



EZYBIZ INDIA CONSULTING LLP

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Monthly Newsletter

February, 2017

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Important Due Dates- March, 2017

6 th March, 2017	Excise Payment for the month ended 28 th February, 2017 .
6 th March, 2017	Service Tax Payment for the month ended 28 th February, 2017.
7 th March, 2017	TDS/TCS Payment for the month ended 28 th February, 2017.
10 th March, 2017	Excise Return for the month ended 28 th February, 2017.
10 th March, 2017	Last date for filing DVAT return of quarter ended 31 st December, 2016.
15 th March, 2017	Provident Fund Payment for the month ended 28 th February, 2017.
15 th March, 2017	Fourth installment of advance tax for the assessment year 2017-18.
21 st March, 2017	VAT Payment for the month ended 28 th February, 2017.
21 st March, 2017	ESI Payment and Return for the month ended 28 th February, 2017.
25 th March, 2017	Provided Fund Return for the month ended 28 th February, 2017.
31 st March, 2017	Last date for declaration of undisclosed income under Pradhan Mantri Garib Kalyan Yojana, 2016.
31 st March, 2017	payment of second installment (i.e., 25% of tax, surcharge and penalty) under Income Declaration Scheme, 2016.

Place of Effective Management of a company: An Overview

CBDT has issued final guidelines for determining the place of effective management (PoEM) of a company.

Applicability: It is applicable from 01.04.2016, and accordingly shall apply from assessment year 2017-18 onwards.

Background

Residential Concept of Companies:

Prior to 01.04.2016 as per Section 6(3) of the Income tax Act, 1961, a company was said to be a resident in India in any previous year if:

- i. it is an Indian company; or
- ii. during that year, control and management of its affairs is situated wholly in India

Amendment: the provision of Section 6(3) of the Income tax Act, 1961 were amended **w.e.f. 01.04.2016** to provide that a company was said to be a resident in India in any previous year if:

- i. It is an Indian company, or
- ii. Its place of effective management (PoEM), at any time in that year, is in India

Concept of Active Business Outside India

The CBDT has issued the guiding principles to be followed for determination of POEM. The final guidelines on POEM contain some unique features. Active Business Outside India (ABOI) test has been provided **so as not to cover companies outside India which are engaged in active business.** A company shall be said to be engaged in “active business outside India” if the passive income is not more than 50% of its total income; and

- i. less than 50% of its total assets are situated in India; and
- ii. less than 50% of total number of employees are situated in India or are resident in India; and
- iii. the payroll expenses incurred on such employees is less than 50% of its total payroll expenditure.

Also, the POEM guidelines **will not apply to Indian companies & companies having a turnover or gross receipts of Rs 50 crore or less** in a financial year.

Conclusion

The guidelines are primarily based on the fact as to whether or not the company is engaged in 'active business outside India'. For determination of 'active business outside India' factors such as passive income, total asset base, the number of employees, payroll expenses in India and outside, etc. are considered. The guidelines state that the concept of POEM is one of substance over form. It also deals with the impact of modern technology in POEM determination.

These guidelines are not intended to cover foreign companies or to tax their global income, merely on the ground of presence of PE, a foreign company completely owned by an Indian company, some of the directors are resident in India, etc. An important exception has been banking companies/Public Financial Institutions (PFIs). Any income by way of interest earned by banks/PFIs shall not be considered as passive income.

Direct Taxation News

➤ **New procedure and common application PAN and TAN**

CBDT has notified The **Income Tax (2nd Amendment) Rules, 2017** to provide new procedure and common application form for allotment of PAN and TAN. The rules shall come into force on the date of their publication in the Official Gazette.

[Notification No.9/2017/F.No.370142/40/2016-TPL]

➤ **E-mail based communication for Paperless Assessment proceedings**

CBDT has started paperless assessment proceedings in seven metro cities of Delhi, Mumbai, Ahmadabad, Bangalore, 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.

[F.No. 225/267/2015 ITA-II]

➤ **IT Department is developing app to pay taxes or apply for PAN by smart phones.**

IT Department is developing app to enable the assessee to pay taxes or apply for PAN by using smart phones. Also, working on a project to issue PAN to assessee within minutes by way of e-KYC authentication using Aadhaar.

➤ **New versions of e-TDS/TCS Utilities**

New versions of e-TDS/TCS Return Preparation Utility (RPU) and File Validation Utilities (FVUs) are applicable from February 23, 2017.

➤ **Standard Operating Procedure (SOP) to be followed by the AO**

CBDT has issued a Standard Operating Procedure (SOP) to be followed by the AOs in verification of Cash transactions relating to demonetization.

in case of individual not having business income, no further verification is required to be made in cash deposit is up to Rs 2.5 lacs and in case above 70 years of age, the limit is Rs 5 lacs.

[Instrument No. 03/2017, dt. 21 FEB 2017.]

➤ **TCS on Cash purchases of jewellery above Rs. 2,00,000.**

Cash purchases of jewellery will attract 1 per cent tax collected at source from April 1 if the amount exceeds Rs. 2 lakh, against the current threshold of Rs. 5 lakh.

➤ **35 points FAQ on Online Cash Deposit Transactions**

CBDT has issued 35 points FAQ Online Cash Deposit Transactions

➤ **Survey operations to check non-deduction of TDS**

CBDT has directed the taxman to step up survey operations to check non-deduction of TDS by firms and employers, especially in cases where such payments have dropped by more than 15 per cent as compared to last time.

➤ **Amended India-Israel DTAA**

CBDT notifies the amended India-Israel DTAA signed on 14th October, 2015.

[N/no. 10/2017 dated 14th February, 2017]

Indirect Taxation News

Service Tax

➤ **Service tax on transportation of goods by a vessel from a place outside India**

CBEC has issued a circular clarifying that services by way of transportation of goods by a vessel from a place outside India to the customs station in India are not taxable in India as the destination of such goods is a country other than India.

[Circular No.204/2/2017-Service Tax, dated-16th February, 2017]

➤ **Exemption withdrawn from service tax on cross border transaction**

Withdrawal of exemption from service tax on cross border B2C (business to consumer) OIAR (Online information and database access or retrieval) services provided online/electronically from a non-taxable territory to consumers in taxable territory in India-reg.

[Circular No. 202/12/2016-Service Tax]

➤ **Service Tax (Second Amendment) Rules, 2017**

The Central Government hereby amend the Service Tax Rules, 1994, which may be called as the Service Tax (Second Amendment) Rules, 2017 and shall come into force on the date of publication in the Official Gazette.

➤ **Hike in Indirect tax collections by 16.9**

Indirect tax collections increase by 16.9 per cent in January and the government is on track to achieve its revised tax target for the current fiscal.

GST

➤ **Refund under GST**

For refund, Assessee to submit CA Certificate with GST RFD-01 that GST burden not passed to customer, Self Certification for less than 5 lacs.

➤ **Mobile Application for GST updates**

CBEC launches a Mobile Application for GST to inform the taxpayers of the latest updates on GST among others.

➤ **Separate invoice for reverse charge and forward charge**

Under GST separate invoice to be issued for reverse charge and forward charge goods & services. Both cannot be clubbed together in single invoice.

➤ **Invoice wise details for interstate sales**

For B2C supplies, invoice wise details in GSTR-1 for interstate sales of more than 2.50 lacs & State wise total for sales up to 2.50 lacs.

➤ **No Composition Scheme in certain cases**

Under GST no composition scheme for :

- Services;
- Non-taxable goods;
- Interstate Supplies;
- Supply through e-commerce operators &;
- Manufacturer of notified goods.

Case Laws: Domestic Taxation

Direct Tax

➤ **No TDS liability if payee not identifiable**

The ITAT Delhi Bench held in the case of Apollo Tyres that if payee is not identifiable, the provision of Chapter XVII-B i.e., tax deduction at source, cannot be pressed into service and, therefore, the assessee is not required to deduct tax at source in such a case.

[2017] 78 taxmann.com 195 (Delhi - Trib.)

➤ **Interest / Service Charges paid on Funds raised to Subscribe Debentures are Allowable Expenditure:**

The Delhi High Court ruled that the assessee was entitled to deduction under section 37 of the Income Tax Act in respect of interest/service charges paid raising funds to subscribe the rights issue and for retaining control in the other company.

[CIT v. M/s Virat Investment & Mercantile Co]

➤ **TDS on lease rental payments made to GNOIDA**

TDS needs to be deducted u/s 194-I on lease rental payments made to GNOIDA constituted under section 3 of the Uttar Pradesh Industrial Development Act.

[Rajesh Projects (India) Pvt. Ltd. vs. CIT (TDS), High Court of Delhi]

➤ **Notice issued u/s 147 in respect of an entity which ceases to exist by virtue of amalgamation order under section 394 of the Companies Act - would be illegal and unsustainable. [BDR Builders Pvt. Ltd. Vs. The ACIT, HC of delhi].**

Indirect Tax

➤ **Duty when not payable on capital goods cleared after long use –**

CESTAT Delhi has held that in a case where the assessee clears capital goods after use for a long time (not as waste and scrap) and reverses the Cenvat credit on the same, no extra duty can be demanded under Rule 3(5) of the Cenvat Credit Rules, 2004.

It was held that Rule 3(5) cannot be considered as charging section to collect more revenue from the manufacturer.

[Jaypee Bela Plant v. Commissioner – 2017 (345) ELT 542 Tri.-Del.]

➤ **Service tax not liable on Construction of commercial portion of ISBT**

CESTAT Delhi has rejected the contention of the Revenue Department that exclusion for transport terminals is not available for commercial portion of Inter-State Bus Terminal (ISBT).

[Commissioner v. Amar Construction Co.- Final Order No. 55260/2016, dated 22-11-2016, CESTAT DEL]

➤ **Money deposit by third parties for Inland Air Travel Tax (IATT) not to be adjusted against tax dues:**

Delhi High Court has held that the amount deposited by the lessor of the aircraft for release of distrained aircraft cannot be appropriated towards the outstanding dues of tax on the part of the carrier.

[Spicejet Ltd. v. Union of India -2017-TIOL-274-HC-DEL-CUS]

International Taxation

➤ Amendments to the India–Israel tax treaty

CBDT notifies amended India Israel DTAA signed on October 14, 2015 and entered into force on December 19, 2016. **The revised tax treaty shall be enforced from 1 April 2017.** The key takeaways from the revised treaty are as follows:

Newly inserted LoB (Limitation of Benefit) clause: The LOB clause inserted provides that the benefits of the India–Israel tax treaty will not be available to a resident of Israel if the purpose of setting up an entity in Israel was to obtain the benefits under this tax treaty. Benefits under the tax treaty would be available only to the beneficial owner of the income.

Further, The LOB clause introduces 'beneficial ownership' test for availing the treaty benefits.

Protocol also removes tax credit available under Paragraphs 3 and 4 of Article 24 (Elimination of Double Taxation) which provided for 15% tax credit on dividend income;

Protocol provides for internationally accepted standards for effective exchange of information ('EOI') on tax matters including bank information and information without domestic tax interest;

➤ ITAT: Special Bench resolves Sec 206AA vs treaty override controversy in favour of taxpayers

A Special Bench of the Indian Income Tax Appellate Tribunal recently held that Sec. 206AA of the Indian Income Tax Act, which provides for a higher withholding tax rate of 20% absent a Permanent Account Number (PAN – the Indian identification code for taxpayers), cannot override beneficial DTAA rates.

SB rules that the 'non-obstante clause' contained in the machinery provision of Sec. 206AA is to be assigned a 'restrictive' meaning and it cannot override beneficial provisions of the treaties

➤ SC: 'Global telecommunication facility' cost reimbursed by Indian agents not FTS; Upholds Bombay-HC ruling

SC dismisses Revenue's appeal challenging Bombay HC decision in the case of A.P. Moller Maersk A/S (assessee, a Danish shipping company); Holds that amounts received by the assessee from its Indian agents for Maersk Net (a global telecommunication facility) is not taxable in India as fees for technical services;

SC notes 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.

Thus, SC rules 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".

Regulatory News

Company Law

- **MCA empowered RDs to prepare and maintain the Mediation and Conciliation Panel**

MCA has empowered the Regional Director(s) to prepare and maintain the Mediation and Conciliation Panel of eligible experts in pursuance of rule 3(1) of sec 442 of the Companies Act, 2013 who are willing to be appointed as mediator or conciliator.

- **Territorial Jurisdiction of NCLT for cases pertaining to State of Haryana is changed**

MCA has altered the Territorial Jurisdiction of National Company Law Tribunal Bench for cases pertaining to State of Haryana, shall be omitted from the Jurisdiction of NCLT New Delhi Bench and shall be a under the jurisdiction of NCLT Chandigarh Bench.

- **7.5 per cent tax on off-shore derivative instruments**

Foreign institutional investors (FPIs) issuing participatory notes (P-notes) have decided to impose a 7.5 per cent tax on those who want to use these off-shore derivative instruments to bet on India's equity market.

FEMA

- **Modified Rules**

RBI has modified Foreign Exchange Management Act, 1999 (FEMA) Foreign Exchange (Compounding Proceedings) Rules, 2000 for compounding of contraventions under FEMA, 1999.

SEBI

- **Dedicated debt segment in the stock exchange**

SEBI has issued guidelines for providing dedicated debt segment in the stock exchange for trading, clearing and settlement of debt securities including trading, clearing and settlement of corporate bonds.

- **Increase in investment ceiling of debt mutual funds in housing finance co's**

SEBI increased the investment ceiling of debt mutual funds in housing finance cos from 10 per cent to 15 per cent," Under the current guidelines, the sectoral exposure for debt mutual fund schemes is 25 per cent.

- **Integrated Reporting by Listed Entities**

SEBI has prescribed Integrated Reporting by Listed Entities through which it has mandated the requirement of submission of Business Responsibility Report ('BRR') for top 500 listed entities under Regulation 34(2)(f) of SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 ("SEBI LODR").

RBI

- **Money Transfer Service Scheme (MTSS)**

RBI has issued a Master direction on Money Transfer Service Scheme (MTSS) of transferring personal remittances from abroad to beneficiaries in India.

[notification No RBI/FED/2016-17/52FED]

Other News

➤ **EPFO extended last date to submit Aadhaar**

The Employees' Provident Fund Organization has extended the deadline for its subscribers to submit Aadhaar number to March 31st from February 28.

➤ **Amount of gratuity doubled**

Labour Ministry has doubled the Gratuity amount to Rs 20 Lacs for the employees of Private Companies.

➤ **PF money can be withdraw by single form**

Subscribers of EPFO can now withdraw money from their account using one common form and will not be required to file documents like marriage invitation cards for taking advances.

➤ **Supreme Court direction to install primary effluent treatment plants**

Supreme Court directed all industrial units situated in severely polluted areas across the country to install primary effluent treatment plants (PETP) within three months, failing which they will be shut down..

➤ **Subsidy on Home Loan Interest**

Govt allowed if you earn up to Rs 18 lakh per annum, buying your first house will cost about Rs 2.4 lakh less as the government will subsidize a part of your home loan interest. At present, this subsidy is available to only those earning up to Rs 6 lakh per annum..

About Us

EZYBIZ India is a Consulting and business outsourcing firm founded by alumni of EY in order to provide one window solution to Taxation, Regulatory, Transaction advisory and Accounting need of clients in India and abroad.

We have team of Chartered Accountants, Company Secretaries and finance professionals and provide services to proud mix of Indian and multinational clients like Corporates, LLPs, Firms, subsidiaries of Foreign Companies, Branch office, Liaison Office, HNIs, NRIs and Expatriates.

Some of our foreign clients are from Netherland, USA, Turkey, UAE and Japan.

OUR SERVICES

- *Business set up and Registrations [BO, LO, WOS, Public/Pvt. Ltd Co., LLPs, GST etc]*
- *Direct Tax Advisory and compliance*
- *Indirect Tax Advisory and compliance*
- *Business Restructuring (M&A, Slump sale, Amalgamation etc)*
- *Regulatory advisory and compliance (ROC, FEMA, RBI & SEBI)*
- *Tax Assessment and Litigation service*
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Contact us:

306, 3rd Floor, Vishwasadan Tower, District Centre, Janakpuri, New Delhi-110058

M: +91-9899217778, T: 011-64992010, W: ezybizindia.in

E: anil@ezybizindia.in; ezybizconsulting@gmail.com