

# THE NEWSLETTER

## **SUBSIDY OR NO SUBSIDY: GIVEITUP**

**T**he Ministry of Petroleum and Natural Gas on December 28, 2015 *vide* its Press Release stated that presently there are 16.35 crore LPG consumers in the country. The Government had also given a call to the well-to-do households for voluntarily giving up LPG subsidy. So far, 57.50 lakh LPG consumers have opted out of LPG subsidy voluntarily heeding the call given by the Prime Minister. The subsidy saved from the 'GiveitUp' campaign is being utilized for providing new connections to the BPL families under the 'Giveback' campaign. This enables provision of LPG, a clean fuel, to poor households by replacing the conventional fuels such as kerosene, coal, fuel wood, cow dung, etc. relieving the poor of the hardships and health hazards from such fuels. While many consumers have given up subsidy voluntarily, it is felt that consumers in the higher income bracket should get LPG cylinders at the market price. Therefore, the Government has decided that the benefit of the LPG subsidy will not be available for LPG consumers if the consumer or his/her spouse had taxable income of more than Rs 10,00,000/- during the previous financial year computed as per the Income Tax Act, 1961. In keeping with the approach of trusting the citizens, this will be given effect to initially on self-declaration basis while booking cylinders from January 2016 onwards.



### **Inside this issue:**

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) BILL, 2015	2
MONEY IN CIRCULATION	2
Right to be Represented by an Advocate as a Willful Defaulter before GRC	3
Revised monetary limits for Departmental Appeals	3
Supreme Court goes Green, bans cars over 2000cc in Delhi	4
Mobile Banking Transactions	4
Companies (Audit and Auditors) Rules, 2014	5
Companies (Meetings of Board and Its Powers)	5
Reduction of Statutory Liquidity Ratio	6
Place of Effective Management	6

## **SECTION 13 AND 14 OF THE COMPANIES ACT, 2013 COME INTO EFFECT**

**T**he Ministry of Corporate Affairs *vide* its notification number S.O. 3388(E) dated December 14, 2015, appointed 14<sup>th</sup> day of December, 2015 as the date for the enforcement of the provisions of Section 13 and 14 of the Companies Act, 2013 ("Act"). The aforesaid Sections deal with alteration of memorandum and articles of association of company respectively. Section 13 of the Act corresponds to Sections 16, 17, 18, 19, 21 and 23 of the Companies Act, 1956 ("Old Act"), whereas, Section 14 corresponds to Sections 31 (except proviso to sub-section (1) and sub-section (2A)) and 43 of the Old Act.

## **JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) BILL, 2015**

**T**he Ministry of Women and Child Development had introduced the Juvenile Justice (Care and Protection of Children) Bill, 2015 in the Lok Sabha on May 7, 2015. It has since then been in dialogue in the Rajya Sabha and was passed on December 22, 2015. The bill brings along with it relief to the people as it helps in curb-



ing down the crime and as a relief to the offenders as it does not send them to jail directly as the mental status of the offender shall first be studied by a psychologist, social worker and experts who shall determine whether the crime committed was by an adult mind or a child mind. The offences for the first time have been categorized as petty, serious and heinous based on the provisions of Indian Penal Code, 1860. The major amendment brought about in the bill shall be the age of juvenile has been reduced from 18 to 16 year old and special provisions have been made to deal with children in the age group of 16-18. An option has been provided to the Juvenile Justice Board to transfer cases of heinous offences by children to a Children's Court (Court of Sessions) after conducting the preliminary assessment. These children shall be kept in a 'place of

safety' during and the after the trial till the age of 21 after which an evaluation of the offender shall be conducted by the Children's Court, on finding the evaluation satisfactory the offender shall be released on probation and if not satisfactory then the offender shall be sent to jail for the remaining term. The enactment of this law will act as a deterrent for child offenders committing heinous offences such as rape and murder and will thus assist in ensuring that the victim's rights are protected.

## **MONEY IN CIRCULATION**



**T**he RBI had previously *vide* its circular dated June 26, 2015 stated that all the currency notes in circulation which have been issued prior to the year 2005 shall be exchanged prior to December 31, 2015. However, the RBI *vide* its Circular *DCM (Plg) No.G-8/2331/10.27.00/2015-16* dated December 23, 2015 has extended this date to June 30, 2016, but the facility shall be made available only at identified bank branches a list of which has been provided on the RBI site and at the Issue offices of RBI.

## **RIGHT TO BE REPRESENTED BY AN ADVOCATE AS A WILLFUL DEFAULTER BEFORE GRC**

**T**he Delhi High Court in *Punjab National Bank & Ors. v. Kingfisher Airlines Ltd. & Ors.* (C.M. No. 7<sup>1</sup>86/6459) has decided that a person classified as a Willful Defaulter in accordance with Reserve Bank of India's (RBI) Master Circular, has a right to be represented by his advocate before the Grievance Redressal Committee (GRC), set up by a Bank. The petitioner contended that the respondent is not eligible to make representation by an advocate, as none of the member of GRC is a law graduate and also that incase the same was permitted there would be a huge backlog of cases in front of the GRC as there would not be any time boundaries for dealing with the same. The Court held that the GRC has same power as a Tribunal and an advocate has a right to appear before it as per Section 30(ii) of the Advocates Act, 1961. The Court rationalized that, the GRC have a statutory & legal character and also an authority empowered to determine the rights of parties, vested with judicial power like Tribunal under Article 136 of the Constitution of India. The GRC was given the power to limit the time for each matter and decide the day on which it would pass its decision. The Court further held that depriving from such right is not equitable, as a consequences of which the borrower will be deprived of credit facilities from other banks and financial institutions also.



## **REVISED MONETARY LIMITS FOR DEPARTMENTAL APPEALS**

CBDT vide Circular no .21/2015 on December 10, 2015 has revised the monetary limits (tax effect) for filing departmental appeals retrospectively before the Income Tax Appellate Tribunal, High Court and Supreme Court.

The revised monetary limits are as under in tabulated

### **Revised Monetary Limit for Filing Appeals by Department Before ITAT HC SC**

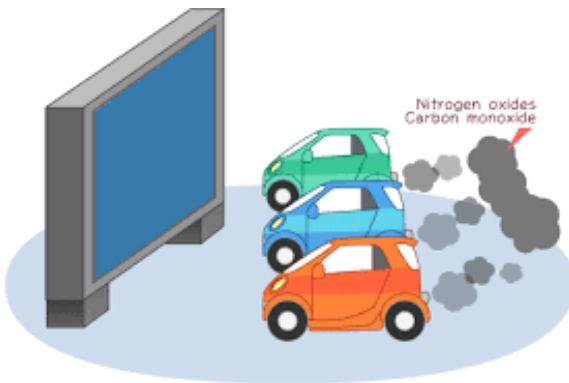
Circular No. 21/2015 dt 10-12-2015  
F No 279/Misc. 142/2007-ITJ (Pt)

Sr.no	Appeal in Income Tax Matters	Monetary Limits (in Rs)	Monetary Limits (in Rs) as per CBDT Instruction No 5/2014
1.	Before Appellate Tribunal	10,00,000/-	4,00,000/-
2.	Before High Court	20,00,000/-	10,00,000/-
3.	Before Supreme Court	25,00,000/-	25,00,000/-

It is also clarified that an appeal should not be filed merely because tax effect exceeds the revised monetary limit prescribed above. Filing of an appeal in such cases shall be decided on merit basis

## **SUPREME COURT GOES GREEN, BANS CARS OVER 2000CC IN DELHI**

A bench comprising of CJI Justice T.S. Thakur, Justice A.K. Sikri and Justice R. Banumathi in *M.C. Mehta v. Union of India* (MANU/SC/1458/2015) on December 16, 2015 ordered a ban on vehicles having the engine capacity of 2000cc or above to be registered in Delhi and NCR region till March 31, 2016. Reacting to the soaring pollution in the capital, the Hon'ble Supreme Court decided to ban the registration of such vehicles. However, the light commercial vehicles have been kept in abeyance from the scope of the ban. The Supreme Court agreed that ban on such commercial vehicles would paralyse the city considering the dependence of the public on such vehicles for supply of essentials and also observed that taxi operators such as OLA and UBER plying in the NCR shall get their vehicles converted to CNG before March 1, 2016. Furthermore, the Hon'ble Court also directed that the transport vehicles which are not Delhi bound shall not enter Delhi even on payment of ECC cess and only those transport vehicles which are Delhi-bound shall be allowed to enter Delhi. Further, the Supreme Court also directed the M.C.D. & N.D.M.C. to ensure compliances in construction of multi-storeys and waste management and also asked the M.C.D. & N.D.M.C. to construct and cleanse pavements and roads.



## **MOBILE BANKING TRANSACTIONS**



The RBI vide its circular DPSS.CO.PD.No./1265/02.23.001/2015-2016 dated December 17, 2015 brought about an amendment on the Mobile Banking Transactions in India- Operative Guidelines for Banks dated July 1, 2015. Due to the high mobile density in the country the RBI feels it is necessary to simplify the procedure and greater degree of standardization in procedures in relation to registering of customers for mobile banking. The National Payment

Corporation of India in collaboration with the RBI developed the mobile banking registration service/ option on the National Financial Switch (NFS) and the same is now ready to be deployed on ATMs of all NFS member banks. The Banks have been asked to carry out the respective change in their respective ATM switches and enable the capability of customer registration for mobile banking at all their ATMs latest by March 31, 2016. Banks have also been asked to strive to facilitate customer registration for mobile banking through other channels including internet banking, IVR, phone banking etc.



## **COMPANIES (AUDIT AND AUDITORS) RULES, 2014**

The Ministry of Corporate Affairs *vide* notification number G.S.R. 972 (E) on December 14, 2015 has amended the Companies (Audit and Auditors) Rules, 2014 in respect of 'Reporting of Frauds by auditor and other matters' as given under rule 13. The said amendment rules prescribe a threshold amount of Rs. 1,00,00,000 (Rupees One Crore only) below which the auditor of a company shall not report the matter to the Central Government and the same ought to be reported to the Audit Committee or the Board. Further, the auditor shall report the matter to the Board or the Audit Committee, as the case may be, immediately but not later than two (2) days of his knowledge of the fraud, seeking their reply or observations within forty-five (45) days. The time period of two (2) days was previously not mentioned in the provision. Apart from this, the said amendment also makes it mandatory for the company to disclose details of each of the frauds reported to the Audit Committee or the Board in the Board's report.



## **COMPANIES (MEETINGS OF BOARD AND ITS POWERS) SECOND AMENDMENT RULES, 2015**

The Ministry of Corporate Affairs has issued the Companies (Meetings of Board and its Powers) Second Amendment Rules, 2015 *vide* notification dated December 14, 2015. The said amendment has inserted 'Rule 6A' under Chapter XII of the said rules which gives authority



to the Audit Committee to grant 'omnibus approval for related party transactions on an annual basis'. The newly inserted rule 6A specifically mentions that 'all' related party transactions are required to be approved by the audit committee. Further, the Audit Committee has authority to lay down the criteria for making an omnibus approval structure based on certain factors. However, a prior board approval is required in this regard. Apart from this, the related party transactions which cannot be foreseen or/and requisite details of which are not available, the Audit Committee may grant omnibus approval subject to the value of the transaction which shall not exceed Rs. 1,00,00,000 (Rupees One Crore only)

per transaction. The omnibus approvals shall be valid for a period not exceeding one year and shall require fresh approvals after the expiry of one year.

## **REDUCTION OF STATUTORY LIQUIDITY RATIO**

**T**he RBI *vide* its notification number DBR.No.Ret.BC.63/12.01.001/2015-16 dated December 10, 2015 specified that every scheduled/ commercial/ local area/ primary co-operative/ state co-operative/ central co-operative bank shall maintain in India assets the value of which shall not, at the close of business on any day be less than:

- a) 21.25 per cent from April 2, 2016
- b) 21.00 per cent from July 9, 2016
- c) 20.75 per cent from October 1, 2016
- d) 20.50 per cent from January 7, 2017



of their total net demand and time liabilities in India as on the last Friday of the second preceding fortnight, valued in accordance with the method of valuation specified by the RBI from time to time.

## **PLACE OF EFFECTIVE MANAGEMENT**

**CA NIKHIL TOTUKA, SENIOR ASSOCIATE**

**U**nder the provisions of Income Tax Act, 1961 ('IT Act') the taxability of an entity is dependent upon its residential status. As per the basic principles of IT Act, the global income of a resident entity is taxed in India. Hence, verifying whether an entity is a resident or a non-resident attains utmost importance.

Prior to amendment in Section 6(3) of the IT Act by Finance Act 2015, a company was said to be resident in India if it is an Indian company or if during the year, the control and management of its affairs is situated **wholly** in India. The efficient tax planners used this corollary to their effective advantage in avoiding residential status by shifting insignificant or isolated events related with control and management outside India. To address these concerns, Finance Act 2015 amended section 6(3) of the IT Act w.e.f. 1<sup>st</sup> April 2016. As per the amended section a company is said to be resident in India in any previous year, if-

- a) It is an Indian company; or
- b) Its place of effective management is in India

The place of effective management (“**PoEM**”) is an internationally accepted recognized test for determination of residence of company incorporated in foreign jurisdiction. PoEM means a place where the key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance, made. Hence, it is a concept that gives precedence to substance over form.

As per PoEM draft guidelines, a company shall be said to be engaged in “active business outside India” if the following conditions are fulfilled:

- a) Its passive income is not more than 50% of total income and,
- b) Less than 50% of its assets are located in India; and
- c) Less than 50% of total number of employees are situated in India or are resident in India; and
- d) The payroll expenses incurred on such employees is less than 50% of its total payroll expenditure.

Further, the passive income of a company shall be aggregate of,-

- a) Income from the transactions where both the purchase and sale of goods is from/to its associated enterprises; and
- b) Income by way of royalty, dividend, capital gain, interest or rental income.

Hence, from the discussion above it is evident that for an entity to be declared as being involved in active business outside India, it needs to fulfill all the four conditions mentioned above. Therefore if any one or more of the said conditions are not fulfilled, it shall be deemed that the Company is engaged in active business in India, hence its PoEM is in India and it will be treated as a resident in India.

In addition to the above, the place of effective management in case of a company engaged in active business outside India shall be presumed to be outside India if the majority meetings of the board of directors of the company are held outside India. However, if it is established that the Board of directors are not exercising their powers of management and such powers are being exercised by either the holding company or any other person (s) resident in India, then the place of effective management shall be considered to be in India. For the purpose of determining whether the company is engaged in active business outside India the average of the data of the previous year and two years prior to that shall be taken into account.

The determination of POEM for companies other than those that are engaged in active business outside India would be a two stage process, namely:-

- a) First stage would be identification or ascertaining the person or persons who actually make the key management and commercial decision for conduct of the company’s business as a whole.
- b) Second stage would be determination of place where these decisions are in fact being made.

From the above discussion it is evident that the place where these management decisions are taken would be more important than the place where such decisions are implemented. Hence, to ascertain PoEM it will be crucial to first identify who in substance holds the decision making power in a company and then to ascertain where such powers are exercised.

It is reiterated that the above draft principles for determining the PoEM are for guidance only. No single principle will be decisive in itself. The above principles are not to be seen with reference to any particular moment in time rather activities performed over a period of time, during the previous year, need to be considered. In other words a “snapshot” approach is not to be adopted. Further, based on the facts and circumstances if it is determined that during the previous year the PoEM is in India and also outside India then PoEM shall be presumed to be in India if it has been mainly /predominantly in India

Further, in case the Assessing officer proposes to hold a company incorporated outside India, on the basis of its PoEM, as being resident in India then any such finding shall be given by the Assessing officer after seeking prior approval of the Principal Commissioner or the Commissioner, as the case may be, in this regard. The Principal Commissioner or the Commissioner shall provide an opportunity of being heard to the company before deciding the matter.



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