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RAIPUR BRANCH OF CENTRAL INDIA REGIONAL COUNCIL OF ICAI

If global warming is such a bad thing
then why is it taking out all of
mankind's competitors ? It just seems to
me that the less species are out there,
killing all our Caribou, the better.

Newsletter

February Edition - 2017

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Message from the Editor



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Respected Members ,

Year 2016 was a watershed year with several landmark reforms like Demonetisation and GST which could alter the country's economic landscape over the longer term. The Union Budget FY 18 expected to be more significance this year as this is the first major economic announcement by the Government post demonetisation.

So in this edition we have tried to cover the Highlights of Union Budget 17-18 and also focussed on GST. Hope u all will find it to be informative and gain knowledge about this year's major amendments in our Indian Law.

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HOW YOUR INVOICE WILL LOOK LIKE IN GST

Finance Ministry has issued Draft GOODS AND SERVICES TAX -INVOICE RULES, which set rules for invoice which will be issued after the implementation of GST. This rules is very important as this will tell us the minimum/compulsory content of the GST Invoice, time (when will the invoice be issued), manner if issue of invoice (no of copies) etc.

This is one of the important preparatory steps as business houses, irrespective of the sizes , nature , goods/ service has to mandatory comply with the requirement from the day1 itself. This article contains the analysis and summary of the rule along with the format of Invoice.

A. Requirement of Tax Invoice V/s Bill of Supply

Tax Invoice	Bill of Supply
Registered Supplier engaged in other than composition scheme and dealing in Taxable goods / Services.	Registered Supplier engaged in non-taxable goods and/or services or paying tax under the composition scheme.

A. Content of the Tax Invoice & Bill of Supply (What)

All the information/content is needed for the Tax Invoice; however for bill of supply only specific contents are needed marked in Coloumn-3 as BOS.

01	Name, address and GSTIN of the supplier	BOS	
02	date of its issue* (not preparation)	BOS	
03	consecutive serial number containing only alphabets and/or numerals, uniquefor a financial year;	BOS	
04	if registered recipient name, address and GSTIN/ Unique ID Number,	If unregistered and where the taxable value of supply is fifty thousand rupees or more; name and address of the recipient and the address of delivery, along with the name of State and its code	BOS
05	If Goods – HSN Code Only if notified by the Board / Commissioner	If Services – Accounting Code	BOS
06	description of goods or services		BOS
07	quantity in case of goods and unit or Unique Quantity Code thereof		
08	total value of goods or services		BOS
09	taxable value of goods or services taking into account discount or abatement,		

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10	rate of tax (CGST, SGST or IGST)	BOS
11	amount of tax charged in respect of taxable goods or services (CGST, SGST or IGST)	
12	place of supply along with the name of State, in case of a supply in the course of inter-State trade or commerce	
13	place of delivery where the same is different from the place of supply	
14	whether the tax is payable on reverse charge	
15	The word "Revised Invoice" or "Supplementary Invoice", as the case may be, indicated prominently, where applicable along with the date and invoice number of the original invoice	
16	signature or digital signature of the supplier or his authorized representative	BOS

C. Additional Requirement in Case of Export

1	Endorsement "SUPPLY MEANT FOR EXPORT ON PAYMENT OF IGST" or	"SUPPLY MEANT FOR EXPORT UNDER BOND WITHOUT PAYMENT OF IGST"
2	name and address of the recipient	
3	address of delivery	
4	name of the country of destination	
5	number and date of application for removal of goods for export [ARE-1].	

D. Manner of Issue of Invoice

I. No of Copies

GOOD	SERVICE
(a) the original copy being marked as ORIGINAL FOR RECIPIENT;	(a) the original copy being marked as ORIGINAL FOR RECIPIENT; and
(b) the duplicate copy being marked as DUPLICATE FOR TRANSPORTER; and	(b) the duplicate copy being marked as DUPLICATE FOR SUPPLIER.
(c) the triplicate copy being marked as TRIPLICATE FOR SUPPLIER	
Provided that the duplicate copy is not required to be carried by the transporter if the supplier has obtained an Invoice Reference Number under sub-rule.	

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II. Serial number of invoices

Serial number of Invoices issued during a tax period shall be furnished electronically through the Common Portal in FORM GSTR-1.

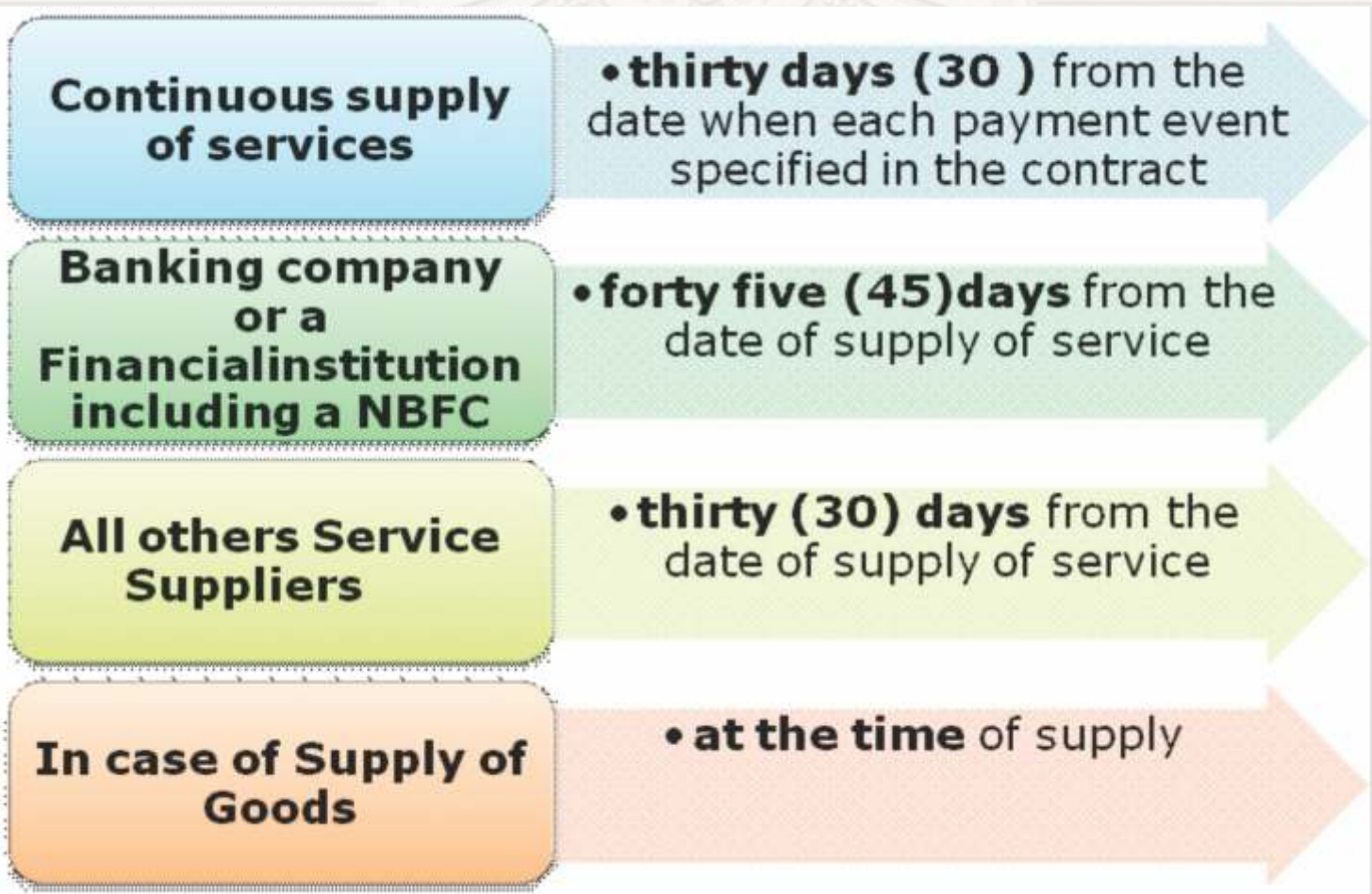
III. What is Invoice Reference Number?

This is a reference number which will be used in lieu of invoice which can be verifiable by proper officer; this will eliminate the requirement of preparing the duplicate copy of the invoice for transporter in case of supply of goods.

A registered taxable person may obtain an Invoice Reference Number from the Common Portal by uploading on the said Portal, tax invoice in the required format GST INV-1.

The Invoice Reference Number shall be valid for a period of 30 days from the date of uploading

E. Time of Issue of Invoice (When)



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F. Draft format of Invoice under GST Invoice Rules - GST INV-1

Form GST –INV-1

Application for Electronic Invoice reference number of an Invoice

1	GSTIN
2	Name
3	Address
4	Serial No. of Invoice
5	Date of Invoice

Details of Receiver (Billed to)

- 1) Name
- 2) Address
- 3) State
- 4) State Code
- 5) GSTIN / Unique ID

Details of Consignee (Shipped to)

- 1) Name
- 2) Address
- 3) State
- 4) State Code
- 5) GSTIN / Unique ID

SR	Description of Goods / Services	HSN / AC	Qty	Unit	Rate per Unit	Total	Disc. Ount	Taxable Value	CGST		SGST		IGST	
									Rate	A M O U N T	Rate	A M O U N T	Rate	A M O U N T

Freight

Insurance

Packing & Forwarding Charges

Total

Total Invoice value (in figure)

Total Invoice value (in words)

Amount of Tax subject to Reverse Charge



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THE UNION BUDGET - 2017-18

The Budget broadly focussed on 10 themes viz. farming sector, rural population, the youth, the poor to name a few.

The 2017 Union Budget, presented by Finance Minister Arun Jaitley on Wednesday, was broadly focused on 10 themes — the farming sector, the rural population, the youth, the poor and underprivileged health care, infrastructure, the financial sector for stronger institutions, speedy accountability, public services, prudent fiscal management and tax administration for the honest.

Following are the highlights of Mr. Jaitley's Budget speech:

DEMONETISATION

1. Demonetisation is expected to have a transient impact on the economy.
2. It will have a great impact on the economy and lives of people .
3. Demonetisation is a bold and decisive measure that will lead to higher GDP growth.
4. The effects of demonetisation will not spillover to the next fiscal.

AGRICULTURE SECTOR

1. Sowing farmers should feel secure against natural calamities.
2. A sum of Rs. 10 lakh crore is allocated as credit to farmers, with 60 days interest waiver.
3. NABARD fund will be increased to Rs. 40,000 crore.
4. Government will set up mini labs in Krishi Vigyan Kendras for soil testing.
5. A dedicated micro irrigation fund will be set up for NABARD with Rs 5,000 crore initial corpus.
6. Irrigation corpus increased from Rs 20,000 crore to Rs 40,000 crore.
7. Dairy processing infrastructure fund will be initially created with a corpus of Rs. 2000 crore.
8. Issuance of soil cards has gained momentum.
9. A model law on contract farming will be prepared and shared with the States.

RURAL POPULATION

1. The government targets to bring 1 crore households out of poverty by 2019.
2. During 2017-18, five lakh farm ponds will be taken up under the MGNREGA.
3. Over Rs 3 lakh crore will be spent for rural India. MGNREGA to double farmers' income.
4. Will take steps to ensure participation of women in MGNREGA up to 55%.
5. Space technology will be used in a big way to ensure MGNREGA works.
6. The government proposes to complete 1 crore houses for those without homes.
7. Will allocate Rs. 19,000 crore for Pradhan Mantri Gram Sadak Yojana in 2017-18.
8. The country well on way to achieve 100% rural electrification by March 2018.
9. Swachh Bharat mission has made tremendous progress; sanitation coverage has gone up from 42% in Oct 13 to 60% now.

FOR YOUTH

1. Will introduce a system of measuring annual learning outcomes and come out with an innovation fund for secondary education.
2. Focus will be on 3,479 educationally-backward blocks.
3. Colleges will be identified based on accreditation.
4. Skill India mission was launched to maximise potential. Will set up 100 India International centres across the country.
5. Courses on foreign languages will be introduced.
6. Will take steps to create 5000 PG seats per annum.

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FOR THE POOR AND UNDERPRIVILEGE HEALTH CARE

1. Rs. 500 crore allocated for Mahila Shakthi Kendras.
2. Under a nationwide scheme for pregnant women, Rs. 6000 will be transferred to each person.
3. A sum of Rs. 1,84,632 crore allocated for women and children.
4. Affordable housing will be given infrastructure status.
5. Owing to surplus liquidity, banks have started reducing lending rates for housing.
6. Elimination of tuberculosis by 2025 targeted.
7. Health sub centres, numbering 1.5 lakh, will be transformed into health wellness centres.
8. Two AIIMS will be set up in Jharkhand and Gujarat.
9. Will undertake structural transformation of the regulator framework for medical education.
10. Allocation for Scheduled Castes is Rs. 52,393 crore
11. Aadhaar-based smartcards will be issued to senior citizens to monitor health.

INFRASTRUCTURE AND RAILWAYS

1. A total allocation of Rs. 39,61,354 crore has been made for infrastructure.
2. Total allocation for Railways is Rs. 1,31,000 crore.
3. No service charge on tickets booked through IRCTC.
4. Raksha coach with a corpus of Rs. 1 lakh crore for five years (for passenger safety).
5. Unmanned level crossings will be eliminated by 2020.
6. 3,500 km of railway lines to be commissioned this year up from 2,800 km last year.
7. SMS-based "clean my coach service" is put in place.
8. Coach mitra facility will be introduced to register all coach related complaints.
9. By 2019 all trains will have bio-toilets.
10. Five-hundred stations will be made differently-abled friendly.
11. Railways to partner with logistics players for front-end and back-end solutions for select commodities.
12. Railways will offer competitive ticket booking facility.
13. Rs. 64,000 crore allocated for highways.
14. High speed Internet to be allocated to 1,50,000 gram panchayats.
15. New Metro rail policy will be announced with new modes of financing.

ENERGY SECTOR

1. A strategic policy for crude reserves will be set up.
2. Rs. 1.26,000 crore received as energy production based investments.
3. Trade infra export scheme will be launched 2017-18.

FINANCIAL SECTOR

1. FDI policy reforms - more than 90% of FDI inflows are now automated.
2. Shares of Railway PSE like IRCTC will be listed on stock exchanges.
3. Bill on resolution of financial firms will be introduced in this session of Parliament.
4. Foreign Investment Promotion Board will be abolished.
5. Revised mechanism to ensure time-bound listing of CPSEs.
6. Computer emergency response team for financial sector will be formed.
7. Pradhan Mantri Mudra Yojana lending target fixed at Rs 2.44 lakh crore for 2017-18.
8. Digital India - BHIM app will unleash mobile phone revolution. The government will introduce two schemes to promote BHIM App - referral bonus for the users and cash back for the traders.
9. Negotiable Instruments Act might be amended.
10. DBT to LPG consumers, Chandigarh is kerosene-free, 84 government schemes are on the DBT platform.
11. Head post office as the central office for rendering passport service.
12. Easy online booking system for Army and other defence personnel.
13. For big-time offences - including economic offenders fleeing India, the government will introduce legislative change or introduce law to confiscate the assets of these people within the country.

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FISCAL SITUATION

1. Total expenditure is Rs. 21, 47,000 crore.
2. Plan, non-plan expenditure to be abolished; focus will be on capital expenditure, which will be 25.4 %.
3. Rs. 3,000 crore under the Department of Economic Affairs for implementing the Budget announcements.
4. Expenditure for science and technology is Rs. 37,435 crore.
5. Total resources transferred to States and Union Territories is Rs 4.11 lakh crore.
6. Recommended 3% fiscal deficit for three years with a deviation of 0.5% of the GDP.
7. Revenue deficit is 1.9 %
8. Fiscal deficit of 2017-18 pegged at 3.2% of the GDP. Will remain committed to achieving 3% in the next year.

FUNDING OF POLITICAL PARTIES

1. The maximum amount of cash donation for a political party will be Rs. 2,000 from any one source.
2. Political parties will be entitled to receive donations by cheque or digital mode from donors.
3. An amendment is being proposed to the RBI Act to enable issuance of electoral bonds .A donor can purchase these bonds from banks or post offices through cheque or digital transactions. They can be redeemed only by registered political parties.

DEFENCE SECTOR

The defence sector gets an allocation of Rs. 2.74,114 crore.

TAX PROPOSALS

1. India's tax to GDP ratio is not favourable.
2. Out of 13.14 lakh registered companies, only 5.97 lakh firms have filed returns for 2016-17.
3. Proportion of direct tax to indirect tax is not optimal.
4. Individuals numbering 1.95 crore showed an income between Rs. 2.5 lakh to Rs. 5 lakh.
5. Out of 76 lakh individual assesseees declaring income more than Rs. 5 lakh, 56 lakh are salaried.
6. Only 1.72 lakh people showed income of more than Rs. 50 lakh a year.
7. Between November 8 to December 30, deposits ranging from Rs. 2 lakh and Rs. 80 lakh were made in 1.09 crore accounts.
8. Net tax revenue of 2013-14 was Rs. 11.38 lakh crore.
9. Out of 76 lakh individual assesseees declaring income more than Rs 5 lakh, 56 lakh are salaried.
10. 1.95 crore individuals showed income between Rs. 2.5 lakh to Rs. 5 lakh.
11. Rate of growth of advance tax in Personal I-T is 34.8% in the last three quarters of this financial year.
12. Holding period for long term capital gain lowered to two years
13. Proposal to have a carry-forward of MAT for 15 years.
14. Capital gains tax to be exempted for persons holding land from which land was pooled for creation of the state capital of Andhra Pradesh.
15. Under the corporate tax, in order to make MSME companies more viable, there is a proposal to reduce tax for small companies with a turnover of up to Rs 50 crore to 25%. About 67 lakh companies fall in this category. Ninety-six % of companies to get this benefit.
16. The government proposes to reduce basic customs duty for LNG to 2.5% from 5%.
17. The Income Tax Act to be amended to ensure that no transaction above Rs 3 lakh is permitted in cash.
18. The limit of cash donation by charitable trusts is reduced to Rs 2,000 from Rs 10,000.
19. Net revenue loss in direct tax could be Rs. 20,000 crore.

PERSONAL INCOME TAX

1. Existing rate of tax for individuals between Rs. 2.5- Rs 5 lakh is reduced to 5% from 10%.
2. All other categories of tax payers in subsequent brackets will get a benefit of Rs 12,500.
3. Simple one page return for people with an annual income of Rs. 5 lakh other than business income.
4. People filing I-T returns for the first time will not come under any government scrutiny.
5. Ten % surcharge on individual income above Rs. 50 lakh and up to Rs 1 crore to make up for Rs 15,000 crore loss due to cut in personal I-T rate. 15 surcharge on individual income above Rs. 1 crore to remain.

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INCOME	TAX RATE
Individual tax payers	
Up to Rs 2,50,000	No tax
Rs 2,50,001 to Rs 5,00,000	5%
Rs 5,00,001 – 10,00,000	20%
More than Rs 10,00,000	30%
Senior citizens who are 60 years old and above but less than 80 years	
Up to Rs 3,00,000	No tax
Rs 3,00,001 to Rs 5,00,000	5%
Rs 5,00,001 to Rs 10,00,000	20%
More than Rs 10,00,000	30%
Senior Citizens who are 80 years old and above	
Up to Rs 5,00,000	No tax
Rs 5,00,001 to Rs 10,00,000	20%
More than Rs 10,00,000	30%

(Surcharge of 10 per cent on income of all individuals above Rs 50 lakh and less than Rs 1 crore and surcharge of 15 per cent on income above Rs 1 crore).

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Budget 2017 : Analysis of Proposed Amendment in section 56(2)

The Union Budget is out on tables. The most expected amendment relating to relaxation in taxes has been fulfilled to some extent by the respected finance minister- Mr. Arun Jaitley in form of decrease in tax rates for individuals. The tax relief is also proposed in form of decrease in corporate taxation to 25% for those companies, whose turnover is restricted to 50 crores. There are more amendments related to 87A relief, penalties on CAs, etc.

Apart from these commonly propagated amendments, The Central Government has proposed several other amendments to the Income Tax Act which are in form of anti abuse amendments. One such important amendment is proposed in Sec 56(2) of the Act.

The provisions contained in clause (vii) and (viiia) are proposed to be withdrawn and a new clause (x) is proposed to be inserted w.e.f. 01.04.2017.

Clause (vii) deals with taxing of income in cases where an individual or HUF receives;

- a. Any sum of money without consideration in excess of Rs. 50,000/- in aggregate, or
- b. Any immovable property(ies) without consideration having stamp duty value exceeding Rs. 50,000/- in aggregate or where the actual stamp value exceeds the consideration by atleast Rs. 50,000/- in aggregate, or
- c. Any property(ies) other than immovable property without consideration having FMV exceeding Rs. 50,000/- in aggregate or where the FMV exceeds the consideration by atleast Rs. 50,000/- in aggregate.

Similarly, Clause (viiia) deals with taxing of income in case where a firm or a company (not being a company in which the public are substantially interested) receives any property, being shares of a company (not being a company in which the public are substantially interested);

- a. Without consideration, whose FMV exceeds fifty thousand rupees in aggregate, or
- b. Where the FMV exceeds the consideration by atleast Rs. 50,000/- in aggregate.

It can be clearly seen that the clause (vii) did not include any person other than individuals and HUFs. The same has been seen to be used as a tax evasion measure in many cases in practical scenarios.

The above two clauses are now proposed to be replaced by new clause (x) which aims to avoid abuse of limitations of law. The same have been added as 'anti abuse provisions'. Through amendment, provisions of clause (vii) and (viii) are merged in clause (x) and are made applicable to transfers from "ANY PERSON OR PERSONS". It now means that the receipt of cash or any property (other than shares also) becomes taxable also in hands of companies, firms and other persons where the above condition of Rs. 50,000/- is satisfied.

Further, there is proposed amendment to the current proviso to clause (vii), which will be merged to clause (x). Currently, the clause doesn't apply to any sum of money or any property received—

- (a) from any relative; or
- (b) on the occasion of the marriage of the individual; or
- (c) under a will or by way of inheritance; or
- (d) in contemplation of death of the payer or donor, as the case may be; or
- (e) from any local authority as defined in the Explanation to clause (20) of section 10; or
- (f) from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in clause (23C) of section 10; or
- (g) from any trust or institution registered under section 12AA;

Now, since the provisions are made applicable to all persons, relief is being provided as follows:

a. As a replacement to (g) above, the words are slightly replaced to provide relief to trust and educational institutions registered under 12AA :

"from or by any trust or institution registered under section 12AA;"

b. Also, a new exemption is provided by adding the following to the above list of exclusions:
"by any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10".

Thus, it can be seen that government has kept the above trusts and organization out of purview of such taxation over income from other sources to maintain the non taxability of donated money and properties.

Lastly, the government has proposed amendment in the words in second proviso to clause (vii) which earlier read as:

"Provided further that the said proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by any mode other than cash on or before the date of the agreement for the transfer of such immovable property;"

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As a matter of clarification and to avoid misuse of text of law, the proviso has been made very specific as under:

“Provided further that the provisions of the first proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by way of account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account on or before the date of the agreement for the transfer of such immovable property;”

To conclude, it can be said that all the amendments proposed to this section are on a positive note and are very well justified in order to curb with misuse currently done through taking benefit of weak language of the clauses proposed to be dropped.

Surgical strike on cash transactions by financial bill, 2017

The most memorable day for Indian economy was 08.11.2017, because from that day itself the two highest denominated currency notes (Rs. 1000 & Rs. 500) ceases to be a legal tender. After the demonetization government not stopped but continuously makes effort to reduce cash transactions and leads India to a digitalised and transparent economy either by providing subsidy or making laws. On 01.02.2017 Finance Minister presented Budget 2017 which also contains such provision to curb the use of Cash. The following are the basic amendments made by the [Finance Bill 2017](#).

Disallowance of depreciation u/s 32 and Capital Expenditure u/s 35AD on Cash payment:-

In order to discourage cash payment for capital expenditure, it is proposed to amend the provision of section 43 of income tax act 1961, where an assessee incurs any expenditure for acquisition of any asset in respect of which payment made or aggregate of payment made to a person in a single day otherwise than by way of an account payee cheque drawn on a bank or account payee bank draft or use of electronic payment system exceeds Rs. 10000/- such expenditure shall be ignored for the purpose of determination of actual cost of such asset. That means assessee will lose depreciation on cash part (Example- If ACB Ltd purchase a machinery for Rs 10 Lakh, payment being made in cash Rs two lakhs and by cheque Rs eight lakhs than the actual cost of asset shall be considered as Rs 8 lakhs and cash part will be ignored for cost part so there is loss of depreciation on Rs two lakhs). Further amendment is made in section 35AD if payment is made in cash than no deduction shall be available u/s 35AD of Income tax Act 1961.

However there is some exemption from above rule if rule 6DD of Income Tax rule 1962 applies.

Restriction on Cash donation:-

The limit of cash donation has been reduced to Rs. 2000/- from Rs. 10000/- i.e. no cash donation in excess of Rs. 2000 shall be allowed for deduction u/s 80G.

Transaction in cash above Rs. 3 Lakhs is strictly prohibited:-

A new section 269ST has been introduced, which proposed to prohibits the receipt of cash in excess of Rs. 3 Lakhs in a single day from a single person in respect of single transaction. However this restriction is not applicable to Government, any banking company including co-operative bank, post office and other notified persons. Simultaneously there is a penalty provision u/s 271DA introduced. The penalty amount shall be equivalent to the amount received.

Restriction on Political parties: –

No registered political shall be allowed to receive cash donation in excess of Rs 2000/-

Amendment in [Section 40A \(3\) of income tax Act 1961:-](#)

The current threshold limit for making cash payment in a day under section 40A (3) has been reduced to Rs. 10000/- from Rs. 20000/-

Amendment in Presumptive income u/s 44AD of Income Tax Act 1961:-

To promote digital transaction for small business entities, it is proposes to amend section 44AD of the Act to reduce the existing rate of deemed total income of 8% to 6% in respect of the amount of such total turnover or gross receipt received by an account payee cheque or account payee bank draft or use of electronic clearing system.

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Notifications

Direct Tax –

Specified authority notified for the purposes of receiving declarations under the Pradhan Mantri Garib Kalyan Yojana, 2016 (PMKGY)-Notification No. 117/2016, dated 16-12-2016

The Taxation Laws (Second Amendment) Act, 2016 has inserted The Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016 as Chapter IXA to the Finance Act, 2016. The Scheme provides an opportunity to persons having undisclosed income in the form of cash or deposit in an account maintained with a specified entity (which includes banks, post office etc.) to declare such income and pay tax, surcharge and penalty totalling in all to 49.9% of such declared income. Besides, the Scheme provides that a mandatory deposit of not less than 25% of such income shall be made in the Pradhan Mantri Garib Kalyan Deposit Scheme, 2016 which has separately been notified by the Department of Economic Affairs. The PMKGY has come into force from 17th December, 2016 and shall remain open for declarations up to 31st March, 2017. Further, relevant rules in this regard have also been notified. Section 199G provides that a declaration of income in the form of cash or deposit in an account maintained with a specified entity shall be made by a person competent to verify the return of income under Section 140, to the Principal Commissioner or the Commissioner notified in the Official Gazette for this purpose and shall be in such form and verified in such manner, as may be prescribed. Rule 3 of the Pradhan Mantri Garib Kalyan Yojana Rules, 2016 inter alia provides that the declaration is to be made in Form 1 to be furnished to Principal Commissioner/Commissioner notified under Section 199G(1) either electronically or in print form. In exercise of the powers conferred by Section 199G of the Finance Act, 2016, the Central Circulars/Notifications Given below are the important Circulars and Notifications issued by the CBDT, CBEC, FEMA, MCA, RBI during the last month for information and use of members. Readers are requested to use the citation/website or weblink to access the full text of desired circular/notification. You are requested to please submit your feedback and suggestions on the column at eboard@icai.in DIRECT TAXES Government has, vide this Notification, notified the Principal Commissioner or the Commissioner, as the case may be, who exercises the jurisdiction under Section 120, as the Principal Commissioner or the Commissioner for the purposes of declaration filed manually or electronically under electronic verification code under Section 199C(1) of the Finance Act, 2016. Further, in case of declaration filed electronically with digital signature, in addition to the Principal Commissioner or the Commissioner as aforesaid, the Commissioner of Income-tax, Centralised Processing Centre, Bengaluru may also be the specified authority.

Substitution of sub-rule (2) in Rule 67 of the Incometax Rules, 1962 w.r.e.f. 01-04-2016 vide the Incometax (36th Amendment) Rules, 2016-Notification No. 122/2016, dated 27-12-2016

The Fourth Schedule to the Income-tax Act, 1961 deals with provisions governing the Recognised Provident Funds (Part A) and Approved Superannuation Funds (Part B). Part A of the Fourth Schedule provides for application, definitions, criteria for according and withdrawal of recognition of the fund, conditions to be satisfied etc. Rule 15(1) (bb) of Part A empowers the CBDT to make rules regulating the investment or deposit of the moneys of a recognised provident fund. Accordingly, Rule 67 deals with the provisions governing the investment of fund moneys. Vide this Notification, Rule 67(2) has been substituted. The amended Rule is deemed to have come into force retrospectively from 01.04.2016. Some of the provisions of the newly substituted subrule (2) are as follows: (i) Earlier maximum percentage to be invested in a particular investment avenue was prescribed but now, minimum and maximum both are prescribed. (ii) The scope of investment avenues available has been widened considerably. (ii) The minimum investment to be made in Government Securities and related investments has now been prescribed at 45% and maximum is 50% instead of 55% earlier. (iii) Investment in Debt instruments and related investments has been prescribed at minimum 35% and maximum 45%. Further, new modes of investment like investment in units of debt mutual fund regulated by SEBI, specified infrastructure related debt instruments etc. have been added. (iv) Investment in units of Liquid Mutual funds regulated by SEBI and specified Term Deposit Receipts of upto 1 year duration of scheduled commercial banks have been added in the category Short-term Debt

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Instruments and Related Investments. Maximum 5% investment could be made in this category. (v) Minimum 5% upto a maximum of 15% could now be invested in the category Equities and Related Investments. Some new modes of investment avenues added include specified Exchange Traded Funds (ETF)/ Index Funds regulated by SEBI, specified ETFs issued by SEBI and specified Exchange traded derivatives regulated by SEBIs. (vi) A new category called Asset Backed, Trust Structured and Miscellaneous Investments have been provided wherein maximum 5% could be invested. This category includes investment in mortgage based Securities or Residential mortgage based securities, units issued by REITs regulated by SEBI, Asset Backed Securities regulated by SEBI and units of Infrastructure Investment Trusts regulated by SEBI. Aforesaid investments are subject to internal limits provided for the same category but in a different mode/avenue as contained in the various provisos to sub-rule (2). For further details regarding the category wise investment limits and the governing conditions, the detailed notification may be referred.

Quoting of PAN in all the existing bank accounts and other measures-Notification No. 2/2017, dated 06-01- 2017 & Press Release dated 08-01-2017

Income-tax Rules have been amended to provide that bank shall obtain and link PAN or Form No. 60 (where PAN is not available) in all existing bank accounts (other than Basic Savings Bank Deposit Account) by 28.02.2017, if not already done. In this connection, the RBI, vide circular dated 15.12.2016, has mandated that no withdrawal shall be allowed from the accounts having substantial credit balance/ deposits if PAN or Form No. 60 is not provided in respect of such accounts. Therefore, persons who are having bank account but have not submitted PAN or Form No. 60 are advised to submit the PAN or Form No. 60 to the bank by 28.2.2017. The banks and post offices have also been mandated to submit information in respect of cash deposits from 1.4.2016 to 9.11.2016 in accounts where the cash deposits during the period 9.11.2016 to 30.12.2016 exceeds the specified limits. It has also been provided that person who is required to obtain PAN or Form No.60 shall record the PAN/Form No. 60 in all the documents and quote the same in all the reports submitted to the Income-tax Department.

Indirect Tax – SERVICE TAX

Central Government vide Notification No. 1/2017-ST dated: January 12, 2017 has amended Mega Exemption Notification No.25/2012-Service Tax, dated June 20, 2012 so as to:

(i) exempt services provided by a business facilitator or a business correspondent to a banking company with respect to accounts in its rural area branch. {entry 29(g)} (ii) withdraw the exemption of service tax w.e.f. 22.01.2017 for services by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India to the customs station of clearance in India. {entry 29(g)} [Notification No. 1/2017-Service Tax, Dated: January 12, 2017]

3. Central Government vide Notification No. 2&3/2017- ST, Dated: January 12, 2017 has: (i) amended the definition of Aggregator provided in Rule 2(1) (aa) of Service Tax Rules, 1994 so as to exclude such person from the aggregator who enables a potential customer to connect with persons providing services by way of renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes subject to the conditions specified therein. (ii) specified that the person complying with the Sections 29, 30 or 38 read with Section 148 of the Customs Act, 1962 as the person liable for paying service tax in case of services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India. Similarly, for Reverse Charge, Notification No. 30/2012-Service Tax has been amended w.e.f. 22.01.2017 so as to specify that the person complying with the Sections 29, 30 or 38 read with Section 148 of the Customs Act, 1962 as the person liable for paying service tax in case of services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India. [Notification No. 2/2017 and 3/2017 - Service Tax, Dated: January 12, 2017]

RAIPUR BRANCH OF CIRC OF ICAI

Circulars –

Clarifications on the Direct Tax Dispute Resolution Scheme, 2016-Circular No. 42/2016, Dated 23-12-2016

The Direct Tax Dispute Resolution Scheme, 2016 incorporated as Chapter X of the Finance Act, 2016 provides an opportunity to tax payers who are under litigation to come forward and settle the dispute in accordance with the provisions of the Scheme. The provisions of the Scheme have been clarified vide Circular No. 33/2016 dated 12.09.2016. Subsequently, further queries were received by the CBDT from the various stakeholders. The Central Government had considered the queries and clarified the same in the form of questions and answers vide this Circular. In all, 8 FAQs have been issued vide this Circular.

Legal Decisions

LD/65/86 Susham Singla vs. Commissioner of Income Tax, Patiala 23rd December, 2016 Annual Value of Properties-

Annual value of the properties like the ones in the case in hand which are more than one, owned by the assessee and which admittedly remained vacant throughout the previous year would not be assessed u/s 23(1)(c) but u/s 23(1)(a)

During the subject year, a search was conducted upon J Jeweller Group and assessee being related to that Group, was also subjected to such search, on the basis of which, a notice was issued to him as to why deemed income by determining annual value of properties, of which he was found to be the owner, may not be added to his income. Assessing Officer found assessee to be the owner of the properties. In the course of the proceedings which ensued, the property at Patiala was treated as self-occupied but since the appellant-assessee was found to own more than one property and in his return, had not shown any deemed income from them, notional rent was determined and after providing the statutory deductions, added to the appellant-assessee's income. Such addition at the hands of the Assessing Officer was challenged by the appellant-assessee by preferring seven appeals before the Commissioner of Income Tax (Appeals), which, by a common order, were dismissed giving a cause to the appellant-assessee to appeal to the Tribunal, which also met the same fate as his appeals before the Commissioner. Aggrieved by the order of the Tribunal, assessee preferred an appeal before the Punjab and Haryana HC. The HC observed that as per Section 23(1)(a), the annual value of any property shall be deemed to be the sum for which the property might reasonably be expected to let from year to year. 1 Contributed by CA. Sahil Garud, Indirect Taxes Committee, CA. Mandar Telang and ICAI's Editorial Board Secretariat. Readers are invited to send their comments on the selection of cases and their utility at eboard@icai.in. For full judgment, write to eboard@icai.in Legal Decisions1 Section 23(1)(b) provides that where any property or any part of such property is let and the actual rent received or receivable by the owner in respect thereof is in excess of the sum, which the property might reasonably be expected to let from year to year, then the annual value of such property would be the actual amount so received or receivable. It was further observed that Section 23(1)(c) is to the effect that where any property or part of such property is let but remained vacant during the whole or any part of the previous year and owing to such vacancy, the actual rent received or receivable is less than the sum, which such property might reasonably be expected to yield on being let out, then the amount so received or receivable would be the annual value of the property in question. The HC held that a harmonious reading of Sections 23(4)(a), 23(2) and 23(1) indicates that in case the assessee owns more than one house, then the annual value of one of such houses, which is in his occupation as his own residence or which was not occupied by him for the reason that on account of his employment, business or profession, he had to reside at other places in a building not owned by him, is to be taken as 'Nil'. For the other houses that the assessee may own which are under his occupation or could not be occupied by him for the reason that on account of his employment, business or profession he had to reside at other places in a building not owned by him, their annual value is to be determined under Section 23(4) read with Section 23(1). Section 23(1) has three sub sections which have been set out earlier. Section 23(1)(b) and (c) would apply only to those properties which were actually let out and for which rent was actually received or receivable by the assessee. These provisions deal with the concept of real income and not notional income. Thus, the HC ruled in favour of the Revenue and held that the annual value of the properties like the ones in the case in hand which are more than one, owned by the assessee and which admittedly remained vacant throughout the previous year would not be assessed u/s 23(1)(c) but u/s 23(1)(a).

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LD/65/91 Aravali Infrapower Ltd. vs. Deputy Commissioner of Income Tax 1st December, 2016

Section 147: Income escaping assessment

Section 148: Issue of notice where income has escaped assessment Reassessment proceedings u/s 147/148 upheld, on account of assessee's failure to substantiate genuineness of transactions relating to receipt of share capital; "Primary materials" required to be submitted by the assessee were not merely PAN or other registration identities of the share applicants and it also extended to Bank details of applicants and their creditworthiness

A notice u/s 148 was issued on account of assessee's failure to substantiate genuineness of transactions relating to receipt of share capital. The assessee was aggrieved by this notice issued by the Assessing Officer (AO) and therefore filed a writ petition before the Delhi HC. The assessee submitted that reassessment notice just proposed to 'look-in' to the original assessment. From the reassessment notice, HC observed that the information was received by the revenue with respect to bogus entries made, resulting in a survey and impounding of certain documents. On this basis, certain inferences were sought to be drawn which amounted to tangible material. HC observed that the question was whether scrutiny by the AO at the time the original assessment was completed into the self-same matters precluded it from seeking recourse to Sections 147/148. HC observed that the requirement in such cases, whether the AO is prima facie not satisfied about the genuineness of the transaction (Section 68), is not merely to establish the genuineness of the identity but also genuineness of the transaction itself and the creditworthiness of the investor. HC remarked that the 'primary materials' required to be submitted by the assessee were not merely PAN numbers or other registration identities of the share applicants, but they also extended to details vis-à-vis other documents such as bank accounts etc., of the share applicants— that the assessee was in possession of. HC observed that there was not a complete disclosure by the assessee. HC further observed that ITR form disclosing returns raised more questions than satisfy the queries. HC observed that the ITRs reflected a very paltry income returned by the share applicants while claiming that they have invested amounts ranging over R8 crore. Thus, the Delhi HC upheld the issuance of notice u/s 148 and dismissed the writ.

LD/65/92 Magdum Dundappa Lokappa vs. Income Tax Officer

27th October, 2016

HC of Karnataka rejected the petition filed against the prosecution initiated by the Income Tax Department under Section 276(C)(2) of the Income Tax Act, 1961.

The assessee, Magdum Dundappa Lokappa, had filed his income tax return by seeking help of his Chartered Accountant. The tax liable to be paid was R1,465/- on taxable income amounting to R1,23,330/-. The return was filed by paying tax of R465/- only. However, challan was tampered with so as to appear that tax liable was duly paid. The same came into light only after inquiry carried out by the department. The Income tax department filed complaint u/s 200 of the Code of Criminal Procedure for offences under Sections 276(C)(2) and 277 of the Income-tax Act. A petition was filed against the proceedings stating that as the amount of tax evaded was less than R25,000/- it is covered by the circular and hence no prosecution can be initiated. W.r.t. assessee's reliance of the circular, HC remarked that whether the amount involved is less than R25,000/- is irrelevant. The allegation is that the document has been tampered by showing that assessee has paid the tax correctly and Section 277 deals with making a false declaration. Further the allegation has been admitted. HC observed that since the allegation is with regard to filing of a false declaration, therefore, the provisions of law stand applicable and circular prescribing a monetary limit therefore would not be applicable to the case on hand. HC noted that it is not a case of evading the tax and it is a case of furnishing of false declaration while submitting the return, and that the circular would be applicable in case of evasion of tax, and not in this case. HC thus rejected assessee's petition.

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INDIRECT TAXES

Service Tax

LD/65/95 N. Bala Baskar vs. Union of India 12th December, 2016

Service tax levy on 'construction service' under JDA

SLP of assessee against levy of service tax on construction service under Joint Development Agreement dismissed. After construction, parties may exchange constructed area for undivided share of land, but in whatever manner worded, agreement is for construction of super built-up area and what developer has done is actually service of construction; JDA gives rise to a bouquet of rights to developer, one of which is to put up a construction and sell it to third parties alongwith undivided share of land, and those parties certainly avail services of developer as service provider

Special Leave Petition (SLP) was filed before SC challenging order of Madras HC which dismissed landowner's petition against levy of service tax on construction service under Joint Development Agreement. The Madras HC stated that if the contention that the person to whom the burden of tax is ultimately passed on is entitled to challenge the levy, was accepted, it would lead to disastrous consequences and any increase in incidence of sales tax affects all consumers of all products. Therefore, any person would be entitled to come and challenge the increase in the levy on the ground that the manufacturer or dealer will eventually pass on the burden only to the ultimate consumer. Every citizen is a consumer of any number of products. Every Finance Act imposes an additional burden upon many such products. Millions of consumers would be entitled to come and challenge such levies, if such a contention was accepted. The HC had noted the assessee's contention that the service, if at all rendered by developer, would fall within the exempted category u/s 65B(44)(a)(i) i.e., it constituted merely a transfer of title in goods or immovable property, by way of sale, gift or in any other manner. 1095 INDIRECT TAXES Legal Update 60 THE CHARTERED ACCOUNTANT FEBRUARY 2017 www.icaai.org The HC had asserted "It is also possible for the Department to contend that a person, who is the owner of the land, had engaged a contractor to put up a construction for themselves upto a particular limit. Since the cost of construction could not be paid by the owner in the form of cash, they agreed to exchange the undivided share of the land with the contractor. If viewed from that angle, what the developer had done is actually the service of construction. Therefore, it is not an easy proposition that it was a transfer of immovable property by way of sale or exchange." It was observed that in the present case, the JDA gave rise to a bouquet of rights for developer/ builder. One was to put up a construction of an area, a part of which could be sold by it to third parties. They could be sold not only as such, but also along with the undivided share of land. Those parties had certainly availed the services of developer as a service provider. Assessee did not stand on a different footing than those persons. Thus, HC held that writ petition was not maintainable, in as much as the law makes service provider viz. the developer, liable to pay service tax. The HC held that it was always open for service providers either to pass on the burden to the recipient or not. Under the agreement, assessee and his siblings, who were service recipients, had agreed to take the burden to the extent they were liable. The Special Leave Petition filed before the Supreme Court challenging order of Madras HC was dismissed by the Supreme Court. However, it was stated that assessee could apply for refund if permissible in law.



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