CORPORATE UPDATE

DIRECT TAX

INTERNATIONAL TAXATION

I. Tribunal affirms capital gains tax under the Indirect Transfer Regime [Cairn U K Holdings Ltd. vs. DCIT (2017) 79 taxmann.com 128 (Delhi Trib)]

Recently, the Tribunal, Delhi Bench, held that a transfer of shares, by a UK based company, of subsidiary incorporated in Jersey, which further held shares in certain Indian companies, was liable to tax in terms of Section 9(1)(i) of the Act.

The assessee, Cairn UK Holdings Ltd ('CUHL') held a subsidiary incorporated in Jersey, Cairn India Holdings Limited ('CIHL') which in turn held shares of nine Indian subsidiaries having significant oil and gas assets in India. As a part of group restructuring shares of CIHL were transferred to a newly incorporated company in India, i.e. Cairn India Limited ('CIL'), the consideration in respect of which, was partly discharged by issuance of shares by CIL and partly by cash.

The revenue contended that the transfer of shares of CIHL to CIL would fall within the rigours of the Explanation 5 read with purview of Section 9(1)(i) ('Indirect transfer provisions') as retrospectively amended (with effect from April 01, 1962) by the Finance Act, 2012. The assessee argued that the provisions of indirect transfer cannot be pressed into service since such provisions were not on the statute at the time of such transaction.

During the course of the proceedings before the Hon'ble Tribunal, the key aspects that were deliberated upon have been highlighted hereunder:

- The assessee contended that the retrospective amendment in Section 9(1)(i) of the Act is bad in law and ultra virus the Constitution of India. However, the Hon'ble Tribunal stated that the Tribunal is not the right forum to challenge the validity of amendments in the Act and as such, refused to entertain such contention;
- The Tribunal rejected the argument of the assessee that the transactions entered into were merely for the purpose of business reorganization and did not result in 'real income'. The Hon'ble Tribunal observed that the series of transactions culminated into an Initial Public Offer by CIL. The resultant funds were utilized to discharge the payments towards acquisition of shares of CIHL;
- While holding so, the Tribunal also observed that the transaction did result in real gains to the assessee, which is evident by its financial statements reflecting exceptional gains from transfer of shares;
- The assessee had also argued that on the date of the entering of the Agreement for Avoidance of Double Taxation between India and UK, the provisions of indirect transfer were not in existence, and hence, the indirect transfer provisions ought to be ignored. The Tribunal, while rejecting this argument, stated that if the provisions of DTAA (in this case, Article 14), provide that the chargeability would be covered by the domestic tax provisions, such DTAA provisions can't limit the boundaries of the domestic tax laws. In other words, such treaty provisions cannot render the provisions of the Act static.

IN THIS ISSUE

In light of the aforesaid, the Tribunal held that the gains earned by the assessee on transfer of shares of CIHL shall be chargeable to tax in India as Capital Gains in terms of provisions of section 9(1)(i) of the Act.

II. Reimbursement of salary of seconded employees not liable to withholding tax [Burt Hill Design Pvt Ltd vs. DDIT (ITA No. 406/Ahd/2014)]

On the vexed issue of withholding tax upon reimbursement of salary of seconded employees, the Tribunal, Ahmedabad Bench, held that such income is liable to tax under the head 'Salary' and therefore, no further incidence of withholding tax does arise upon the reimbursement of such salary costs.

In terms of a secondment agreement, the assessee made certain payments to its parent entity in US, comprising of the salary cost of the seconded employees. While cross charging such salary costs, no mark up was charged.

While taxes were duly withheld under Section 192 of the Act, from the salaries of such seconded employees, no tax was withheld under Section 195 in respect of the reimbursement of the salary cost on the premise that no profit element was embedded therein. However, the revenue authorities contended that while reimbursing the salary cost, tax ought to have been withheld by the assessee.

The Hon'ble Tribunal held that once the obligation to deduct tax under Section 192 of the Act arises, there would be no requirement to deduct tax under Section 195 in respect of the reimbursement of the salary cost to the parent entity. While holding so, the Hon'ble Tribunal relied upon the language of the provisions of Section 195 of the Act, which does carve out an exception in respect of income chargeable under the head 'Salaries'.

On the question whether the said amounts could be characterised as Fee for Included services under Article 12 of the Indo-US tax treaty, the Hon'ble Tribunal noted that the revenue authorities could not demonstrate how the reimbursements would fulfill the conditions specified by Article 12(4)(b), i.e. that the service should make available technical skill, knowhow or process.

Furthermore, as regards the incidence of a Service PE in India, it was held that the payment received by the US entity was merely a cost to cost reimbursement, which does not entail any element of income. In view thereof, the Tribunal held that no profit does arise in India in terms of Article 7(1) of the Indo-US tax treaty.

In light of the above backdrop, it was concluded that in the absence of any income accruing / arising in the hands of the US entity, incidence of withholding tax under Section 195 of the Act does not arise.

Interestingly, it may be mentioned that that in the instant case, the aspect of employer-employee relationship was regarded is wholly irrelevant. However, in various judicial precedents, the aspect of economic employment has been extensively deliberated upon.

Here, it would apt to highlight that in a recent decision of the Bangalore bench of the Tribunal in the case of Flughafen Zurich AG v. DDIT, (IT) [2017] 79 taxmann.com 199, it was held that payments made by the host company to the home company is liable to tax in India as FTS, on the premise that the home company continues to be the employer during the secondment period. While rendering such decision, reliance was placed on the judgment of the High Court of Delhi in Centrica India Offshore Pvt. Ltd. v. DCIT (364 ITR 336) and Tribunal, Bangalore Bench in the case of Intel Corporation Ltd. v. DDIT IT(TP) A No.1486/ Bang/ 2013.

(Contributed by: Mr. Anuj Mathur/ Ms. Purnima Bajaj)

TRANSFER PRICING

I. Payment of brand usage royalty to Associated Enterprise allowed for period prior to the date of formal agreement in view of commercial expediency [Johnson & Johnson Ltd (TS-171-HC-2017(BOM)-TP) dated March 17, 2017]

In the instant case, the Mumbai High Court ('the HC'), amongst other issues, upheld the order of Income Tax Appellate Tribunal ('ITAT') that royalty payment to associated enterprise ('AE') for brand usage made on account of commercial expediency can be allowed even if there was no agreement to support the same. In this regard, the HC placed reliance on the decision of Madras High Court in the case of CIT vs. Associated Electrical Agencies (266 ITR 63).

The HC noted finding of the ITAT that there was an understanding between the parties that royalty payment would be made with effect from a particular earlier date while the final agreement was entered into at a later date. The effective date of royalty payment was provided in the draft agreement submitted to the Reserve Bank of India ('RBI') for approval. The final agreement was executed later only after the RBI approval to the draft agreement with the same effective date.

II. Transfer pricing provisions applicable to international transactions on accrual basis, even where expenses not claimed under cash accounting system [SIS Live (TS-149-ITAT-2017(DEL)-TP) dated March 8, 2017]

In the instant case, the assessee, a UK based partnership firm, was formed for producing and providing coverage of Common Wealth Games (CWG) 2010, New Delhi to Prasar Bharathi. During the relevant assessment year, assessee entered into various transactions with its AE relating to availing of technical services, reimbursement of expenses and availing equipment on hire. The assessee did not file Transfer Pricing ('TP') Certificate in Form 3CEB since it followed cash basis of accounting and no expenses arising out of international transactions were accounted for and claimed as deduction in the relevant assessment year. The Assessing Officer ('AO') referred the international transactions to the Transfer Pricing Officer ('TPO') who computed Arms's Length Price ('ALP') of all transactions with AEs at NIL and also computed notional interest on receivables from AE.

Before the ITAT, the assessee contended that TP provisions were not applicable for the relevant assessment year and the same shall apply in the year in which expenses would be recorded in the books of accounts. However, the ITAT rejected assessee's argument and held that transactions benchmarked by the TPO were "international transactions" u/s 92B of the Act despite the method of accounting followed by assessee and expenditure not claimed as deduction.

ITAT further distinguished Bombay HC decision in the case of Vodafone India Services Private Limited vs. Union of India & Others [368 ITR 1 (Bom.)] as well as coordinate bench decisions in Bharti Airtel vs. Addl CIT [161 TTJ 428 (Del.)] and Toppsgrup Electronic Systems Ltd. vs. ITO [157 ITD 1123 (Mum.)] as relied upon by the assessee stating that the transactions in those cases dealt with last category being issue of share capital or issue of corporate guarantee, i.e. "other transactions" which impact profit, income, loss or assets of the enterprise, whereas assessee's transactions were covered under "lease of tangible assets, "provision of services" or "lending or borrowing money". The ITAT further illustrated that under cash accounting system, income on interest free advance given by Indian company to its AE would never get recognized at any point.

However, the ITAT rejected TPO's determination of ALP at NIL without examining details/ evidence provided by the assessee and accordingly remitted the issue to AO/ TPO for fresh examination.

III. Selection of foreign AE as tested party accepted, database 'Global Symposium' as used by assessee available in public domain [IDS Infotech Ltd (TS-184-ITAT-2017(CHANDI)-TP) dated March 20, 2017]

In the instant case, the assessee had treated its foreign AE as tested party and used an international search engine, namely 'Global Symposium'. The assessee furnished all relevant documents to the TPO including detailed search process. However, the TPO, while benchmarking the impugned international transaction of provisions of IT/ IT enabled services, rejected foreign AE for the sole reason that reliable data regarding foreign comparables as selected by the assessee was not available.

The ITAT held that there is no bar in treating foreign AE as tested party where the data is available in public domain accessible to the tax authorities or the assessee has furnished all relevant data. In this regard, the ITAT placed reliance on various ITAT decisions in the case of Ranbaxy Laboratories Ltd. [TS-173-ITAT-2016(DEL)-TP], General motors India Private Limited vs. DCIT [TS-215-ITAT- 2013(Ahd)-TP] and Development Consultants Pvt Ltd [TS-3-ITAT-2008(Kol)]. The ITAT also observed that the TPO had accepted foreign AE as tested party in relation to other international transaction of provision of marketing services and also in preceeding year for the impugned transaction with same facts. Consequently, the ITAT deleted the TP adjustment and allowed the assessee's appeal.

IV. 'Channel distribution' and 'advertisement sale' segments of ESPN closely linked, aggregation by the assessee for benchmarking upheld [ESPN Software India Ltd (TS-128-ITAT-2017(DEL)-TP) dated March 1, 2017]

In the instant case, the ITAT, amongst other issues, accepted assessee's aggregation of 'advertisement sale' and 'channel distribution' segments for benchmarking purpose under TNMM from commercial perspective observing that higher the subscriber base of channel, the greater are chances of the aired advertisement being viewed by a large target audience. The ITAT noted that advertisement airtime increased with number of cricketing events. The ITAT placed reliance on OECD TP Guidelines and US TP Regulations in this regard.

The ITAT also observed that Indian companies engaged in downlinking of foreign television channels were mandatorily required to have both rights, i.e. channel subscription rights and advertisement air time inventory rights in view of guidelines issued by the Ministry of Information and Broadcasting of Government of India.

The ITAT rejected contention of the Revenue that the assessee had merged these two segments to conceal loss incurred in advertisement segment. The ITAT confirmed that the Commissioner of Income-tax (Appeals) was justified in directing the TPO to carry out the ALP analysis of both segments on aggregated basis.

V. More than twenty percent sales to customer constitute 'dominant influence' leading to 'defacto control' to form AE relationship [Hospira Healthcare India Private Limited (TS-147-ITAT-2017(CHNY)-TP) dated February 28, 2017]

In the instant case, amongst other issues, the ITAT held that two entities to which the assessee sold more than 20% of the total sales, would constitute AE under section 92A(2)(i) of the Act. The ITAT held that the term 'influence' used in section 92A(2)(i) means 'dominant influence' leading to de facto control and a person who purchased more than 1/5th of total sales of assessee would have a distinctly dominant influence on the pricing and could exercise defacto control over the assessee.

The ITAT did not agree with the assessee's contention that direct/ indirect participation in the management/ control/ capital of one enterprise in the other enterprise was required to establish AE relationship. The assessee, relying on the decision of Bangalore ITAT in the case of Page Industries Ltd [TS-943-ITAT-2016(CHNY)-TP] had contended that unless conditions of section 92A(1) are satisfied, section 92(A)(2) could not come into play.

While holding that the above referred two entities were AEs of the assessee, considering certain shortcomings in benchmarking as done by the TPO, the ITAT remitted the issue regarding benchmarking back to the file of the TPO for fresh consideration.

VI. Re-characterization of share application money as debt upheld, considering inordinate delay in allotment of shares and availability of funds with AE for utilization [Logix Microsystems Ltd (TS-181-ITAT-2017(Bang)-TP) dated March 21, 2017]

In the instant case, the ITAT, amongst other issues, held that remittance of share application money to subsidiary constituted an international transaction under Section 92B of the Act in view of extraordinary delay in allotment of shares and availability of money with the AE for utilization in its business. The ITAT held that the said transaction had a direct bearing on the profit /loss as well as the assets of the assessee.

However, the ITAT rejected the application of State Bank of India prime lending rate by the TPO to determine TP adjustment. The ITAT concurred with the assessee's alternative plea that LIBOR rate ought to be applied to determine arm's length interest as the remittance was made in foreign currency. Accordingly, the ITAT directed the TPO to re-compute the arm's length interest considering LIBOR rate.

(Contributed by: Ms. Ritu Theraja)

DOMESTIC TAXATION

I. CIT cannot invoke revisionary powers u/s 263 to initiate penalty after AO completed assessment

In a recent decision, in the case of Easy Transcription & Software Pvt. Ltd. ("assessee") vs. CIT, the ITAT, Ahmedabad Bench has quashed CIT's revision order under section 263 directing AO to initiate penalty proceedings under Section 271(1)(c) in respect of assessee's erroneous claim of deduction under Section 10B for the Assessment Year (AY) 2010-11.

In the instant case, the assessee was engaged in the business of medical transcription data in foreign countries. For the year under consideration, the assesse filed its return of income declaring NIL income after claiming deduction of Rs. 74,13,630/- under Section 10B of the Act.

During the assessment proceedings, the Assessing Officer ("AO") asked the assessee to demonstrate as to how the conditions prescribed for deduction were fulfilled. Subsequently, the assessee filed a revised return of income declaring total income of Rs.74,13,630/- and withdrew deduction claimed under Section 10B of the Act.

The assessment was completed under Section 143(3) of the Act where the income of Rs.74,13,630/- as per revised return was accepted by the AO. The AO however did not initiate any penalty proceedings in relation to withdrawal of claim under section 10B, after objection raised by AO.

On completion of the assessment, the CIT issued notice under section 263 of the Act in exercise of his revisionary power requiring the assessee to show-cause as to why the assessment framed under section 143(3) accepting the revised return should not be set aside or modified, on account of lapse of AO to not initiate penalty proceedings in respect of erroneous claim of deduction under section 10B and for not verifying and making proper enquires in respect of certain expense claims.

In relation to non-initiation of penalty proceedings, the assesse submitted before the CIT that the penalty proceedings under section 271(1)(c) of the Act have not been initiated by the AO in exercise of discretion vested to him. Thus, non-initiation penalty proceedings ipso facto would not lead to a conclusion that the order of the AO is erroneous in any manner.

The CIT did not accept the pleas as raised by the Assessee and issued directions to the AO to reassesse and initiate penalty proceedings.

Aggrieved by the revisionary order of the CIT under section 263 of the Act, the assessee went in appeal before the Tribunal.

The Tribunal observed that the legal issue that emerges for adjudication is whether the CIT under the umbrella of revisionary powers is entitled to upset the finality of assessment proceedings before the AO who has omitted to initiate penalty proceedings in respect of defaults stipulated under section 271(1)(c) when the circumstances for doing so exists. It further took note of the fact that there are long line of judicial precedents on the issue both for and contra.

The Tribunal observed that the proceedings in respect of assessment and penalty are different and distinct, notwithstanding the precondition that later has to be initiated in the course of former proceedings. Relying on the decision of jurisdictional High Court, in the case of J P Construction v. CIT [ITA No. 1304/Ahd/2009], the Tribunal held that penalty proceedings can be initiated during the currency of assessment proceedings till the conclusion of assessment proceedings. It is not open to CIT to exercise the revisional powers to create a non existent proceedings under section 263 by holding the assessment proceeding as erroneous in so far as prejudicial to the interest of revenue.

In the instant case, the proceeding and consequent order is assessment order. Therefore, the CIT cannot, after the conclusion of the assessment proceedings, make up mind or arrive at the required affirmative conclusion towards initiation of penalty proceedings in substitution of the lapse committed by the AO.

Thus the ITAT overturned CIT's order and held that the CIT was not competent to direct the AO to redo the assessment in order to initiate and levy penalty in respect of erroneous claim of deduction.

(Contributed by: Ms. Ankita Mehra)

II. AADHAAR Number mandatory for PAN and Income Tax Return in india

A new section, Section 139AA, has been inserted in the Finance Act, 2017, as per which it is mandatory for persons eligible to obtain AADHAAR no. to quote AADHAAR no. in the PAN application form and in the income tax return, with effect from July 01, 2017.

Where PAN has already been allotted to any person who is eligible to obtain AADHAR as on July 01, 2017, such person shall intimate AADHAAR no. to such authority and in such form and manner, as may be prescribed, on or before a date to be notified by the Central Govt.

However, the Central Govt. may, by notification, exempt any person or any State from the above requirement.

The above amendment has been made to curb the practice of obtaining duplicate PANs or PANs fraudulently.

As per Section 3(1) of the Aadhaar (Targeted Delivery Of Financial And Other Subsidies, Benefits And Services) Act, 2016, every resident shall be entitled to obtain AADHAAR no. by submitting requisite information and undergoing enrolment process.

Further, as per Section 2(v) of the said Act, "resident" means an individual who has resided in India for a period or periods amounting in all to 182 days or more in the 12 months immediately preceding the date of application for enrolment.

The CBDT on April 04, 2017 also issued a press release in this regard clarifying that such mandatory quoting of AADHAAR shall apply only to a person who is eligible to obtain AADHAAR number.

Accordingly, as per the present provision, foreign nationals residing in India for more than 182 days in 12 months, being eligible to obtain AADHAAR no., shall be required to obtain AADHAAR no. for the purposes of PAN and filing tax return in India effective July 01, 2017, unless exempted by way of notification.

(Contributed by: Ms. Ritu Theraja)

III. CBDT's Clarifications on Revised ICDS [Circular No 10/2017]

The Central Government, in 2015, had brought about a landmark legislative amendment, which had a far reaching impact in the computation of business profits chargeable to tax. The Central Government had issued certain Income Computation and Disclosure Standards ('ICDS'), which were earlier applicable from the Assessment Year ('AY') 2016-17. The objective of introduction of ICDS was to harmonize the Accounting Standards under corporate laws with the provisions of the Act.

Thereafter, upon receiving representations from stakeholders, the applicability of the ICDS was delayed by a year, i.e. from the AY 2017-18. Considering the onerous implications on application of such standards, the CBDT did receive various queries from stakeholders and general public. To facilitate more clarity on these aspects, the CBDT has, vide circular number 10/2017 dated March 23, 2017, issued certain clarifications in the form of Frequently Asked Questions ('FAQs').

The circular has dealt with important aspects revolving around the applicability of ICDS in various situations, such as, where the provisions of Minimum Alternate Tax and Alternate Minimum Tax are applicable, Ind-AS compliant companies, companies governed by presumptive scheme of taxation etc.

Furthermore, the circular does also seek to clarify other aspects, such as requirement of maintenance of separate books of accounts, recognition of retention money, applicability of ICDS on income computed on gross basis, etc.

(Contributed by: Ms. Ritu Gyamlani)

INDIRECT TAX

GOODS & SERVICES TAX (GST)

I. GST Council Meeting Update

The GST Council meeting was held on March 4, 2017, wherein the CGST & IGST Bill was approved. In the Council meeting held on March 16, 2017, the council approved the SGST & UTGST Bill.

On 20th March, 2017 the Union Cabinet has approved the four draft laws on GST i.e. Central GST Law ('CGST Law'), Integrated GST Law ('IGST Law'), Union Territories GST Law ('UTGST Law') and Compensation Law.

As the next step, the Central laws (i.e. CGST Law, IGST Law, UTGST Law and Compensation Law) are expected to be tabled in the Parliament as Money Bills in the on-going Budget session and State GST laws would be presented before the respective State legislatures for approval.

On March 29, 2017, Lok Sabha passed the much-awaited Central Goods and Services Tax ('CGST') Bill, Integrated GST Bill, Compensation GST Bill and Union Territory GST Bill.

The GST Counsil during the meeting on March 31, 2017 finalized and approved Rules related to Valuation, Composition, Transition provision, Input Tax Credit and other Rules related to payment of tax, refund etc.

Rajya Sabha on April 6, 2017 passed four bills, i.e. Central Goods and Services Tax ('CGST') Bill, Integrated GST Bill, Compensation GST Bill and Union Territory GST Bill.

(Contributed by: Mr. Shashank Goel/ Mr. Karan Chandna)

SERVICE TAX

I. Non-applicability of Clause (b) Of Entry 9 of Notification No. 25/2012 on Educational Institution other than an Institution providing Pre-school education services and education services up to higher secondary school :

Vide Notification No. 10/2017-Service Tax dated March 8, 2017, the following proviso has been inserted after sub-clause (iv) of clause (b)

of entry 9:

"Provided that nothing contained in clause (b) of this entry shall apply to an educational institution other than an institution providing services by way of pre-school education and education up to higher secondary school or equivalent"

Earlier exemption was available for services provided to any educational institution. Such exemption is now limited (w.e.f. April 1, 2017) to services provided to educational institution providing services by way of pre-school education and education up to higher secondary school or equivalent.

FOREIGN EXCHANGE MANAGEMENT ACT

RECENT NOTIFICATIONS

I. Risk Management and Inter-bank Dealings: Operational flexibility for Indian subsidiaries of Non-resident Companies

In terms of RBI A. P. (DIR Series) Circular No. 41 dated March 21, 2017, the extant hedging guidelines have been amended.

The purpose of the guidelines is to provide operational flexibility for booking derivative contracts to hedge the currency risk arising out of current transactions of Indian Subsidiaries of Multinational Companies.

The Users are the Non-resident parent of an Indian subsidiary or its centralised treasury or its regional treasury outside India.

Products comprise all Foreign Currency-INR derivatives, OTC, as well as exchange traded that the Indian subsidiary is eligible to undertake as per FEMA, 1999 and Regulations and Directions issued thereunder.

Operational guidelines, terms and conditions for hedging are as given hereunder:

- The transactions under this facility will be covered under a tri-partite agreement involving the Indian subsidiary, its non-resident parent / treasury and the AD bank. This agreement will include the exact relationship of the Indian subsidiary or entity with its overseas related entity, relative roles and responsibilities of the parties and the procedure for the transactions, including settlement. The ISDA (International Swaps and Derivatives Association) agreement between the AD bank and the non-resident entity will be distinct from this agreement.
- The non-resident entity should be incorporated in a country that is member of the Financial Action Task Force (FATF) or member of a FATF-Style Regional body.
- The AD Bank may obtain KYC/ AML certification on the lines of the format in Annex XVIII of the Master Direction on Risk Management and Inter Bank Dealings, as amended from time to time.
- The non-resident entity may approach an AD Cat-I bank directly which handles the foreign exchange transactions of its subsidiary for booking derivative contracts to hedge the currency risk of and on the latter's behalf.
- The non-resident entity may contract any product either under the contracted route or on past performance basis, which the Indian subsidiary is eligible to use.
- The Indian subsidiary shall be responsible for compliance with the rules, regulations and directions issued under FEMA 1999 and any other laws/rules/regulations applicable to these transactions in India.
- The profit/ loss of the hedge transactions shall be settled in the bank account and books of accounts of the Indian subsidiary. The AD bank shall obtain from the Indian subsidiary an annual certificate by its Statutory Auditors to this effect
- The concerned AD Bank shall be responsible for monitoring all hedge transactions (OTC as well as exchange traded) booked by the non-resident entity and ensuring that the Indian subsidiary has the necessary underlying exposure for the hedge transactions.
- AD banks shall report hedge contracts booked under this facility by the non-resident related entity to CCIL's trade repository with a special identification tag.

[Source: RBI A. P. (DIR Series) Circular No. 41 dated March 21, 2017]

(Contributed by: Mrs. Ruchi Sanghi)

CORPORATE LAW

RECENT NOTIFICATIONS

I. Companies (Indian Accounting Standard) (Amendment) Rules, 2017

The Ministry of Corporate Affairs ('MCA') vide notification issued on March 17, 2017 has notified Companies (Indian Accounting Standard) (Amendment) Rules, 2017 [hereinafter referred to as "amended rules"] in order to amend the Companies (Indian Accounting standards) Rules, 2015. The amended rules have come into force with effect from April 1, 2017.

A copy of the Notification G.S.R. 258(E) dated March 17, 2017 issued by the MCA is attached (Annexure-1).

II. Amendment in Schedule III (i.e. Financial Statement) of the Companies Act, 2013

The Ministry of Corporate Affairs ('MCA') vide notification issued on 30th March, 2017 has amended Schedule III of the Companies Act, 2013. The aforesaid amendment will come into force from the date of publication of this notification in official gazette.

The proposed amendment is mainly focusing on disclosure of specified bank notes in balance sheet held and transacted by the Company during demonetization period starting from November 08, 2016 to December 30, 2016.

Specified Bank Notes means bank notes of the denominational value of five hundred rupees or one thousand rupees of the series existing on or before the November 8, 2016.

A copy of the Notification G.S.R. 308(E) dated March 30, 2017 and Performa issued by the MCA in this matter mentioned hereinabove is enclosed (Annexure-2).

III. Companies (Audit And Auditors) Amendment Rules, 2017

The Ministry of Corporate Affairs ('MCA') vide notification issued on March 30, 2017 has notified Companies (Audit and Auditors) Amendment Rules, 2017 [hereinafter referred to as "amended rules"] in order to amend the Companies (Audit and Auditors) Rules, 2014. The amended rules shall come into force on the date of their publication in the official gazette.

The amendment is as mentioned below:

After clause (c) of Rule 11 the following clause has been inserted:

(d) "whether the company had provided requisite disclosures in its financial statements as to holdings as well as dealings in Specified Bank Notes during the period from 8th November, 2016 to 30th December, 2016 and if so, whether these are in accordance with the books of accounts maintained by the Company."

A copy of the Notification G.S.R. 307(E) dated March 30, 2017 issued by the MCA is attached (Annexure-3).

(Contributed by: Mr. Archit Tandon)

IV. Notification of certain sections of Insolvency and Bankruptcy Code, 2016

The Ministry of Corporate Affairs (MCA), vide its notification no. S.O. 1005(E) dated 30th March, 2017 has notified the following sections of The Insolvency and Bankruptcy Code, 2016, w.e.f. April 1, 2017:

- Section 59 dealing with voluntary liquidation of corporate persons
- Sections 209 to 215 dealing with Information Utilities
- Section 216(1) dealing with rights and obligations of person submitting financial information to the Information Utilities
- Section 234 and 235 dealing with agreement to be entered by the Central Government with foreign countries, and request letter to be issued by Adjudicating Authority (NCLT) to an appropriate court or authority of foreign country, in certain cases.

V. Notification of Voluntary Liquidation Regulations

Till now there were no provisions in force to deal with voluntary winding up of a Company, as the provisions of Companies Act 2013 containing Section 304 to 323 relating to Voluntary Winding up were omitted w.e.f. 15th November, 2016 and the relevant Section 59 of The Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as 'the Code') was not in force.

Upon notification of Section 59 w.e.f. April 1, 2017, the Insolvency and Bankruptcy Board of India (hereinafter referred to as 'the Board') has notified Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017, with effect from April 1, 2017.

These regulations provide for the entire process from initiation of voluntary liquidation of a corporate person [including company and limited liability partnership] till its dissolution, which inter-alia includes:

- Appointment of an insolvency professional to act as a liquidator
- Public announcement by the liquidator calling upon the stakeholders [including financial and operational creditors, workmen, employees, statutory authorities] to submit a proof of their claims
- Verification of claims, and preparation of list of stakeholders based thereon
- Realisation of assets including recovery of monies due to the company
- Distribution of proceeds of liquidation to stakeholders
- Completion of liquidation process

A copy of the relevant notification is enclosed (Annexure-4).

VI. Notification of Information Utilities Regulations

These regulations contain provisions for registration of a person as an 'Information Utility', which stores financial information to provide assistance in establishment of defaults as well as verification of claims expeditiously, so as to facilitate completion of transactions under the Code in a time bound manner.

Upon notification of Sections 209 to 215 dealing with Information Utilities, the Board has notified the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 w.e.f. April 1, 2017.

These regulations provide for a framework for registration and regulation of Information Utilities. The regulations inter-alia lay down eligibility criteria for registration of an Information Utility, provide for shareholding and governance of Information Utilities, duties to be performed, services to be delivered by them etc.

A copy of the relevant Notification is enclosed (Annexure-5).

(Contributed by: Ms. Shikha Nagpal)

IMPORTANT
DATES TO REMEMBER

Particulars	Date
Deposit of TDS for the month of April, 2017	May 07, 2017
Deposit of Service Tax for the month of April, 2017	May 06, 2017

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