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# POC CONNECT

## MARCH EDITION 2017



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# Corporate News Round Up

## Sebi eases norms for debt MF investment in housing finance cos

Debt mutual funds can now invest up to 15 percent of their total net assets in housing finance companies with Sebi easing the regulations in this regard. The norms have been relaxed as part of efforts to channelise more funds towards affordable housing activities. Debt mutual funds were allowed to have an exposure of only up to 10 percent to housing finance companies. This has been increased to 15 percent with the immediate effect subject to certain conditions.

## RBI to frame standard procedure for FDI approvals post FIPB

The Reserve Bank is expected to formulate standard operating procedure (SOP) for approval of FDI proposals by ministries following the government decision to phase out FIPB. The proposal for setting up norms for foreign direct investment (FDI) approvals in sensitive sectors, which are currently under government approval of the FDI policy, was discussed at a recent inter-ministerial meeting. According to sources, several options came up for discussions at the meeting.

# Corporate News Round Up

## RBI wants banks to create common pool of forensic audit firms

The Reserve Bank of India wants banks to create a common pool of forensic audit firms so that they can pick one of them quickly whenever a high-value fraud needs to be investigated. This is aimed at ensuring that precious time is not lost in evaluating eligibility criteria of audit firms. This development comes in the wake of the central bank finding that advances-related frauds constituted nearly 92 per cent of the total frauds reported by all banks in FY16. Given that the common pool will only have forensic audit firms that have already been evaluated for professional competence and proven track record in forensic and investigative auditing, all that a bank, irrespective of whether it is a sole lender or leader of a consortium of lenders, wanting to engage a firm needs to do is call for price bids.



# Corporate News Round Up

## CA guilty of professional misconduct for failure to report suspicious book entries

Delhi High Court in the case of Council of The Instt. Of Chartered Accountants Of India Vs. CA G S Johar & Anr. passed order that where respondent-chartered accountant was statutory auditor of company but failed to discharge its duty to enquire whether transactions which were merely book entries were prejudicial to interest of company, respondent was guilty of professional misconduct and his name was to be removed from register of member of ICAI for a period of 5 years.

## 5-year ban on CA for issuing incorrect certificate of share application money

Delhi High Court in the case of Council of ICAI Vs Kailash Chander Agarwal & ANR. passed order that where respondent Chartered Accountant did not cross check certificates issued by him to a company, for listing of its shares for trading in stock exchange, with statement of account issued by bank to said company, respondent was to be held guilty of misconduct

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# Tax News Round Up

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## **I-T refunds rise by a whopping 41.5%, government issues 1.62 cr refunds worth Rs 1.42 lakh cr**

The income tax department has issued refunds to the tune of Rs 1.42 lakh crore so far this fiscal till February 10, 41.5 per cent higher than last year's. The Centralised Processing Centre (CPC) of the tax department has already processed over 4.19 crore income tax returns (ITRs) and issued over 1.62 crore refunds during the current financial year up to February 10, 2017.

## **No reply to I-T query could invite a notice from the dept**

The I-T department is "verifying" over Rs 4.5 lakh crore of suspicious deposits made by 18 lakh people post note ban and will send 'non-statutory' letters to those who have not responded to its SMS and e-mail queries seeking explanation. Big Data analysis by the tax department has revealed that deposits of over Rs 2 lakh totalling Rs 10 lakh crore were made in about 1 crore bank accounts in the 50-day window after the demonetisation decision that cancelled 86 per cent of currency in circulation.



# Tax News Round Up

## **Modi gets tough on benami transactions: Violators may get may get 7 years rigorous imprisonment**

The tax department warned that those who undertake Benami transactions would invite Rigorous Imprisonment (RI) of up to 7 years and such violators would also stand to be charged under the normal I-T Act.

## **No tax on Rs 20 lakh gratuity for private employees**

The government has amended the Payment of Gratuities Act where private sector employees will now be able to withdraw up to R20 lakh in tax-free gratuity. Till now the tax-free limit was R10 lakh. For government employees, however, the limit is R20 lakh.





# Tax News Round Up

## GST Council approves the CGST Bill and the IGST Bill

The Goods and Services Tax GST Council, in its meeting held on 04<sup>th</sup> March 2017 in Vigyan Bhawan in New Delhi under the Chairmanship of the Union Minister for Finance & Corporate Affairs, Shri Arun Jaitley has approved the draft CGST Bill and the draft IGST Bill as vetted by the Union Law Ministry. This clears the deck for the Central Government to take these two Bills to the Parliament for their passage in the ongoing Budget Session.

## Furnishing of Aadhaar mandatory for final settlement of Pension claims

The EPFO has clarified that obtaining of Aadhaar should be mandatory for the time being only for final settlement of Pension and not in withdrawal cases. The EPFO had extended the date of submission of Aadhaar Number authentication by the members of Employees' Pension Scheme 1995 upto 31st March 2017.



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Unique Identification  
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# Notifications, Circulars & Press Releases

CBEC has Launched Official Mobile Application CBEC GST at Google Play Store

CBEC LAUNCHES OFFICIAL MOBILE APP FOR GST. The MOBILE APP (CBEC GST MOBILE APP) can be downloaded at GOOGLE PLAY STORE now. The Mobile App gives all details about GST Draft LAWS/RULES and procedure for MIGRATION to GST by CENTRAL EXCISE/ SERVICE TAX ASSESSEES. CBEC 's GST HELPDESK can be contacted through the App round the clock by toll free number/email.

**For more detail refer-**

<http://www.cbec.gov.in/resources//htdocs-cbec/press-release/launch-cbec-mobileapp.pdf>

**>>Click Here to Download Mobile Application CBEC GST<<**



# Notifications, Circulars & Press Releases

POEM Guidelines shall not apply to a Company having Turnover or Gross Receipts of Rs. 50 crores or less in a financial year. [Circular No. 08/2017, Dated: February 23, 2017]

The concept of Place of Effective Management (POEM) for deciding the residential status of a company, other than an Indian company, was introduced by the Finance Act, 2015. The existing provision of clause (ii) of sub section (3) of section 6 of the income-tax, 1961 (the Act) shall come into effect from 1st April, 2017 and accordingly, applies to Assessment Year 2017-18 and subsequent years. Guiding Principles for determining POEM of a company were issued by Circular No. 6 of 2017 on 24th January, 2017. Press Release on POEM guidelines dated 24th January, 2017 has, inter alia, stated that the POEM guidelines shall not apply to a company having turnover or gross receipts of Rs. 50 crores or less in a financial year.

In view of above, it is clarified that existing provision of clause (ii) of sub section (3) of section 6 of the Act, shall not apply to a company having turnover of gross receipts of Rs. 50 crores or less in a financial year.

# Notifications, Circulars & Press Releases

## CBDT Instruction on Verification of Cash Deposits under 'Operation Clean Money'

CBDT vide Instruction No. 3/2017 dated 21.02.2017, has issued a SOP to be followed by the Assessing Officer(s) for Online Verification of Cash Transactions pertaining to the demonetisation period.

In continuation thereof, the Board hereby prescribes a Template, to be used for issue of notices under section 133(6) of the Income-tax Act, 1961 ('Act') in appropriate cases, for Online Verification of Cash Deposits.

### **For more detail refer:-**

<https://irsofficersonline.gov.in/Documents/OfficalCommunique/133201733450.pdf>



# Notifications, Circulars & Press Releases

Application of winding-up provisions on Foreign Companies [General Circular No.01/2017 dated 22th February, 2017

Section 391(2) of the Companies Act, 2013, states that the provisions of Chapter XX shall apply mutatis mutandis for closure of the place of business of a foreign company in India as if it were a company incorporated in India. These provisions have been brought in force on 15th December, 2016. Stakeholders have sought clarification with regard to scope of application of the section 391(2).

The matter has been examined by MCA and it has been noted that section 391(1) & (2) needs to be read harmoniously. Accordingly, it is clarified that section 391(2) of the Companies Act, 2013 would apply only in case of a foreign company which has issued prospectus or IDRs pursuant to provisions of Chapter XXII of the Companies Act, 2013.

**For more detail refer:-**

[http://mca.gov.in/Ministry/pdf/GeneralCircular1\\_2017\\_23022017.pdf](http://mca.gov.in/Ministry/pdf/GeneralCircular1_2017_23022017.pdf)



# Notifications, Circulars & Press Releases

## MCA amends the Transfer of Pending Proceedings Rules, 2016

MCA vide Notification dated February 28, 2017, has amended the Companies (Transfer of Pending Proceedings) Rules, 2016 w.e.f. 28.02.2017 in relation to Winding Up.: -

In the Companies (Transfer of Pending Proceedings) Rules, 2016, in Rule 5, in sub-rule (1) in the proviso for the words “sixty days” the words “six months” shall be substituted.

**Impact:** Now, in case of Transfer of pending proceedings of Winding up on the ground of inability to pay debts, the petitioner shall submit all additional information, required for admission of the petition under sections 7, 8 or 9 of the Insolvency Code, as the case may be, including details of the proposed insolvency professional to the NCLT within six months (instead of sixty days) from date of enforcement notification of the Companies (Transfer of Pending Proceedings) Rules, 2016 i.e. 15.12.2016.

**For more detail refer:-**

[http://www.mca.gov.in/Ministry/pdf/CoTransferofProceedingsAmdtRules\\_01032017.pdf](http://www.mca.gov.in/Ministry/pdf/CoTransferofProceedingsAmdtRules_01032017.pdf)



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## Twenty First Century Securities Ltd. v. Income-tax Officer

[2017] 78 taxmann.com 152 (Kolkata - Trib.), Dated- FEBRUARY 3, 2017

Deduction of tax at source at lower rate is 'person specific' and cannot be extended to amounts specified by recipient of payment while making an application for grant of certificate under section 197, hence, interest under section 201(1A) not leviable for short deduction.

### Facts of the case-

- The assessee made payment of interest to two parties. It was liable to deduct TDS under section 194A on these interest payments. Further both parties had obtained a certificate from their respective Assessing Officer under section 197 authorizing assessee to deduct tax at source at a lower rate. However, the amount mentioned in such certificate was lesser than the actual amount of interest paid and assessee had deducted tax at source at a lesser rate on the entire payment.
- Thus, Assessing Officer held that the deduction of tax at a lower rate was valid only in respect of the amount specified in certificate and on the balance amount assessee ought to have deducted tax at source at the normal applicable rate. For the shortfall, the Assessing Officer held assessee under default and levied interest under section 201(1A).
- Commissioner(Appeals) confirmed order of Assessing Officer.

### On appeal to the Tribunal: Held that :-

- Deduction of tax at source at lower rate is 'person specific' and cannot be extended to amounts specified by recipient of payment while making an application for grant of certificate under section 197. Section 197(2) alongwith relevant rule 28AA(2), clarifies that once certificate under section 197(2) is issued for lesser/no TDS deduction, person making payment is at liberty to deduct tax at rates specified in certificate and that it does not make any reference to any income specified in such certificate. Thus, interest under section 201(1A) levied for alleged short deduction of TDS under section 194A on interest payments made by assessee-company was to be deleted. © Punkaj Oswal & Co.

## Thakorbhai Maganbhai Patel v. Income-tax Officer

[2017] 78 taxmann.com 201 (SC), Dated- FEBRUARY 3, 2017

SLP dismissed against High Court's ruling that where assessee claimed land sold by it to be an agricultural land on basis of fake certificate, order of reopening of assessment to tax capital gain arising from such sale could not be quashed.

### **Brief of the Case-**

- Assessee sold a land and claimed that land to be an agricultural land since it was situated beyond a distance of 8 kms from nearest Municipal Corporation and produced a certificate from Executive Engineer Road and Building Division.
- Later, Assessing Officer found that distance between sold land and nearest Municipal Corporation was much lesser than 8 kms and he issued a notice to reopen assessment to tax capital gain arising from such sale.
- High Court by impugned order held that since certificate on which assessee relied on was not genuine and distance between sold land and nearest Municipal Corporation was much shorter than 8 kms, reopening was justified.

### **Supreme Court Held that :-**

- Special Leave Petition filed against impugned order was to be dismissed - Held, yes [Para 1] [In favour of revenue]

**DIT Vs. A. P. Moller Maersk,  
[2017] 78 taxmann.com 287 (SC), Date of Judgment: 17.02.2017**

**Issue:-**

Whether the payments made by the agents to the concerned foreign assessee, for using the facility of Net Communication System, developed by the assessee for smooth functioning of its international shipping business would be classified as fees for technical services and would be chargeable as income under Income Tax Act, 1961?

**Held that :-**

The Hon'ble Supreme Court Upheld the decision of the High Court of Bombay and held that the Amounts received by assessee from its Indian agents for Global Telecommunication Facility 'Maersk Net' not taxable in India as fees for technical services. Global telecommunication facility was a common facility provided by assessee to all its agents across countries to enable them to discharge their role more effectively, which was an integral part of shipping business and hence payments towards same were not towards reimbursement of any technical services.

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United Breweries (Holdings) Ltd.(UBHL) ordered to be wound up for its failure to pay back creditors, including banks, as per corporate guarantees extended to Kingfisher Airlines Ltd.

### **Brief of the Case:-**

- On the basis of summary of the Financial Reports and constant increase in losses and complete erosion of net worth and reticent refusal of Company, UBHL to square up its Guarantee obligations and raising sham and moonshine defences to avoid winding up, it was held that UBHL is a commercially insolvent Company and is unable to meet its admitted financial obligations and square up its admitted liability towards the petitioning creditors.
- Further, it is evident from relevant and cogent material that the specified amounts of debts were due to be recovered from UBHL under its contractual Guarantee obligations incurred by it for the financial obligations of the Kingfisher Airlines Ltd, which it has failed to discharge, despite due notice without any cogent reasons.
- Therefore, on a totality of the facts and circumstances, the Company, UBHL deserves to be wound up for its failure to discharge its admittedly liability towards the petitioning creditors.

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SPREAD THE WINGS OF JOY,  
PEACE AND LAUGHTER  
ON YOU AND YOUR FAMILY.

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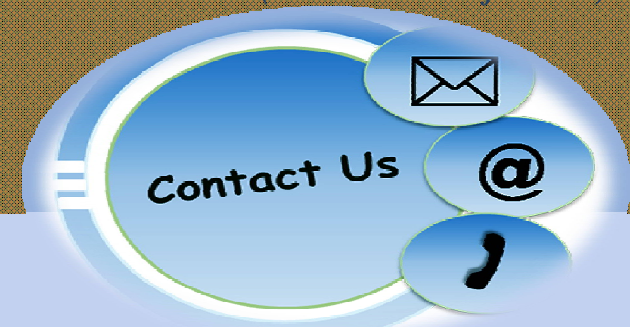






*Thank You*

## Contact us



For further details please contact:

Punkaj Jain - +91 9810286606  
Gaurav Gupta - +91 9811393764

## *Punkaj Oswal & Company*

7A LGF, NRI Complex, Mandakini Greater Kailash - IV, New Delhi - 110 019.

**Tel:** 91-11-26277030; 41631242 **Fax:** 011 - 26272011