge Mechanism both under Sec.9(3) and Sec.9(4) at regular rate of tax and NOT at composition rate
- In case of migration of existing registration into GST- the goods held in stock by him on the appointed day have not been purchased in the course of inter-State trade or commerce or imported from a place outside India or received from his branch situated outside the State or from his agent or principal outside the State
- The goods held in stock by him have not been purchased from an unregistered supplier and where purchased, he pays the tax under sub-section (4) of section 9 i.e. under Reverse Charge
- Taxable person opting to pay tax under the composition scheme shall not collect tax on the outward supplies
- Taxable person opting to pay tax under the composition scheme will not be eligible to claim any input tax credits including the Tax paid by him under reverse charge
- The taxable person shall not affect any inter-State outward supplies. This means that even stock transfers to branches outside the State would not be permitted. However, insofar as it relates to inter-State inward procurements / receipts, there is no restriction except where migrating from existing registration
- He shall mention the words "composition taxable person" on every notice or signboard displayed

at a prominent place at his principal place of business and at every additional place or places of business

- Customer who buys goods from taxable person who is under composition scheme is not eligible for composition input tax credit

Accounts & Records

A registered person opting for composition scheme shall maintain all records as prescribed under Sec. 35 & 36 and in Accounts and records Rules. Some relaxations are given to them like non-preparation of register of tax invoice issued/received / input credit availed etc

Returns

- Quarterly returns prescribed to be filed by 18th of the month succeeding the Quarter in Form GSTR-4
- The registered person shall make payment of tax no later than the last date on which he is required to file the return
- Returns to be furnished for every tax period whether or not any supplies of goods or services or both have been made during such tax period
- The registered person shall furnish one annual return for every financial year electronically on or before 31st December following the end of such financial year
- Proper officer may cancel registration if the person opting for composition scheme does not furnish return for three consecutive tax period i.e. 3 quarters. (Sec 29(2)(b))

3.0 SEBI launches online registration system for REITs, InvITs

To make it easier to do business, markets regulator Sebi today said it has introduced an online registration system for REITs and InvITs

The new system would help REITs (Real Estate Investment Trusts) and InvITs (Infrastructure Investment Trusts) to complete registration and

other regulatory filings with Sebi much faster and in a cost-effective manner

4.0 Sebi notifies rules to levy fee on participatory notes

The Securities and Exchange Board (Sebi) of India has notified stricter participatory notes (P-Notes) norms stipulating a fee of USD 1,000 that will be levied on each instrument to check any misuse for channelising black money



GST: REGISTRATION OF FIRMS CAN BE CANCELLED FOR NOT PASSING ON BENEFITS

Companies not passing on benefits of reduced prices on account of the proposed goods and services tax (GST) to customers may lose their registration

An anti-profiteering authority that will be set up will have the powers to debar an errant assessee from conducting business if he does not pass on lower prices on account of the GST to customers

Finance Minister Arun Jaitley has said the anti-profiteering provisions are not to be used unless the government is forced to do so

The authority will cease to exist two years after its constitution. The authority can order a reduction in prices and ask companies to return money to customers. In case customers do not claim their money or are not identifiable, the money will go into a customer welfare fund. The authority can also impose a penalty

At a press conference, Jaitley said, "We hope we do not have to use it (the anti-profiteering clause)."

The authority will have a chairman of the rank of a secretary and four nominated members who have been commissioners of central or state taxes. The GST Council will have the power to constitute a Standing Committee on Anti-profiteering, which will consist of officers of state governments and the central government

It will also constitute state-level screening committees, which will have one officer of the state government, to

be nominated by the commissioner, and one officer of the central government, to be nominated by the chief commissioner. The additional director general of safeguards will be the secretary to the authority

It will be up to the authority to determine whether the reduction in the rate of tax on goods or services or the benefit of input tax credit has been passed on by companies and dealers to customers

The standing committee will, within two months from the receipt of a written application from a complainant, establish whether there is evidence to support the claim. All applications will first be examined by state level screening committees, which will forward them with their recommendations to the standing committee

Based on the recommendations of the Directorate General of Safeguards, if Authority is satisfied that profiteering has been done by a company, it may order:

- Reduction in prices
- Returning money to the customer along with interest
- Depositing money in Customer Welfare Fund in case the customer does not claim it or is not identifiable
- Imposition of penalty equivalent to the amount of profiteering
- Cancellation of registration Source

5.0 SEBI asks banks to make additional disclosure on loans

Markets regulator asked Sebi listed banks to make additional disclosure on divergence in asset classification and provisioning to stock exchanges in a prescribed format

The move will help banks to recognise their stressed assets as non-performing more uniformly

6.0 Sebi hikes FPI investment limit for govt debt

Regulator Sebi raised the FPI investment limit in central government securities to Rs 1,87,700

crore to boost inflow of foreign funds into Indian capital markets money

Earlier, the limit for foreign portfolio investors (FPIs) was about Rs 1.85 lakh crore

7.0 SEBI tightens norms for issuance of credit ratings

SEBI has virtually put the onus on CRAs to monitor sharing of information by companies with regard to servicing of their debt. This includes seeking a 'no default statement' from companies at the end of every month



INDIRECT TAXATION

1.0 Deposits of excise duty prior to issuance of notice has no effect on adjudication proceedings

The High Court of Allahabad held that where only after inspection of business premises and seizure of excess finished goods, assessee on its own deposited amount of duty and thereafter show cause notice under section 33 was issued for confiscation and penalty, deposits of duty by assessee prior to issuance of notice would have no effect upon adjudication proceedings

Sampark Industries Ltd. v. Commissioner of Central Excise, Noida [2017] 82 taxmann.com 178 (Allahabad)*

2.0 'Mehndi Cone' is a cosmetic product, not exempted from VAT

The High Court of Allahabad held that Mehndi cone, is a cosmetic preparation as various oil and chemicals are added to Mehndi powder; it is not exempted from VAT

Pradhan Trading Company v. Commissioner, Commercial Tax [2017] 82 taxmann.com 181 (Allahabad)*

3.0 Lump sum amount received on leasing of land for less than 30 years was chargeable to service tax

The CESTAT, New Delhi bench held as follows:

- Where appellant who was allotted land by Govt. for 99 years, further allotted land, appellant was liable to pay service tax on lump sum consideration received in respect of lease of land for a period less than 30 years and on transfer charges relating to lease under tax category of 'Renting of immovable property services'
- Where appellants further allotted land allotted to it by Govt. of Rajasthan, appellant not being a govt. authority was liable to service tax under management, maintenance and repair services in respect of maintenance charges collected from allottees

Riico Ltd. v. Commissioner of Central Excise, Jaipur-II [2017] 82 taxmann.com 304 (New Delhi - CESTAT)*

4.0 Fees collected for providing inspection & certification service by statutory authority was chargeable to service tax

The CESTAT, New Delhi bench held as follows:

- Technical testing and inspection of seeds by a statutory authority against fees paid by concerned person fell under section 65(108) and taxable as such
- Where a statutory authority paid service tax and thereafter claimed for refund on ground that demand was illegally not sustainable, since service tax liability of assessee had been upheld, there was no reason to interfere with orders of lower authorities rejecting refund claim
- There was no legal justification to invoke demand for extended period when earlier enquiries were conducted twice which later resulted in realization of service tax dues and closure of matter without any adjudication proceedings and, consequently, penalties imposed were liable to be set aside

M.P. State Seed Certification Agency v. Commissioner of Central Excise, Bhopal [2017] 82 taxmann.com 303 (New Delhi - CESTAT)*

FINANCIAL INDICATORS

	Current Rate*	Previous Month	3 Month ago	6 Month ago
3 Month LIBOR (%)	1.30	1.21	1.17	1.15
SENSEX	31804.23	31262.06	30248.17	29575.74
NIFTY	9,816.10	9668.25	9,407.30	9181.45
CRR (%)	4	4	4	4
REPO (%)	6	6	6.25	6.25
REVERSE REPO (%)	5.75	5.75	6.00	6.00
Gold (per 10 gm)	29230	29019	29730	29445
Silver (per kg)	39800	41800	40310	42631
Crude (USD/bbl)	48.62	46.17	50.33	56.00
Rs vs USD	64.45	64.14	64.54	64.42
Rs vs Euro	73.47	75.26	70.21	68.41
Rs vs 100 Yen	58.17	58.38	56.37	59.39
Rs vs RMB	9.54	9.47	9.29	9.35
Rs vs Pound	83.06	81.74	83.58	80.72
MCX Aluminium (per kg)	124.35	124.06	123.91	124.1
MCX Copper (per kg)	389	371.25	369.62	368.05

*As on July 10, 2017

(Sources: MoneyControl, NSE, BSE, RBI, MCX)

5.0 'Drilling and blasting for laying out roads was taxable as site formation & clearance service; not as mining services

The CESTAT, Mumbai Bench held that where assessee undertook drilling, blasting, etc. as per work contract of laying as haulage road etc., and it had already taken service tax registration certificate under head 'site formation and clearance, excavation and earthmoving and demolition services', it would be liable to pay service tax

Western India Mining Services (P.) Ltd. v. Commissioner of Central Excise, Nagpur [2017] 82 taxmann.com 197 (Mumbai - CESTAT)*

6.0 Service provided by clearing and forwarding agents was exempt for period from 16-10-1998 to 01-09-1999

The High Court of Delhi held that Exemption from payment of service tax on services provided by clearing and forwarding agents would be available for period 16-10-1998 to 1-9-1999

Ambuja Cements Ltd. v. Commissioner of Service Tax Commissionerate [2017] 82 taxmann.com 179 (Delhi)*

7.0 New circular couldn't supersede earlier circular, unless there was change in provisions of law

All India Association of Authorized Money Changers & Money Transfer Agents v. Union of India [2017] 82 taxmann.com 180 (Bombay)*

8.0 Service tax wasn't leviable on rent paid towards gas container taken on lease from foreign supplier

[2017] 82 taxmann.com 305 (Mumbai - CESTAT)

GST

- Transitional Phase Implementation
- IT System Integration
- Business Advisory Services
- Pre Implementation Guidance
- Input Credit Planning & Management



- Departmental Audit
- Preventive Audit
- Compliance Audit



Audit

Compliances

- Preparation of Return
- Maintenance of Records
- Business Advisory Compliances



- Business Operating Procedures
- Automation
- Reconciliation
- Planning



System Designing



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