



The key amendments introduced in statutes, policies and procedures in respect of Direct Tax, Indirect Tax, Company Law, Ministry of Corporate Affairs, and Reserve Bank of India related matters are summarized hereunder.

DIRECT TAX

Amendments, Notifications & Court Rulings

- » The right of set off of one time non-refundable entry fee against the upfront fee payable for allotment of telecom licenses is not a 'capital asset' and therefore not taxable as capital gain
- » Delhi Tribunal rules that applicability of threshold limit for withholding obligation in relation to sale of immovable property is for each co-owner

INDIRECT TAX

Amendments, Notifications & Court Rulings

- » Notification No. 66/2018 - Central Tax dated November 29, 2018
- » Advance Ruling No. KAR ADRG 32/2018 dated December 3, 2018- M/s Bindu Ventures
- » Advance Ruling No. KAR ADRG 29/2018 dated November 28, 2018- Sri. Patrick Bernardinz D'Sa
- » Circular No. 52/2018 – Customs dated December 12, 2018

COMPANY LAW

Amendments, Notifications & Court Rulings

- » Notification of Companies (Incorporation) Fourth Amendment Rules, 2018

MCA & RBI Rules and Notifications

- » Declaration at the time of commencement of business (Form No.INC-20A)
- » Application under sub-section (41) of section 2 for change in financial year
- » Application under section 14 for conversion of public company into private company
- » Delegation of powers to Regional Directors
- » Foreign Exchange Management (Borrowing and Lending) Regulations, 2018

DIRECT TAX

1. The right of set off of one time non-refundable entry fee against the upfront fee payable for allotment of telecom licenses is not a 'capital asset' and therefore not taxable as capital gain

Telenor (India) Communications Pvt. Ltd. ('Taxpayer') an Indian company, incorporated in February 2012 and Unitech Wireless (Tamilnadu) Ltd ('UW') were group companies of a foreign parent company operating in telecom industry.

In 2008, UW had acquired telecom licenses from Indian Government on payment of one-time non-refundable entry fees of INR 16585 million. Subsequently, Supreme Court quashed these licenses allotted to UW and issued directions to the Government to make a fresh auction of licenses, wherein UW was not allowed to participate.

In November 2012, the taxpayer participated and was declared a successful bidder in a fresh auction and thereby became liable to pay INR 40182 million as spectrum fee.

In December 2012, taxpayer acquired UW's business on a going concern basis whereby UW's rights and claims were transferred to Telenor. Pursuant to representations made by UW, in March 2014, the Government allowed set off of one time entry fee of INR 16585 million paid by UW against the upfront fee payable of INR 40182 million.

As per Actionable Claim Agreement entered between the taxpayer and UW in December 2012, all rights, claims including this set off right against Department of Telecommunications ('DoT') was transferred to Telenor for a consideration of 50 percent of amount of set-off allowed to the taxpayer or INR 1000 million whichever is less.

The Assessing Officer contended that the right to set off the entry fee constituted a 'capital asset' within the meaning of Section 2(14) of the Income Tax Act, 1964. Consequent to the set off, capital asset acquired by the taxpayer was extinguished and thus there was a transfer of capital asset resulting into taxable capital gains of INR 16585 in the hands of the taxpayer.

On Appeal, Commissioner of Income Tax (Appeals) held that acquisition of right and subsequent set off of the license fee was nature of trade and commerce and therefore taxable as business income.

On further Appeal, the Tribunal held that not every 'right' can be regarded as a capital asset. UW had exploited licenses from 2008 till the date such licenses were quashed. In such circumstances, UW had not left with any right, title, and interest in the license fee paid to DoT. Mere fact that taxpayer had paid INR 1000 million against the alleged right to set off cannot be decisive factor in determining the nature of asset. Accordingly, it was held that no capital asset was acquired by the taxpayer and thereby there was no taxable capital gain.

Further, it was mere waiver or concession from license fee payable by DoT and therefore cannot be taxable as business income. DoT did not permit trading/sharing of spectrum and therefore set off of license fee could not be construed as gains from business and profession.

Source: Telenor (India) Communications Pvt. Ltd. vs ACIT [I.T.A. No .7541/DEL/2017] dated November 26, 2018

2. Delhi Tribunal rules that applicability of threshold limit for withholding obligation in relation to sale of immovable property is for each co-owner

In a recent ruling of the Delhi Income Tax Appellate Tribunal in the case of Vinod Soni and others (Taxpayer) v. ITO has observed that if the share of each co-owner does not exceed the minimum threshold limit of Rs. 50 lacs, withholding tax obligation as per section 194IA of Income-tax Act would not be triggered.

The Act requires any person, being a buyer of an immovable property, to withhold taxes at the rate of 1% if the consideration is in excess of Rs. 50 lacs at the earlier of (a) credit of consideration in the account of the seller; or (b) payment of consideration.

Assessee along with three persons (family members) bought and registered a property of value Rs.1.5 cr under the joint names with equal share and respectively paid their each share from their bank accounts amounting to Rs. 37.5 lacs.

The tax authority issued a notice to the assessee and other co-owners to inquire about the compliance of the withholding obligation in respect of said purchase of immovable property. The assessee contended that since the individual share of each co-owner did not exceed Rs. 50 lacs the withholding tax obligation to deduct tax while making payment of consideration to seller did not arise.

However, the tax authority was of the view that since the value of the property exceeded Rs. 50 lacs, withholding tax obligation u/s 194 IA was triggered and held the assessee and other co-owners as “assessee-in-default”. The tax authority raised demand of tax together with interest and the same was even confirmed by the first appellate authority.

In response, the aggrieved party filed the case with the tribunal where the tribunal ruled that the withholding provision and limit provided therein is applicable qua each co-owner. Thus, if each co-owner were to purchase 1/4th interest in the property under a separate agreement for consideration of Rs. 37.5 lacs, withholding provision would not be applicable. Income-tax law cannot be interpreted differently merely because each co-owner purchases 1/4th interest in the property under a single agreement. The same intention is even clarified in the memorandum explaining the object of introducing tax withholding tax provision.

Source: Vinod Soni vs ITO (TDS) [ITA No.:- 2736/Del/2015] dated December 10, 2018

INDIRECT TAX

1. Seeks to extend the time limit for filing FORM GSTR – 7 for the months of October, 2018 to December, 2018

CBIC extends the time limit for furnishing the return by a registered person required to deduct tax at source in FORM GSTR-7 for the months of October, 2018 to December, 2018 till January 31, 2019.

Source: Vide Notification No. 66/2018 - Central Tax dated November 29, 2018

2. Advance Ruling given on relevant date of completion of construction of the property & levy of GST on consideration being received either before or after completion, in full or part

It is held that:

- a. The date of occupancy certificate would be deemed to be the date of completion. Chartered engineer's certificate can't be a substitute for Completion Certificate/ Occupation Certificate
- b. If full consideration received after date of completion, then that would not be treated as a taxable service
- c. If part consideration is received before such date, then it would be treated as a supply of service
- d. If full consideration is received after the date of completion, then it would not be liable to GST

Source: Vide AR No. KAR ADRG 32/2018 dated December 3, 2018- M/s Bindu Ventures

3. Advance Ruling on whether the land owner is liable to pay GST on premises allotted to him, which he intends to distribute among his family members

It is held that the applicant, being the person who has supplied development rights to a developer in respect of his land, is liable to registration and payment of tax. The applicant is a supplier of a taxable service by way of transfer of undivided share of land and hence is liable to register himself and discharge the tax.

Source: Vide AR No. KAR ADRG 29/2018 dated November 28, 2018- Sri. Patrick Bernardinz D'Sa

4. Seeks to Revise All Industry Rates of Duty Drawback

The Central Government has notified the revised All Industry Rates (AIRs) of Duty Drawback vide Notification No. 95/2018-Customs (N.T.) dated 6.12.2018 which will come into force w.e.f. 19.12.2018. This notification provides for increase and rationalization of AIRs of Duty drawback with regard to several items on account of various factors. Further, it has introduced new tariff items in various sectors.

Source: Vide Circular No. 52/2018 – Customs dated December 12, 2018 r/w Notification No.95/2018-Customs (N.T.) dated 6.12.2018

COMPANY LAW

1. Notification of Companies (Incorporation) Fourth Amendment Rules, 2018

Consequent to introduction of Companies (Amendment) Ordinance, 2018 dated November 02, 2018, MCA has further amended the Companies (Incorporation) Fourth Amendment Rules, 2018 vide notification dated December 18, 2018. Following key changes will come into effect from this notification:

- Declaration of commencement of business for newly incorporated Companies to be filed with Registrar of Companies (RoC).

- Application under section 14 for conversion of Public Company into Private Company to be filed with Regional Director instead of National Company Law Tribunal (NCLT).

Source:http://www.mca.gov.in/Ministry/pdf/CompaniesFourthAmendmentRules_19122018.pdf

MCA & RBI Rules and Notifications

1. Declaration at the time of commencement of business (Form No.INC-20A)

The declaration under section 10A by a director shall be in Form No.INC-20A and shall be filed as provided in the Companies (Registration Offices and Fees) Rules, 2014, and the contents of the said form shall be verified by a Company Secretary or a Chartered Accountant or a Cost Accountant, in practice.

Also company pursuing objects requiring registration or approval from any sectoral regulators such as the Reserve Bank of India, Securities and Exchange Board of India, etc., the registration or approval, as the case may be from such regulator shall also be obtained and attached with the declaration.

Source:http://www.mca.gov.in/Ministry/pdf/CompaniesFourthAmendmentRules_19122018.pdf dated December 19, 2018

2. Application under sub-section (41) of section 2 for change in financial year

The application for approval of concerned Regional Director under sub-section (41) of section 2, shall be filed in e-Form No.RD-1 along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 and shall be accompanied by the said documents.

The order conveyed by the Regional Director shall be filed by the company with the Registrar in Form No.INC-28 within thirty days from the date of receipt of the order along with fee as provided in the Companies (Registration Offices and Fees) Rules, 2014.

Source:http://www.mca.gov.in/Ministry/pdf/CompaniesFourthAmendmentRules_19122018.pdf dated December 19, 2018

3. Application under section 14 for conversion of public company into private company

An application under the second proviso to sub-section (1) of section 14 for the conversion of a public company into a private company, shall, within sixty days from the date of passing of special resolution, be filed with Regional Director in e-Form No. RD -1.

The order conveyed by the Regional Director shall be filed by the company with the Registrar in Form No.INC-28 within fifteen days from the date of receipt of approval along with fee as provided in the Companies (Registration Offices and Fees) Rules, 2014

Source:http://www.mca.gov.in/Ministry/pdf/CompaniesFourthAmendmentRules_19122018.pdf dated December 19, 2018

4. Delegation of powers to Regional Directors

In exercise of the powers conferred by section 458 of the Companies Act, 2013 (18 of 2013), the Central Government has delegated to the Regional Directors at Mumbai, Kolkata, Chennai, New Delhi, Ahmadabad, Hyderabad and Shillong, the powers and functions vested in it under the first proviso to clause (41) of section 2 and second proviso to sub-section (1) of section 14 of the Companies Act 2013, subject to the condition that the Central Government may revoke such delegation of powers or may itself exercise the powers under the said sub-section, if in its opinion such a course of action is necessary in the public interest

Source: http://www.mca.gov.in/Ministry/pdf/NotificationDelegates_1812_22122018.pdf dated December 18, 2018

5. Foreign Exchange Management (Borrowing and Lending) Regulations, 2018

Reserve Bank has made regulations for borrowing and lending between a person resident in India and a person resident outside India.

No person resident in India shall borrow or lend in foreign exchange from or to a person resident in or outside India and no person resident in India shall borrow in rupees from, or lend in rupees to, a person resident outside India, unless the Reserve Bank may, for sufficient reasons, permit a person resident in India to borrow or lend in foreign exchange from or to a person resident in or outside India and/or permit a person resident in India to borrow in rupees from, or lend in rupees to, a person resident outside India

Source: <https://rbi.org.in/Scripts/NotificationUser.aspx?Id=11441&Mode=0> dated December 17, 2018



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