

NEWSLETTER

MAY 2017

J P Chawla & Co. LLP
Chartered Accountants

Taxation | Audit | Outsourcing | Regulatory | Transaction Advisory | Consultancy Services



FINEPRINT

MAY 2017

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June 7th 2017,

CEO's Message

It's a hot summer in India and heat is not limited to weather, but the regulatory scenario is also boiling up, with countdown to India's biggest tax reform already begun. GST law is undergoing fine tuning before its launch with changes every week in terms of rates and rules. The Indian Government is determined to implement the GST w.e.f 1st July 2017. GST promises a landmark change in the way of doing business in India, whether it leads to ease of doing business in India will totally depend on how it is implemented in times to come.

Tax arena in May saw certain important judgments in the area of International tax, transfer pricing, direct & Indirect tax. The month also saw Income Tax department launching Operation Clean Money (Swachh dhan abhiyaan) Portal and a launch of E-Nivaran online grievance redressal mechanism for taxpayers and there was also an extension of SFT filing to June 30th2017.

On regulatory side all associations/organizations who have applied for renewal of their registration under the Foreign Contribution (Regulation) Act, 2010 (FCRA) but has not filed their Annual Returns from Financial Year 2010-11 to 2014-15 can file their Annual Returns without compounding fee being imposed on them for the late filing.

On Economic side, in continuation with the double digit growth exhibited by exports during March 2017, exports during April 2017 have shown growth of 19.77 per cent in dollar terms valued at US\$ 24635.09 million as compared to US\$ 20568.85 million during April, 2016. In Rupee terms, during April 2017 exports were valued at Rs. 158913.79 crore as compared to Rs. 136720.11 crore during April, 2016, registering a positive growth of 16.23 per cent.

We sincerely hope this May news letter will update you regarding new developments in the area of Business, Tax, Assurance & Accounting and regulations such as company law, FEMA and other laws.
Happy Reading!!

Sincerely Yours,

Rajat Chawla

Managing Partner & CEO
New Delhi

The Month That Was

In May 2017, The 14th Goods and Services Tax (GST) Council Meeting, chaired by the Union Minister of Finance Shri Arun Jaitley, was held at Srinagar, Jammu and Kashmir. The fitment of rates of goods were discussed during the Council meeting. The Council has broadly approved the GST rates for goods at nil rate, 5%, 12%, 18% and 28% to be levied on certain goods. The Council has also broadly approved the rates of GST Compensation Cess to be levied on certain goods.

Some of the other highlights in May 2017 are:-

- **Cabinet approves National Steel Policy 2017:-** The new Steel Policy enshrines the long term vision of the Government to give impetus to the steel sector. It seeks to enhance domestic steel consumption and ensure high quality steel production and create a technologically advanced and globally competitive steel industry.
- **Facebook brings Express WiFi to India, partners with Airtel for 700 hotspots** -Called Express WiFi, the new programme, which is a follow up of the banned Free Basics platform, ties up with entrepreneurs to help them set up public WiFi hotspots and helping them provide internet to a lot of citizens in poor or no connectivity areas – the “intent” behind Free Basics platform..
- **President Mukherjee approves ordinance to amend Banking Regulation Act:** - giving more powers to the Reserve Bank of India (RBI) to deal with non-performing assets. The central bank can effectively ask banks to sit down with defaulters and reach a settlement as part of the package, aimed at accelerating a resolution of the Rs9.64 trillion in bad loans choking the banking system. The NPA problem is, to a large extent, confined to 50 large loan defaulters.
- **Indian Foreign Trade- April 2017-** In continuation with the double digit growth exhibited by exports during March 2017, exports during April 2017 have shown growth of 19.77 per cent in dollar terms valued at US\$ 24635.09 million as compared to US\$ 20568.85 million during April, 2016. In Rupee terms, during April 2017 exports were valued at Rs. 158913.79 crore as compared to Rs. 136720.11 crore during April, 2016, registering a positive growth of 16.23 per cent. Imports during April 2017 were valued at US\$ 37884.28 million (Rs. 244380.52crore) which was 49.07 per cent higher in Dollar terms and 44.67 per cent higher in Rupee terms over the level of imports valued at US\$ 25413.72 million (Rs. 168923.71 crore) in April, 2016.
- **Cabinet approves Pan-India implementation of Maternity Benefit Program:-** The Union Cabinet has given ex-post facto approval to Pan-India implementation of Maternity Benefit Program which now has been extended to all districts of the country w.e.f. 01.01.2017. The Maternity Benefit Program will provide compensation for the wage loss in terms of cash incentives so that the women can take adequate rest before and after delivery and not be deprived of proper nutrition.

TAX

Tax arena in May saw certain important judgments in the area of International tax, transfer pricing, direct & Indirect tax. May also saw Income Tax department launching Operation Clean Money (Swachh dhan abhiyaan) Portal, Launch of E-Nivaran online grievance redressal mechanism for taxpayers and extension of SFT filing to June 30th.

International Taxation

International Taxation May Updates

- **Marks & Spencer Reliance India Pvt. Ltd. [HC-2017(BOM)] - Upholds ITAT; Reimbursement of seconded employees' salary to NR, not FTS**

The assessee, Mark & Spencer Reliance India Pvt. Ltd., is a joint venture between Marks and Spencer Plc (M&S) and Reliance Retail Ltd. (RRL). The assessee entered into an agreement with M&S whereby the assessee was provided personnel to carry out the functions in the area of management. The AO noted that the assessee has made payment to M&S without deduction of tax u/s 195. The AO held that the sum was chargeable to tax as fees for technical services (FTS).

ITAT referred to JV agreement and observed that the reimbursement of salary to seconded employees was without any mark-up.

ITAT thus remarked *the article 13(4)(c) of Indo-UK DTAA* "that, "Merely providing the employees or assisting the assessee in the business and in the area of consultancy, management etc. would not constitute make available of the services of any technical or consultancy in nature.....!!". Thus, ITAT held that TDS u/s 195 was not applicable on reimbursement as it was actually a payment made to the employees deputed in India under seconded agreement but routed through M&S.

- **Hero Motocorp Limited [HC-2017(DEL)] - Rejects export commission re-characterization as royalty; Export agreement not tax-avoidance device.**

Hero Motocorp Limited ('assessee') is engaged in the business of manufacture and sale of motorcycles using technology licensed by Honda Motor Co. Ltd., Japan ('HMCL'). The assessee entered into a license and technical assistance agreement with the HMCL, and under this contract, the assessee received technical assistance for the manufacture, assembly, and service of the products as well as plans and designs for setting up a plant for which the assessee paid a royalty to the related party (HMCL).

In 2004, a separate Export Agreement ('EA') was also entered into whereby HMCL accorded consent to assessee to export specific models of two wheelers to certain countries on payment of export commission. By virtue of EA, assessee made payment to its AE i.e. HMCL.

The High Court concluded that the payment of the export commission was not without consideration because it permitted the taxpayer to make export sales in the specified countries, thereby generating substantial profits, without having to pay for using the existing distribution and sales networks in those territories. The High Court upheld the tribunal's decision and concluded that the payment of the export commission by the taxpayer to the related party was not in the nature of payment of royalty or fee for technical services.

- **ONGC as representative assessee for M/s University of Calgary, Alberta, Canada [ITAT-2017(DEL)] - NR-payment for training/collaborative research, FTS; Rejects alternate plea of Sec. 44BB applicability**

Oil and Natural Gas Corporation Ltd. ('assessee') had made payment in AY 2010-11 to the University (non-resident) pursuant to a contract for long term collaboration, participation, training, and maintenance of air injection equipment and filed return of income for AY 2010-11 showing nil income in its capacity as the representative assessee of University of Calgary, Alberta, Canada ('University'). In the assessment order, the aforesaid fee was treated as 'fees for technical services' u/s 9(l)(vii) to be taxed on gross basis by applying Sec 115(A). It was also held that the consideration paid was outside the purview of Sec 44BB.

ITAT analyzed the scope of work under the contract and noted that it was evident from the scope of project that the know-how possessed by the University was shared and 'made available' to the ONGC personnel. Thus ITAT ruled against the assessee and held that Article 12(4) of the DTAA was applicable in the present facts and circumstances of the case.

Further, Sec. 44BB is applicable in a case where consideration is received for services relating to exploration activity which are not in the nature of technical services, since the NR itself was not involved in extraction or production of mineral oil, Sec. 44BB was not applicable.

- **Gemological Institute International Inc [ITAT-2017(Mum)] - 'Internal cost' of employing individual constitutes FTS, excludes deputation cost towards travel/insurance**

Gemological Institute International Inc ('assessee') is a non-resident company incorporated in USA and engaged in grading and certification of diamonds. During AY 2009-10, assessee had entered into a training and technical service agreement with GIA India for training the employees of GIA India and providing technical services for the implementation of grading policies, procedures and processes.

The assessee received fee on account of reimbursement of travel expenses, group health insurance and other incidental expenses in connection with the assignment under training and technical service Agreement ('TTA'), and AO held the same as part of FTS.

ITAT observed that assessee offered to tax only the amount of fee received for providing training and technical services. ITAT also referred to the agreement entered into between the parties and observed that assessee was entitled to receive only amount incurred by way of cost to 'employ' the individuals with a markup of 6.5%. ITAT clarified that the cost of employment includes only internal costs that were incurred by assessee to employ an individual.

ITAT referred the SC ruling in A. P. Moller Maersk [TS-70-SC-2017] wherein it was held that "*Once the character of the payment is found to be in the nature of reimbursement of the expenses, it cannot be income chargeable to tax...*". Thus, ITAT thereby directed AO to delete impugned addition.

Transfer Pricing

Transfer pricing May Updates

- **Samsung Electronics India Information & Telecommunications Ltd [HC-2017(DEL)-TP] - Dismisses Revenue's appeal; AMP reimbursement part of operating profit for computing PLI**

HC dismisses Revenue's appeal against ITAT-order treating reimbursement received by assessee towards advertisement, marking and promotion expenses as operating in nature; ITAT had relied in earlier year order of co-ordinate bench for AY 2002-03 which confirmed CIT(A) order deleting TP-adjustment on manufacturing activity of assessee; HC notes that earlier ITAT order was affirmed by the jurisdictional HC in further appeal; Stating that it was not inclined to revisit the issue, HC holds that no substantial question of law arises for its consideration

- **Strides Shasun Limited [ITAT-2017(Mum)-TP] - Upholds TP-adjustment on interest-free advance to AEs; Commercial expediency principle inapplicable**

The assessee had incurred cost by availing credit facility; it had advanced interest free funds to its subsidiaries. During the assessment proceedings for AY 2006-07, TPO proposed an addition in respect of notional interest on the 'debit balance' of advances made by assessee to its foreign AEs.

ITAT opined that *"it can safely be concluded that certainly a benefit had accrued to the subsidiaries on account of cost incurred on credit facility which has been shifted by the assessee to its subsidiaries"* and held that *"as the assessee had not charged interest on the outstanding receivables from the overseas subsidiaries, and thereby restored matter to AO directing him to compute disallowance of notional interest on advances given by the assessee to its overseas subsidiaries at LIBOR + 300 points.*

- **Aban Offshore Ltd [ITAT-2017(CHNY)-TP] - Upholds TP-adjustment deletion on corporate guarantee; Follows Redington over Everest Kanto ruling**

The assessee, Aban Offshore Ltd had extended corporate guarantee to its AEs, during AY 2010-11 & 2011-12 but not charged any commission on the same. In assessment proceedings, TPO proposed an adjustment for the value of service charges in respect of corporate guarantees issued on behalf of the AE which was not disclosed in Form 3CED.

In appeal, DRP relied on Chennai ITAT ruling in Redington India Ltd [TS-208-ITAT-2014(CHNY)-TP] wherein it was held that since no cost is involved in extending the corporate guarantee, it will not constitute an 'International transaction'. Accordingly, DRP reversed TPO's order and deleted the TP-adjustment.

Further, ITAT held that “judicial discipline requires consistency in its proceedings and the decision of very co-ordinate Bench is staring at us and it is to be followed on this issue instead of the decision of Mumbai Bench. More so, the decision in favour of the assessee is followed in view of judgment of Vegetable Products”

- **3D Networks PTE Ltd [ITAT-2017(Bang)-TP] - Upholds CIT(A)-order, cannot allocate direct costs between segments for computing ALP**

During AY 2003-04, the assessee, 3D Networks PTE Ltd – India Branch (Since merged with Wipro Limited) had shown income from three segments namely marketing support service, trading functions and AMC of local sales. During TP proceedings, TPO found that out of total operating cost of Rs. 5.69 crores, an amount of Rs. 3.04 was apportioned to AMC activity and had artificially shown higher profit margins in respect of segments having international transaction. TPO re-computed the allocation of the operating cost amongst the 3 segments.

ITAT held that “*the action of the TPO in allocating the direct as well as indirect cost in the ratio of turnover of each segment is not proper and justified. ITAT concluded that “we do not find any error or illegality in the impugned order of the CIT(A) which has taken note of the fact that if the direct cost is taken out from the allocation then the adjustment made by the TPO will not survive. Hence we uphold the impugned order of the CIT(A) qua this issue.”*

- **BNT Global Pvt Ltd [ITAT-2017(Mum)-TP]**

Mumbai ITAT upholds levy of Sec 217BA penalty in AY 2011-12 for assessee’s failure in filing Form 3CEB in respect of its transaction of receipt from its NRI director-shareholder towards share capital / premium; Relies on co-ordinate bench ruling in IL&FS Maritime Infrastructure Company wherein it was held that share investment transactions fall within the purview of Sec 92E and the assessee is required to file audit report in Form 3CEB for such transactions, failure of which would attract Sec 271BA penalty

- **Akzo Nobel India Limited [ITAT-2017(Kol)-TP]**

Kolkata ITAT rejects classification of support services received from its AE in the field of human resources, marketing support, information technology and similar other areas as ‘stewardship services’, distinguishes SC decision in Morgan Stanley on facts. Noting that the services were rendered by AE to various Group companies including the assessee company, ITAT relies on OECD Guidelines and US Regulations to observe that “*coordination activities (stewardship activities) qualify as services, unless a particular subsidiary does not need the activity and would not be willing to pay an unrelated party to perform it*”; ITAT rules that, “*it has been amply demonstrated that the benefits generated by the said services... have undeniably added economic / commercial value to enhance the commercial position of the assessee and such services are received by the assessee on a continuous basis across its operational areas*”, thus deletes TP adjustment;

▪ **Actis Global Service Pvt Ltd [HC-2017(DEL)-TP]**

Delhi HC dismisses Revenue's appeal challenging ITAT's exclusion of 'TCS E-Serve Limited' for assessee providing ITES to AEs for AY 2011-12; Notes that ITAT had excluded TCS E-Serve as it was involved in both 'transaction processing' and 'technical services' by relying on Ameriprise India ruling; HC opines that *"as far as profile of the Assessee was concerned, it was not involved in software development at all but only in BPO activities. This apart the size and scale of TCS's operations makes it an inapposite comparable vis-a-vis the Petitioner"*; Accordingly, HC concludes that it *"is not convinced that the ITAT has committed any error in holding that TCS is not an appropriate comparable as far as determining of the arms length price of international transactions involving the Assessee is concerned"*

▪ **Ray Ban Sun Optics India Ltd [HC-2017(DEL)-TP]**

HC directs AO/TPO to decide AMP-issue in case of RayBan Sun Optics India Ltd. (assessee) for AY 2009-10 in conformity with HC decision in Sony Ericsson Mobile Communications and not Special Bench decision in LG Electronics; ITAT had remanded the AMP matter to AO/TPO to determine AMP expenses afresh in light of LG Electronics ruling; HC clarifies that ITAT opinion in LG Electronics no longer being good law in view of HC decision in Sony Ericsson, *"AO/TPO will have to consider the matter afresh in light of the said decision"*.

Direct Tax

Direct Tax May Updates

- **Sub-letting not principal business activity to constitute 'business income': [Raj Dadarkar & Associates (SC-2017)]:**

The Supreme Court in the case of Raj Dadarkar & Associates (the taxpayer) held that the income from the sub-licensing of property is taxable as "Income from house property" and not Business income. The Supreme Court held that the object clause of the business showing a particular object would not be determinative factor to arrive at a conclusion that the income is from business.

- **15% demand payment not pre-condition for stay application: [Jagdish Gandabhai Shah vs. Pr CIT (Gujarat High Court)]:**

The interpretation by the Assessing Officer that at the time of submitting stay application and/or before stay application is taken up for consideration on merits, the assessee is required to deposit 15% of the disputed demand as pre-deposit is absolutely based on misinterpretation and/or misreading of the modified Instructions dated 29th February 2016.

CBDT's instruction dated 29.02.2016 on stay of demand by the AO does not require the assessee to make a pre-deposit of 15% of the disputed demand. As per the Instruction, if the AO requires the assessee to pay less, or more, than 15% of the demand, the sanction of the Pr. CIT is required. If the AO demands 15% to be paid, the assessee is entitled to approach the Pr CIT for review of the AO's decision.

- **Income Tax department launches Operation Clean Money (Swachh dhan abhiyaan) Portal :**

The Hon'ble Union Minister of Finance, Shri Arun Jaitley officially launched the Portal of Operation Clean Money (<https://www.cleanmoney.gov.in>) at New Delhi. The Operation Clean Money was initiated by the Income Tax Department (ITD) on the 31st January, 2017 with the launch of e-verification of large cash deposits made during 9th November to 30th December, 2016. The salient features of the portal launched are: i) Providing comprehensive information at one place consisting of Step by Step Guides, Frequently asked Questions, User Guides, Quick Reference Guides and Training Toolkits related to verification process and other issues. (ii) Enabling Citizen Engagement for creating a tax compliant society where every Indian takes pride in paying taxes (iii) Enabling Transparent Tax Administration by sharing status reports (including sanitized cases and explanation of verification issues).

- **Central Government notification regarding the categories of individuals to whom Sec. 139AA provision relating to mandatory quoting of Aadhaar will not be applicable:**

Central Government notifies categories of individuals to whom Sec. 139AA provision relating to mandatory quoting of Aadhaar will not be applicable; Sec. 139AA shall not apply to an individual who does not possess the Aadhaar number and is:- (i) residing in the States of Assam, Jammu and Kashmir and Meghalaya, (ii) a non-resident as per the Income-tax Act, 1961, (iii) of the age of eighty years or more at any time during the previous year, (iv) not a citizen of India; The notification shall come into force with effect from July 1, 2017.

- **Income tax: E-Nivaran offers online grievance redressal mechanism for taxpayers**

With Prime Minister Narendra Modi's vision of making the redressal mechanism taxpayer friendly, the income tax department had launched a special electronic grievance mechanism called 'E-Nivaran'. It is a dedicated one-stop grievance redressal system that operates under the supervision of an assessing officer or supervisory officer.

- **CBDT Extends SFT filing due-date to June 30, 2017**

CBDT extends the due date for furnishing of the statement of financial transactions ('SFT') under Rule 114E(S) read with sub-section (1) of Sec 285BA for AY 2017-18 from May 31 to June 30.

Indirect Tax

Service Tax May Updates:

- **Notification No. 17/2017-ST dated May 4, 2017 :**

Central Govt. exempts life insurance services provided under 'Pradhan Mantri Vaya Vandana Yojana'; Amends Entry 26A of Notification No. 25/2012-ST.

- **Dismisses assessee's SLP, upholds tax on dealer's commission for auto-finance under 'BAS' (Competent Automobiles Company Ltd.: SC-2017-ST)**

SC dismisses assessee's SLP, thereby upholds levy of service tax on commission received by automobile dealer from Maruti Finance, a unit of Maruti Udyog Ltd. (Maruti) under 'business auxiliary service' (BAS) u/s 65(105) of Finance Act, 1994. HC had earlier dismissed assessee's writ petition rejecting his plea that, since Maruti had already deposited service tax amount, hence, it (i.e. assessee) cannot be asked to satisfy outstanding demand as same would amount to 'double taxation'. HC had observed that, service tax liabilities discharged by Maruti would refer to amounts constituting proportion of 'commission' it retains and discloses as consideration/service received, for which tax is to be paid and there is no positive assertion that amount or portion of commission received by assessee is also deducted in service tax. Perusing procedural history, HC had stated that, assessee had several statutory remedies and if in reality it possessed proof to show that Maruti or someone else had discharged liability on its behalf, its inaction in availing those remedies implies that, matter attained finality earlier. Further, stating that, assessee's previous two writ petitions did not succeed, HC remarked that, assessee's present attempt - a third one to seek same relief but by presenting a different dimension is clearly misconceived if not an abuse of process of court.

- **Larger Bench to decide taxability of 'operating' vs 'arranging' of "outbound tours" (Cox and Kings Ltd: TS-121-CESTAT-2017-ST)**

CESTAT rules on taxability of services of planning, scheduling, organizing or arranging of outbound tours as "tour operator services" u/s 65(105)(n) r/w 65(115) of Finance Act, finds Delhi Bench decision in assessee's own case sub-silentio and not binding precedent. Holds that said order does not define as to what the term 'operate' means in case of assessee, and how it differs from 'planning, scheduling, organizing or arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport'. States, it is incorrect to say that expression 'tour operator' includes or excludes any 'taxable service', amendment w.e.f September 10, 2004 only make changes in definition of person providing the service and nature of taxable service has to be construed accordingly. Observes, "...taxable service is not limited to 'planning, scheduling, organizing or arranging tours', but it is 'any service' in relation to a tour, provided by a tour operator...just because a person is 'operating tours' (apart from planning, scheduling, organizing or arranging tours) the service provided by him does not become non-taxable".

Perusing the dictionary meanings of “operator” and in the context of Motor Vehicles Act 1988, CESTAT observes that scope of the term 'operating tours' is not different from scope of expression 'planning, scheduling, organizing or arranging tours' and resultantly, all activities of assessee individually qualify under the category of 'tour operator'. “So long as they are involved in any one or more, of these activities of 'planning, scheduling, organizing or arranging tours' they remain within the definition of 'tour operator'...”, states CESTAT. Further rejects Delhi Bench’s conclusion that the specific inclusive part of definition of 'tour operator' is surplusage as it covers a person 'providing tourist transport vehicles on tourist circuits' who would otherwise be not covered by the generic definition. Resultantly, holding that the 'tour' / 'outbound tour' is not taxable event but 'all the services' provided 'in relation to the tour', CESTAT observes that same are provided and consumed within India much before the client leaves the shores, which Delhi Bench had failed to analyze alongwith scope of Section 65(105)(n). Accordingly, refers matter to President for constitution of Larger Bench to decide whether assessee was providing a taxable service and whether same was provided within taxable territory.

- **Waives pre-deposit, grants stay; Expenditure reimbursement to overseas branches prima facie non-taxable (Aricent Technologies (Holding) Ltd.: CESTAT-2017-ST)**

CESTAT grants stay on recovery & complete waiver of pre-deposit in respect of Rs. 149.40 Cr (approx.) service tax demand u/s 66A of Finance Act towards reimbursement of salary / expenditure to branch offices established overseas to provide on-site services to clients during the period 2009-10, 2010-11 and 2011-12.

Referring to earlier decisions in Tech Mahindra Ltd, Torrent Pharmaceuticals Ltd and KPIT Cummins Infosystems Ltd, CESTAT holds that prima facie no service tax is liable on amount reimbursed to overseas branches. As regards demand on insurance towards accidental bodily injury and medical expenses abroad, CESTAT finds that insurance service providers are not registered with IRDA and hence, prima facie not taxable as 'life insurance service' u/s 65(105)(zx) or 'general insurance service' u/s 65(105)(d) of Finance Act. Similarly, visa facilitation services would prima facie not constitute 'business support services' in as much as same were received and consumed outside India, holds CESTAT.

Distinguishing rulings in Saro International Freight System Intas Pharma Ltd and Shree Bhagwati Steel Rolling Mills on facts, CESTAT holds that Rs. 7.28 Cr (approx.) already deposited by assessee is sufficient for compliance with Section 35F of Central Excise Act r/w Section 83 of Finance Act.

- **'Naturopathy' - preventive treatment for illness, not taxable as "health & fitness" services [Manthena Satyanarana Raju Charitable Trust.:HC-2017 (TEL & SP)-ST]**

HC extends service tax exemption under Notification No. 25/2012-ST in respect of 'nature cure treatment' provided by a registered public charitable trust in terms of Section 12AA of Income Tax Act, 1961. HC Rejects Revenue’s plea that since various therapies and treatments provided by assessee under the system of medicine of naturopathy are only incidental to overall services of physical well-being and fitness, service tax is payable under the 'health and fitness' services category. HC states that an institution claiming benefit of exemption under the Notification should establish two things, viz., (a) registration u/s 12AA of Income Tax Act, and (b) activities fall within the definition of “charitable activities” provided thereunder;

Notes that assessee indulges in public awareness and spreading public health by way of care and counselling thereby satisfying both the conditions. Further observes that Notification exempts 'health care services' by a clinical establishment and thus, even a multi / special specialty hospital run on profit motive would be exempt from service tax, however a hospital / health care centre providing indigenous system of treatment / well-being would necessarily be registered as 'charitable trust'. Remarks that 'health care' establishment promoting indigenous system of medicine cannot undergo such a discriminatory treatment and as a matter of fact, expression "clinical establishment" would mean a hospital, nursing home, clinic, or any other institution which offers services / facilities requiring diagnosis / treatment / care for illness. In view thereof, holds that Revenue erred in considering services provided by assessee for well-being of an individual, as something out of purview of diagnosis / treatment, and states, "While Allopathic system of medicine is only for diagnosis and treatment of illness, many of the indigenous system of medicines, seek to prevent rather than prescribe."; Therefore, an exemption Notification which is understood by Revenue to confer a benefit upon clinical establishments, cannot be made inapplicable to a holistic health care institution such the assessee herein, as same would tantamount to killing indigenous system of health and well-being, observes HC; States, "A system of medicine which focused mainly on healthy living and not merely a prolonged existence cannot be denied the benefit of the exemption notification on the basis of a misconception that a clinical establishment is one that would treat people after they fall ill and not one which will prevent people from falling ill.". Moreover, HC finds a clear distinction between fitness centres / unisex saloons which provide different types of services to customers and focus mostly on beauty rather than maintenance of health, accordingly holds that Revenue erred in mixing up both.

Assurance & Accounting

May 2017 saw various clarifications on Ind As, including a proposed revision in Ind AS 101 and various clarifications on Ind AS transition issues. There was also a clarifications for parent company auditor, through amendment to paragraph 17 of Revised Guidance Note on Audit of Consolidated Financial Statements, enabling the compliance of SA 600 by the parent company auditor , while auditing standalone statements for parent company.

- ICAI has proposes amendments to IND AS 101

ICAI has issued the Exposure Draft of the Amendments to Ind AS 101, First-time Adoption of Indian Accounting Standards issued by the Accounting Standards Board of the Institute of Chartered Accountants of India, for comments

Looking into difficulties foreseen by the industry ICAI's exposure drafts indicates that Where there is no change in its functional currency on the date of transition to Ind ASs, a first-time adopter to Ind ASs may elect to continue with the carrying value for a class of its property, plant and equipment as recognised in the financial statements as at the date of transition to Ind ASs, measured as per the previous GAAP and use that as its deemed cost as at the date of transition after making necessary adjustments in accordance with Ind AS 101. Further consequential changes arising on the application of other Ind AS should be adjusted from the deemed cost of property, plant and equipment

To summarize Ind AS 101 now allows different value for different class of assets in transition carry forward, further property plant and equipments can be adjusted due to transition application of other Ind- As's.

- Ind AS Transition Facilitation Group' (ITFG) of Ind AS (IFRS) Implementation Committee has been constituted for providing clarifications on timely basis on various issues related to the applicability and /or implementation of Ind AS under the Companies (Indian Accounting Standards) Rules, 2015, raised by preparers, users and other stakeholders. Ind AS Transition Facilitation Group (ITFG) considered some issues received from members and has issued clarifications in its 8th & 9th Bulletin.

Issues such as Corporate Social Responsibility expenditure, Ind AS 115, Revenue from Contracts with Customers, Ind AS 101, First-time Adoption of Indian Accounting Standards etc have clarified.

- The Council of ICAI at its 365th meeting held on May 17-19, 2017 considered a matter regarding amendment to paragraph 17 of Revised Guidance Note on Audit of Consolidated Financial Statements issued in October 2016. At the meeting, the Council noted that the members had expressed concerns regarding the 3rd bullet point of Paragraph 17 of Guidance Note (text given below) and requested that the guidance given therein needs to be clarified.

“However, while considering the observations (for instance modification and /or emphasis of matter in accordance with SA 705/706) of the component auditor in his report on the standalone financial statements, the concept of materiality would not be considered. Thus, the component auditor's observations, if any, on the component’s financial statements, irrespective of whether the auditors of the component are also the auditors of the CFS or not, are required to be included in the parent auditor's report on the CFS, regardless of materiality. (Refer paragraph 46 of this Guidance Note)”.

After detailed deliberations, the Council concluded that the 3rd bullet of Paragraph 17 of the Guidance Note requires to be amended to clarify that the intent of the Guidance Note was also to ensure compliance of SA 600 in such matter. Accordingly, the Council decided to amend the aforesaid 3rd bullet in the following manner:

While considering the observations (for instance modification and /or emphasis of matter/other matter in accordance with SA 705/706) of the component auditor in his report on the standalone financial statements, the parent auditor should comply with the requirements of SA 600, “Using the Work of Another Auditor”.

REGULATIONS

MCA has launched registered valuer rules, to give regulatory licence to various professionals to act as a registered valuer under companies act 2013. On the other side, NGO's have been given one time window to clear past compliances under FCRA.

COMPANIES ACT

▪ **COMPANIES (ACCEPTANCE OF DEPOSITS) AMENDMENT RULES, 2017**

MCA has amended Rule 2(1) (c) (xviii) and Rule 5(1), of the Companies (Acceptance of Deposits) Rules, 2014 which has also exempted any amount received from Infrastructure Investment Trusts from the purview of deposits.

Further now the companies may accept deposits without deposit insurance contract till the March 31, 2018 or till the availability of deposit insurance product, whichever is earlier.

▪ **WITHDRAWL OF GENERAL CIRCULAR NO. 03/2017 DATED 27.04.2017 REGARDING TRANSFER OF SHARES TO IEPF AUTHORITY**

MCA has withdrawn its e General Circular No. 03/2017 dated 27.04.2017 regarding Transfer of shares to IEPF Authority and intimated that the new instructions for the same shall be issued soon.

▪ **MCA HAS ISSUED THE DRAFT OF COMPANIES (REGISTERED VALUERS AND VALUATION) RULES, 2017**

MCA has issued the draft of Companies (Registered Valuers and Valuation) Rules, 2017 for the suggestion/ comments of the stakeholders and the same shall be effective from 15th July, 2017.

▪ **MCA CLARIFICATION ON DUE DATE FOR TRANSFER OF SHARES TO IEPF**

MCA has clarified that where the period of seven years provided under section 124(5) of the Companies Act, 2013 has been completed during 7th September, 2016 to 31st May, 2017, then the Companies has to transfer the shares to IEPF by 31st May, 2017.

OTHER ACTS & REGULATIONS

- **ONE TIME EXEMPTION TO NGOS TO FILE ANNUAL RETURNS**

All associations/organizations who have applied for renewal of their registration under the Foreign Contribution (Regulation) Act, 2010 (FCRA) but has not filed their Annual Returns from Financial Year 2010-11 to 2014-15 can file their Annual Returns without compounding fee being imposed on them for the late filing.

- **EMPLOYEE'S COMPENSATION (AMENDMENT) ACT, 2017**

The Central Government has notified Employee's Compensation (Amendment) Act, 2017 with effect from 15th day of May, 2017.

- **MCA NOTIFIES CLAUSE (A) TO (D) OF SECTION 2 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016**

MCA has notified provisions of clause (a) to (d) of section 2 of the Insolvency and Bankruptcy Code, 2016 with effect from 1st April, 2017

TAX CALENDER

June 2017

Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri							
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
Date	Regulation	Obligation																											
6	Service Tax	-Online Service Tax Payment by corporates																											
7	Income Tax	-Due date for deposit of Tax deducted/collected for the month of May, 2017. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan																											
14	Income Tax	-Due date for issue of TDS Certificate for tax deducted under Section 194-IA in the month of April, 2017																											
15	Income Tax	-Due date for furnishing of Form 246 by an office of the Government where TDS for the month of April, 2017 has been paid without the production of a challan																											
15	Income Tax	-Quarterly TDS certificates (in respect of tax deducted for payments other than salary) for the quarter ending March 31, 2017																											
15	Income Tax	-First instalment of advance tax for the assessment year 2018-19																											
15	DVAT	-Last date for payment of tax deducted at source on payment made to contractor during the month of May, 2017																											
15	PF	-Last Date for deposit of Provident Fund for the month of May, 2017																											
15	GST	-Last Date for GST registration for existing taxpayers																											
21	DVAT	-Last date for online payment of tax due for the month of May, 2017																											
21	ESI	-Last Date for deposit of Employees State Insurance for the month of May 2017																											
21	MVAT	-Last date for payment of taxes for the quarter/ month ended May 2017.																											
22	DVAT	- Date of issuance of certificate for Tax Deducted at Source in the month of May 2017																											
29	Income Tax	-Due date for e-filing of a statement (in Form No. 3CEX) by an eligible investment fund under section 9A in respect of its activities in financial year 2016-17.																											
30	Income Tax	-Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IA in the month of May, 2017																											
30	Income Tax	-Return in respect of securities transaction tax for the financial year 2016-17																											
30	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 March 31, 2017																											
30	Income Tax	-Statement to be furnished (in Form No. 64C) by Alternative Investment Fund (AIF) to units holders in respect of income distributed during the previous year 2016-17																											
30	Income Tax	-Report by an approved institution/public sector company under section 35AC(4)/(5) for the year ending March 31, 2017																											
30	Income Tax	-Due date for furnishing of statement of income distributed by business trust to its unit holders during the financial year 2016-17. This statement is required to be furnished to the unit holders in Form No. 64B [As prescribed under Rule 12CA inserted by the Income-tax (First Amendment) Rules, 2015, w.e.f. 19-1-2015.]																											

Form No.

GAR-7(Online)

Challan 281

DVAT-20

DVAT-43

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