

# NEWSLETTER

FEBRUARY, 2017

J P Chawla & Co. LLP  
Chartered Accountants

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



## FINEPRINT

February 2017

| Sno. | Content                |
|------|------------------------|
| 1    | CEO's Message          |
| 2    | The month that was     |
| 3    | Tax                    |
| 4    | Assurance & Accounting |
| 5    | Regulations            |
| 6    | Tax Calendar           |
| 7    | About us               |

**March 3<sup>rd</sup> 2017,**

## **CEO's Message**

February 2017 was all about Budget and its impact, with analysis boiling down to drawing room of average citizen of India. The positive news of GDP growth being 7% between the demonetization months of October to December is a surprise and relief to many.

February 2017 also saw a stable review of Indian monetary policy by Reserve bank of India. In the governance space the push towards demonetization and digitization continued in February. In the business space the major movement was in telecom sector; TATA finally reaching settlement with Docomo, subject to final decision of High Court; Also Airtel eyeing purchase of Indian assets of Telenor and Reliance JIO pushing for expansive market share. GST also saw meetings of GST council for finalization of various aspects of GST law. Over all February was a stable month in the Indian economic and regulatory space.

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

Happy Reading!!

Sincerely Yours,

**Rajat Chawla**

**Managing Partner & CEO**  
**New Delhi**

## The Month That Was

February 2017 was a budget month and its impacts! The economy is slowly turning back after demonetization with December quarter, showing a GDP growth at 7%. The tailwinds which supported the economy over the past few years, such as low oil and commodity prices, are gradually turning into headwinds now. The government is now proactively looking at ease of doing business even as legacy issues such as the pile of bad debt continue to delay a broad-based investment revival. During a monetary policy review in February Reserve Bank of India kept the repo rate, at which it lends to banks, unchanged at 6.25% after reducing it twice in the current financial year. Over all fundamentals of Indian economy remain robust as ever.

Some of the other highlights in February 2017 are:-

- **The Lok Sabha** has passed the Payment of Wages (Amendment) Bill, 2017 which allows for digital payment of salaries or through cheque which would enable employers to pay wages of less than Rs. 18,000 a month by cheque or digitally to bank accounts, besides in cash, by doing away with the requirement of employee's written consent for the same.
- **INDIA'S FOREIGN TRADE: January, 2017** In consonance with the revival exhibited by **exports** in the last four months, during January, 2017 exports continue to show a positive growth of 4.32 per cent in dollar terms (valued at US\$ 22115.03 million) and 5.61 per cent in Rupee terms (valued at Rs. 150559.98 crore) as compared to US\$ 21199.02 million (Rs. 142568.31 crore) during January, 2016. **And, Imports** during January 2017 were valued at US\$ 31955.94 million (Rs. 217557.32 crore) which was 10.70 per cent higher in Dollar terms and 12.07 per cent higher in Rupee terms over the level of imports valued at US\$ 28866.53 million (Rs. 194134.02 crore) in January, 2016.
- **RBI proposes lower MDR from April 1 to keep digi-pay momentum** The Reserve Bank of India (RBI) has proposed that the merchant discount rate (MDR or charge) on debit card transactions be rationalised on the basis of turnover. Besides, there should be differentiated MDR for the government and QR-code related transactions.
- **Tata Motors partners with Microsoft for new car products** to improve the in-car connected experience. Other global automakers including Toyota, Ford also have similar technology tie-ups with Microsoft to develop technology-enabled new products. But in India Tata Motors is the first company to do so. The company will use Microsoft's connected vehicle technology along with AI (artificial intelligence, machine learning and IoT (internet of things) capabilities.
- **Renewable Energy** The Cabinet Committee on Economic Affairs (CCEA) has approved the enhancement of capacity of the Scheme for Development of Solar Parks and Ultra Mega Solar Power Projects from 20,000 megawatt (MW) to 40,000 MW, which will ensure setting up of at least 50 solar parks each with a capacity of 500 MW and above in various parts of the country

## TAX

The Tax saw lot of new developments February 2017, with India Austria new protocol, CBDT clarification on POEM, clarification of demonetization in form of SOP's and FAQ's and new tax jurisprudence, including few changes in VAT and Service tax.

### International Taxation

#### International Taxation February Updates

- **India, Austria sign protocol amending 'India-Austria Double Taxation**

India and Austria have signed a Protocol to amend the existing double taxation avoidance convention between the two countries. The protocol will broaden the scope of the existing framework of exchange of tax related information, which will help curb tax evasion and tax avoidance between the two countries and will also enable mutual assistance in collection of taxes.

- **CBDT clarifies Rs. 50 crore turnover threshold for Place of effective management POEM applicability**

CBDT issues circular clarifying that provisions of Sec 6(3)(ii) relating to (POEM) won't apply to companies having turnover or gross receipts less than Rs 50 crores during financial year; CBDT now issues a clarificatory circular since the Press Release issued in January 2017 referred to Rs 50 crores limit, however the same was not expressly mentioned in the POEM circular.

- **Ford India Limited [TS-37-ITAT-2017(CHNY)] - FTS, not taxable since specific FTS article under India-Thai DTAA**

In the above case, Chennai ITAT rules that payment on account of fees for technical services ('FTS') to Thailand based entities by assessee, does not qualify as Fess for technical services (FTS), absent specific FTS article under India-Thailand DTAA. Rejects Revenue's stand that since the payment qualified as FTS u/s 9(1)(vii) of the Act, the domestic law provisions will apply to that extent, also rejects Revenue's invocation of residuary Article 22 (relating to "Other Income") to tax the remittances. Further ITAT observes that the income earned by these entities were in the regular course of their business and therefore clearly dealt by Article 7, however in absence of PE the same cannot be brought to tax.

- **D.I.T Vs A.P. Moller Maersk A/S [TS-70-SC-2017] - Global telecommunication facility' cost reimbursed by Indian agents not FTS; Upholds Bombay High Court (HC) ruling**

In the said case SC dismisses Revenue's appeal challenging Bombay High Court decision by clarifying that a common facility was provided by the assessee to all its agents across countries to enable them to discharge their role more effectively, which was an integral part of the shipping business. SC also rules "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". Further, SC relies on Kotak Securities Ltd. ruling wherein it was held that "use of facility does not amount to technical services".

- **Nagarjuna Fertilizers [TS-67-ITAT-2017(HYD)] - Special Bench resolves Sec 206AA Vs treaty override controversy in favour of taxpayers**

Special Bench ('SB') of ITAT rules in favour of taxpayers, holds Sec. 206AA (which provides for higher TDS rate of 20% absent PAN) cannot override beneficial DTAA rates. Further SB clarifies that "since section 206AA falls in Chapter XVII-B dealing with tax deduction at source, it follows that the treaty provisions which override even the charging provision of the Domestic Law by virtue of section 90(2) would also override the machinery provisions of section 206AA irrespective of non-obstante clause contained therein.

- **Nipro Asia Pte Ltd. [TS-66-ITAT-2017(DEL)] – Attribution of profits to Indian Branch**

In the given case, Delhi ITAT attributes 30% of profits to Indian branch (PE) of Singapore-based assessee (engaged in trading of medical equipment) in respect of direct sales in India by head office during AY 2003-04, rejects assessee's argument that AO had applied 'force of attraction rule.

- **Singapore Budget 2017 proposes BEPS-compliant IP regime and R&D safe harbor**

The Budget includes a proposal to introduce a new IP regime called the 'IP Development Incentive' (IDI) that is said to conform with the "modified nexus approach". The Budget proposes to introduce a safe harbor rule for payments made under Cost-sharing agreements (CSAs) for R&D projects. It is proposed, to ease compliance, taxpayers may opt to claim tax deduction under Section 14D for 75 percent of the payments made under a CSA incurred for qualifying R&D projects instead of providing the breakdown of the expenditure covered by the CSA payments.



## Transfer Pricing

### Transfer Pricing February Updates

- **CBDT signs 4 unilateral APAs pertaining to contract manufacturing, software development & ITeS**

CBDT signs 4 more unilateral APAs pertaining to manufacturing, financial and Information Technology sectors; International transactions covered in these APAs include contract manufacturing, ITeS and software development services. With this, total number of APAs signed during this financial year reaches 66 while 130 agreements have been signed since inception of APA programme.

- **OECD releases peer review documents on BEPS Action 13 on Country-by-Country Reporting**

The Organization for Economic Co-operation and Development (OECD) released the peer review documents on Base Erosion and Profit Shifting (BEPS) Action 13 on Country-by-Country (CbC) Reporting. The terms of reference in the Action 13 peer review documents focus on three key aspects of CbC reporting i.e. The domestic legal and administrative framework, The exchange of information framework, The confidentiality and appropriate use of CbC reports. The peer reviews will consist of three phases structured into annual reviews, starting respectively in 2017, 2018 and 2019.

- **Goodyear India Limited [TS-115-HC-2017(DEL)-TP]**

Delhi HC refuses to admit Revenue's appeal challenging ITAT's deletion of TP-adjustment on account of Advertising, Marketing and Promotion (AMP) expenses in the case of Goodyear India. However, admits question of law raised by Revenue against ITAT's deletion of TP-addition on payment of trademark fee to AE and application of TNMM over CUP method. TPO had proposed adjustment towards AMP-spend at an amount equal to the trademark fee observing that the assessee instead of paying trademark fee should have received compensation from AE for creating and developing marketing intangible, however ITAT had deleted AMP-adjustment following HC decisions in Maruti Suzuki and Honda Siel.

- **AXA Business Services Pvt Ltd [TS-1032-ITAT-2016(Bang)-TP]**

Bangalore ITAT rejects assessee's contention for exclusion of expenses reimbursement in operating cost/operating revenue, holds that relevant expenses were incurred in connection with provision of services to AE and non-charging of mark-up is an irrelevant consideration. Also holds that, the fact that expenses were taken directly to Balance Sheet without routing the same through P&L, cannot change nature and purpose of expenses; Regarding selection of comparables for assessee's IT enabled services, excludes 2 comparables for AY 2009-10 citing functional dis-similarity and remands back Infosys BPO and Cosmic Global for comparability analysis. For AY 2008-09, excludes 8 comparables applying turnover filter of 10 times assessee's turnover on both sides, notes that both assessee & Revenue agree that Rs. 1-200 Cr turnover filter applied by CIT(A) was not proper. Also, held that abnormal profit/loss cannot be criteria for inclusion or exclusion of comparable, but reasons for such abnormal profit/loss may be relevant, thus remits comparability of 2 companies to examine reasons for abnormal results; Also excludes 4 comparables citing reasons like functional dissimilarity, ownership of intangibles, brand value, KPO services.

## Direct Tax

### Direct Tax February updates:

**1. CBDT issued standard operating procedure for on-line verification of cash Transactions post demonetization:**

CBDT vide Instruction No. 3 of 2017 released the Standard Operating Procedure ('SOP') to be followed by AOs for online verification of cash transactions pursuant to demonetisation. These SOPs will be related and limited to primary verification of information only provided by the person and AO can categorized the explanation provided by the person in '**Acceptable**' or '**Non-Acceptable**' categories. But no right has been provided to AO to undertake any independent enquiry; third party verification even telephonic queries have to be avoided.

CBDT also provides 'source specific general verification guidelines' for cash deposited out of (i) earlier income or savings, (ii) receipts exempt from tax (iii) bank withdrawals (iv) cash received from identifiable (with/without PAN) and un-identified persons. With regards to cash out of earlier income or savings, in case of an individual not having any business income, CBDT clarifies that no further verification is required to be made if total cash deposit is up to Rs. 2.5 lakhs.

**2. CBDT issues FAQs on "Operation clean money":**

'Operation Clean Money' was initiated on December 31 last year for the e-verification of large cash deposits made during the period from November 9 to December 30, 2016. In order to facilitate online responses, the last date for their submission has been extended up to February 15, 2017 and a detailed Frequently Asked Question (FAQs) has also been issued to assist the taxpayers in submitting their response relating to account confirmation, explanations of source of cash deposits including cases of gifts & donations, cash sales, professionals having cash receipts, depositing someone else's cash in own bank account, etc.

**3. Tax officers to file self-appraisal report on e-assessment**

The Central Board of Direct Taxes (CBDT) has started paperless assessment proceedings in 7 metro cities of Delhi, Mumbai, Ahmedabad, Bengaluru, Chennai, Hyderabad and Kolkata. The assessment proceedings in all cases selected under scrutiny have to be conducted through email based communications unless the taxpayer concerned desires to opt out of the paperless assessment scheme.

**4. The Pr. Commissioner of Income tax vs. State bank of Patiala- AY 2008-09 - Income on shares holding as stock-in-trade not hit by Sec 14A disallowance:**

As per Punjab and Haryana HC, exempt income earned by the person engaged in business of sale and purchase of shares as trader will not be hit by disallowance of Section 14A. As per section 14A



no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act. Holds that the assessee did not retain shares with the intention of earning dividend income and that the dividend income was incidental to the business of sale of shares, clarifies that the expenditure incurred in acquiring the shares cannot be apportioned to the extent of dividend income and disallowed u/s 14A;

**5. Additional Commissioner of Income tax New Delhi vs. Sony India Pvt. Ltd., AY 2005-06- Eligibility of depreciation on discontinued unit's assets forming part of 'block' :**

As per Delhi HC, depreciation on assets of discontinued units will be allowed as deduction irrespective of the fact that depreciation u/s 32 cannot be allowed as assessee was neither the owner nor the assets were put to use in assessee's business.

**6. Agarwal Yuva Mandal (Kerala) vs Union of India - Sec 143(1) Intimation, despite not order, subject to revision u/s 264 to consider taxpayer's claim:**

As per Kerala HC If an assessee receives the intimation u/s 143(1) where certain deduction was not allowed then assessee can file the revise return consequently. As per HC "a mere intimation u/s 143(1) does not amount to an order which could be revised u/s 264, in view of statutory provision u/s 143(1) which uses the word intimation and not order. However, considering that CIT's revisionary powers are very wide, HC opines that if there is failure on part of taxpayer in making a claim for deduction, the CIT may grant one more opportunity in the matter; Holds that "*independent of the notice issued u/s 143(1)(a), ...when the petitioner has filed a revised return and has sought for interference by the Commissioner, necessarily the claim has to be considered in accordance with law.*",

## Service Tax

### Service Tax February Updates:

- 1.) **Amendment in Rule 6 (payment of service tax) of the Service tax Rule, 1994 vide Notification 6/2017- ST;** In case of online information and database access or retrieval services provided or agreed to be provided by any person located in a non-taxable territory and received by non-assessee online recipient, the service tax payable for the month of December, 2016 and January, 2017, shall be paid to the credit of the Central Government by the 6th day of March, 2017.”.
- 2.) **Amendments in Mega Exemption (Notification no. 25/2012) vide Notification 7/2017- ST;**
  - a) **Amendment in Entry 9B of mega exemption:** In the said entry the word “residential” shall be omitted. The exemption remains the same in all other respects.
  - b) **New entry 23A in mega exemption:** The said entry states that the services provided to the Government by way of transport of passengers, with or without accompanied belongings, by air, embarking from or terminating at a Regional Connectivity Scheme Airport, against consideration in the form of Viability Gap Funding (VGF) shall be exempt from service tax for a period of one year from the date of commencement of operations of the Regional Connectivity Scheme (RCS) as notified by Ministry of Civil Aviation.
  - c) **New entry 26D in mega exemption:** The said entry states that the services provided or agreed to be provided by the Army, Naval and Air Force Group Insurance Funds by way of life insurance to members of the Army, Navy and Air Force under the Group Insurance Schemes of the Central Government is being exempted from service tax from 2nd February, 2017.
  - d) **Amendment in Entry 30 of mega exemption with effect from the date of assent of the President:** The entry 30 shall be re-drafted. The sub-entry (i) of revised entry 30 states that “Services by way of carrying out any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption shall not be liable to service tax.

The old sub-entry (i) shall become the sub-entry (ii). The revised sub-entry (ii) states that any intermediate production process as job work **not amounting to manufacture or production** in relation to (a), (b), (c) and, (d) of the old entry (i) shall not be liable to service tax.

Consequently, the definition of ‘process amounting to manufacture’ [clause (40) section 65B] is also proposed to be omitted from of the Finance Act, 1994 and is being incorporated in the general exemption notification.

**3.) Service tax on services by operators of Common Effluent Treatment Plant shall not be required to be paid, vide *Notification 8/2017- ST*;**

According to a generally prevalent practice, there was non-levy of service tax, on the services by operators of Common Effluent Treatment Plant by way of treatment of effluent for the period 1<sup>st</sup> July, 2012 to 31<sup>st</sup> March, 2015. However the said service was liable to service tax under section 66B of the Finance Act, 1994.

The central government vide *notification 8/2017* directs that service tax payable on the said services, during the period stated above shall not be required to be paid.

## Value Added Tax

### Delhi VAT

- **Filing of online return for 3rd Quarter of FY 2016-17**

Due date of filing of DVAT Return in Form 16, 17 an 48 for 3rd quarter FY 2016-17 has been extended upto 28th February, 2017 (Circular No. 23 dated February 13, 2017).

- **Framing of Central Assessment**

The reconciliation return in CST form 9 relating to declaration of sales against statutory forms are required to be filed by all such dealers who had effected interstate sale against any statutory form like C, F, H, E-I, E-II, I & J.

All the Assessing Authorities have been directed to complete the Form-9 assessment u/s 9(2) of the CST Act, 1956 read with section 32 of the DVAT Act, 2004 for the year 2012-13 which will get time barred by the end of this financial year.

OHAs/SOHAs shall allow the objection/appeal, filed, if any, framed due to deficiency of forms only after ensuring that the forms under dispute have been filed online (Circular No. 22 dated February 02, 2017).

- **Work Contract**

The Property in the consumable chemicals used in the cleaning process does not transfer to the contractee- No Vat liability (Vpssr Facilities Vs Comm of VAT & Anr. (2017 (2) TMI814 – Delhi HC))

## **Maharashtra VAT**

- **Improves New Registration Functionality With Integrated Payment Gateways**

The SAP based Registration System providing for unified online application for registration under various Acts administered by the department has been in operation since 25th May 2016. This system has been upgraded from 19th December 2016.

## Assurance & Accounting

The assurance and accounting space in February 2017 did not see many changes, except for few changes mentioned below

- **ICAI issues Exposure Draft of Ind AS compliant Schedule III to Companies Act, 2013 for NBFCs**

The Exposure Draft of the Ind AS-compliant Schedule III to the Companies Act, 2013, for Non-Banking Financial Companies (NBFCs) has been issued by the Accounting Standards Board of the Institute of Chartered Accountants of India, for comments. The Board has invited comments on any aspect of this Exposure Draft.

- **IFRIC 22 issued**

It explains the date for the purpose of determining the exchange rate when an entity is paying or receives consideration in advance in a foreign currency.

## REGULATION

The regulatory areas of company law saw clarifications in Companies Act, 2013 and few changes in foreign exchange management act, 1999 in February 2017.

### Foreign Exchange Management Act

- **Penalty for contravention**

Contravention of delay in filing the Annual Return on Foreign Liabilities and Assets (FLA return), by all Indian companies which have received Foreign Direct Investment in the previous year(s) including the current year have been delegated to Regional Offices of the Reserve Bank of India

- **New Lending options in ECB**

In order to provide more choices of investors to Indian entities issuing Rupee denominated bonds abroad, it has been decided to also permit Multilateral and Regional Financial Institutions where India is a member country, to invest in these Rupee denominated bonds.

### Companies Act

- **MCA Clarification on applicability of Provisions u/s 391(2) of Companies Act 2013**

MCA has reviewed the provisions of Section 391(2) of the Companies Act 2013 which stipulates Chapter XX shall apply mutatis mutandis, to closure of place of business of a foreign company in India, w.e.f. 15 Dec. 2016, as if it were a company incorporated in India. MCA has noted that provisions of Section 391(1) and 391(2) need to be read harmoniously and has clarified that provisions of Section 391(2) shall apply to only those foreign companies which have issued prospectus or IDRs pursuant to provisions of Chapter XXII of the Companies Act, 2013.

- **Investor Education and protection fund**

MCA notifies Investor Education and protection fund authority (Accounting , Audit , Transfer and Refund rules) 2016 , which deals with Accounting , Audit , Transfer of shares and Refund claims from the fund.





**Dear Valuable Client / Colleague,**

In case you require any further detailed analysis on above mentioned news letter, please do get back to us and we shall be happy to provide you the same.

**With Best Regards,**

**Team J P Chawla & Co . LLP**

## **About J P Chawla & Co. LLP**

J P Chawla & Co. LLP is a professional services firm based in New Delhi, India. We were established in the year 1974 with the aim to create value for our clients by delivering quality, comprehensive, timely, practical and innovative services. We offer a comprehensive range of services, including taxation services, regulatory services, transaction advisory services, financial & management consultancy services, assurance & risk services, and outsourcing services. Over the past several decades, we have established significant competitive presence in the country. Our vast and diversified client base includes Multinational enterprises, domestic companies, high net worth individuals, government companies and institutions in all leading industry verticals. We are a team of distinguished Chartered Accountants, Management Accountants, Corporate Financial Advisors and Tax Consultants. Our team has the requisite skills and experience to provide complex business, financial, assurance, tax and regulatory services to our clients. Our strength lies in our timely performance-based, industry-tailored and technology-enabled services which are delivered by some of the most talented professionals in the country. For more information about J P Chawla & Co.LLP's service offerings, visit [www.jpc.co.in](http://www.jpc.co.in)

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