

THE NEWSLETTER

Constitution Of NCLT And NCLAT

The Ministry of Corporate Affairs has issued notifications on 1st June, 2016 whereby The National Company Law Tribunal (“NCLT”) and the National Company Law Appellate Tribunal (“NCLAT”) have been constituted and Hon’ble Justice S.J. Mukhopadhyaya, Judge (Retd.), Supreme Court of India has joined as the Chairperson of the NCLAT and Hon’ble Justice M.M.Kumar, Judge (Retd.) has joined as the President of the NCLT. Further, MCA has notified certain provisions of the Companies Act, 2013 which were not operational due to non constitution of NCLT.

NCLT

stands for

**National Company Law
Tribunal**

The effect of the notifications is that from 1st June, 2016, the Company Law Board (“CLB”) as constituted under the Companies Act, 1956 shall stand dissolved and all matters or proceedings or cases pending before the Board of Company Law Administration (Company Law Board) shall stand transferred to the NCLT and it shall dispose of such matters or proceedings or cases in accordance with the provisions of the Companies Act, 2013 or the Companies Act, 1956.

The NCLT will start functioning with eleven Benches: two at New Delhi and one each at Ahmedabad, Allahabad, Bengaluru, Chandigarh, Chennai, Guwahati, Hyderabad, Kolkata and Mumbai. The Principal Bench of the NCLT will be at New Delhi.

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Equalisation Levy Rules, 2016

In line with the Organisation for Economic Co-operation and Development’s Base Erosion and Profit Shifting project to tax e-commerce transactions, the Finance Act 2016, had inserted a separate Chapter VIII titled ‘Equalisation Levy’. The newly inserted provisions of the Act provide for an equalisation levy of 6% to be deducted from amounts paid to a non-resident not having any permanent establishment in India, for specified services. The CBDT on 27th May, 2016 issued a notification numbered as SO 1904(E) [NO.37/2016 (F.NO.370142/12/ 2016 - TPL)] stating that the provisions of Chapter VIII relating to the equalisation levy would come into effect from 1st June 2016. In other words, any payments being made for the specified services provided on or after 1 June 2016 shall attract the equalisation levy. The CBDT has also notified the Equalisation Levy Rules, 2016 via Notification No. SO 1905(E) [NO.38/2016 (F.NO.370142/12/2016-TPL)] dated 27th May, 2016 which lays down the procedural framework for the compliances to



be undertaken and appeals process to be followed for such levy. These Rules would also be effective from 1 June 2016. The rules provide for computation and payment of equalisation levy, furnishing statement of specified services, non compliance and filing of appeal against the penalty order before the Commissioner of Income Tax (Appeals) and Income Tax Appellate Tribunal.

Overview Of Patent (Amendment) Rules, 2016

On 16.05.2016, the Government of India published the Patent (Amendment) Rules, 2016. The same have been enforced on the aforesaid date of publication by virtue of a public notice No.CG/F/Public Notice/2016-371 dated 16.05.2016 issued by the Controller General Patents, Designs and Trademarks. The amendment aims to speed up the process for grant of patent by bringing the key

changes in the existing patent protection regime. The applicant can now request for an expedited examination of the patent application. Mechanism for the same has been provided. Provisions for refund of excess fee i.e. fee paid more than once during the online filing process, for the same proceeding and refund upon withdrawal of application have been made. It is now obligatory for every patent agent to file all the required documents electronically. The electronically submitted documents are to be filed in original within the next fifteen (15) days. Further, the reasons for condonation of delay are now limited to war, revolution, civil disorder, strike, natural calamity, and a general unavailability of electronic communication services. Hearing through video-conference in cases of anticipation by prior publication is allowed. The time period for filing a power of attorney is prescribed to be three

(3) months from the date of filing application. The time period for putting an application is reduced from twelve (12) months to six (6) months. However, the same is not applicable on the applications for which a first examination report has been issued before 16.05.2016. As for adjournments, the applicant shall be required to show reasonable cause for requesting an adjournment and the maximum number of adjournments in any case shall not be more than two(2).



Krishi Kalyan Cess

The government has levied Krishi Kalyan Cess (KKC) w.e.f. 01.06.2016. KKC is applicable only on taxable services. This cess is leviable on the value of services, thus, the effective rate of service tax would be 15% w.e.f.

01.06.2016 (i.e. 14% as Service Tax, 0.5% as SBC and 0.5% as KKC). This cess will not be applicable on non-taxable services including the exempted services. This cess is to be disclosed separately on the invoice and paid separately. The CENVAT credit of KKC shall be available and shall be utilized only for the payment of KKC. Thus, separate accounts needs to be maintained. Further, only a provider of output service is allowed to take



CENVAT Credit. Refund of this KKC shall also be allowed as the cenvat credit is there. Further, refund of this cess shall be allowed to Exporter of Service as well as Exporter of Goods as there is no restriction of its availment. Suitable amendment is awaited in CCR' 2004 as well as refund notifications. This Cess shall be applicable only on the abated value in case of services covered under abatement scheme. KKC shall also be applicable on the services covered under Reverse Charge Mechanism. Rule 5 of Point of Taxation Rules' 2011 need to be referred for its applicability in case of ongoing contracts on 01.06.2016. Thus, if payment is made before 01.06.2016 and invoice is raised latest upto 14.06.2016 then, this cess is not applicable

No Power To Conduct Audit Under Service Tax

The hon'ble High Court of Delhi has recently in the case of *Mega Cabs Pvt Ltd v. Union Of India* [2016] 70 taxmann.com 51 (Delhi) has held that

Departmental officers have no power to conduct special audit under service tax. Audit is a special function which has to be carried out by duly qualified persons like a Cost Accountant or a CA. It cannot possibly be undertaken by any officer of the Service Tax Department. There is a distinction between auditing the accounts of an Assessee and verifying the records of an Assessee. Therefore, without assigning any reasons and giving opportunity of being heard, conducting special audit by departmental officers is ultra-vires. The hon'ble High Court declared Rule 5A(2) of the Service Tax Rules, 1994 as amended in terms of Notification No. 23/2014-Service Tax dated 5th December 2014 of the Central Government, to the extent that it authorises the officers of the Service Tax Department, the audit party deputed by a Commissioner or the CAG to seek production of the documents mentioned therein on demand is ultra vires the Finance Act, 1994 and, therefore, struck it down to that extent. It also declared that the CBEC Circular No. 995/2/2015-CX dated 27th February 2015 on the subject —Central Excise and Service Tax Audit norms to be followed by the Audit Commissionerates and the Central Excise and Service Tax Audit Manual 2015 issued by the Directorate General of Audit of the CBEC is *ultra vires* the Finance Act, 1994 and do not have any statutory backing and cannot be relied upon to legally justify the audit undertaken by officers of the Service Tax Department.



Modification In Advance Tax Payment

Section 211 of Income Tax Act, 1961 has been amended and now all type of assessee whether corporate or non-corporate can pay advance tax as follows:

- 1st installment Upto 15th June – 15% of total tax liability
- 2nd installment Upto 15th September- 45% of total tax liability
- 3rd installment Upto 15th December- 75% of total tax liability



- 4th installment and on or before 15th March- 100% of total tax liability

The said amendment had come into effect from 1st June, 2016 for assessment year 2017-18. Earlier upto assessment year 2016-17 the assessee other than corporate assessee were allowed to pay advance tax in three installments but now due to the amendment all assessee except assessee covered under section 44AD (Presumptive Income) are treated at par for advance tax provisions.

A Comparative Analysis Of New Income Declaration Scheme, 2016 And Settlement Scheme Under Income Tax Law

- By CA Mukesh Soni, Senior Associate

Amongst the various new schemes and changes brought about by the Budget, 2016, one of them is Income Declaration Scheme, 2016 (“**Scheme**”). The Scheme came into effect from 1st June, 2016 which is expected to bring about a change in the manner of disclosure/declaration of undisclosed/undeclared income. The Scheme has been introduced as a separate chapter, Chapter IX of the Finance Act, 2016 and the government has also notified the Income Declaration Rules, 2016 (“**Rules**”) with the Scheme. Currently, the penal consequences of non-disclosure of income (concealment or furnishing of inaccurate income) are so harsh, that the assessee who wants to disclose the income, due to fear not able to disclose the true income.

PURPOSE AND SCOPE

The main purpose of the Scheme is to provide an opportunity to persons who have not paid full taxes in the past, to come forward and declare the undisclosed income and pay tax. The Scheme extends to all assesses (Individual, HUF, Company, Firm, etc.). However, assesses who have been served notice under section 142, 143(2), 148 153A or 153C of the Income Tax Act, 1961 (“**the Act**”), persons notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, persons against whom proceedings under Chapter IX (offences relating to public servants) and Chapter XII (offences against property) of Indian Penal Code are pending, persons accused under Unlawful Activities (Prevention) Act, etc. are also left out from the Scheme.

SALIENT FEATURES OF THE SCHEME

1. Applicant can declare any income chargeable to tax, which he has failed to disclose for any AY prior to AY 2017-18 by making declaration in Form No. 1.
2. The fair market value of asset as on 1st June, 2016 shall be calculated as per Rule 3 of the Rules as undisclosed income, where the income chargeable to tax is declared in the form of investment in any asset.
3. Aggregate tax, surcharge and penalty payable on the income disclosed will be 45% of the total undisclosed income.
4. Scheme is in operation from 01.06.2016 to 30.09.2016 and the last date for payment of tax with surcharge and penalty is 30.11.2015.
5. The amount of undisclosed income will not be included in the total income of the declarant under the provisions of the Act for any assessment year.
6. Immunity from the Benami Transactions (Prohibition) Act, 1988 available in respect of the assets disclosed in the declarations made on or before 30th September, 2017;

The value of asset declared is not chargeable to Wealth-tax for any assessment year(s).

7. The value of asset declared is not chargeable to Wealth-tax for any assessment year(s).
8. Declaration of undisclosed income will not affect the finality of completed assessment.

Under the Act the provision related to 'settlement of case' is already present, which relates to settlement of case for undisclosed income under section 245 C of the Act.

SETTLEMENT OF CASE IN ACT VIS-A-VIS SCHEME

Settlement of case (section 245C of the Act)	Income Disclosure Scheme, 2016
Application is to be made during the pendency of a case only.	An assessee may declare his undisclosed income anytime, even in cases of completed assessment.
Assesses can opt any AY, for which case is pending before the department.	Any assessment year prior to AY 2017-18 is covered.
Additional tax and interest to be paid as per section 245C(1A)&234 A/B/Cof the Act.	Total all cost as per scheme amount to 45% of undisclosed income as per Rules.
Mandatory to disclose manner of earning the additional income and source thereof.	No such requirement, only <i>nature of undisclosed income</i> is to be specified.
Payment of min. additional tax of Rs. 50lakhs or Rs. 10lakhs as the case may be.	No such min. tax payment requirement under the Scheme.
Additional income can be offered on the basis of 'income approach' or 'asset/investment approach'.	Undisclosed income can be offered on the basis of 'income earned' and where the income in the form of investment, then Fair market value in accordance with the Rule 3 as undisclosed income.
Cost involved in making an undisclosed investment, is taken into consideration.	Higher of the Fair market value of investment or cost involved in making declaration is taken.
Time limit for passing final order in u/s 245D(4) is 18 months from end of the month in which settlement application filed.	Validity or otherwise of declaration would be decided within 15 days of submission of proof of payment of tax in Form No. 3.
One time Opportunity	One time opportunity
Additional income offered forms part of the total income of the Applicant under the provisions of the Act	Undisclosed income would not form part of the total income of the declarant under the provisions of the Act.

CONCLUSION

From the above analysis, it is evident that various factors comes into play so as to decide which scheme out of the above, is better depending upon facts and circumstance of each case, as far as the question of disclosure of undisclosed/additional income is concerned. It would not be justified to take into consideration only cost in monetary terms while making the decision regarding disclosure of undisclosed income/investment. Factors such as legal provisions, statutory relief being provided, quantum of income, assessment year to which the income relates, nature of income, fair market value of investments, penal consequences, time of payment of taxes etc., should also be taken into consideration so as to decide the applicability and viability of the particular scheme in the particular case.

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