

POC Connect

December Edition, 2013



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CSR move: Govt. to open doors for companies to invest in low-cost rental homes

The government plans to rope in corporates to provide low-cost rental homes on a large scale in cities and towns. A Housing Ministry Task Force has recommended that the money invested in building rental flats under 60 square metres (600 sq ft) be made part of the Corporate Social Responsibility spend mandated under the New Companies Act. This move will allow a deduction of over 100 per cent of the capital expenditure incurred by corporates and significantly improve the viability of such projects.



RBI norms may dissuade smaller banks from becoming insurance brokers

RBI has issued draft guidelines for banks, who are willing to become insurance brokers. As per these norms, only banks with strong capital base can become brokers. Further, their net Non-Performing Assets (NPA) should be below 3%.

11 people honoured at Forbes India Philanthropy Awards

Eleven people including members from the influential Nilekani, Bajaj and Godrej families, were honoured for their outstanding contribution towards the good of the society. Rohini Nilekani, founder of Arghyam, and Nandan Nilekani, Infosys co-founder who presently heads the Unique Identification Authority of India, won the second Forbes India Philanthropy Award in Outstanding Philanthropist category for the year 2013.

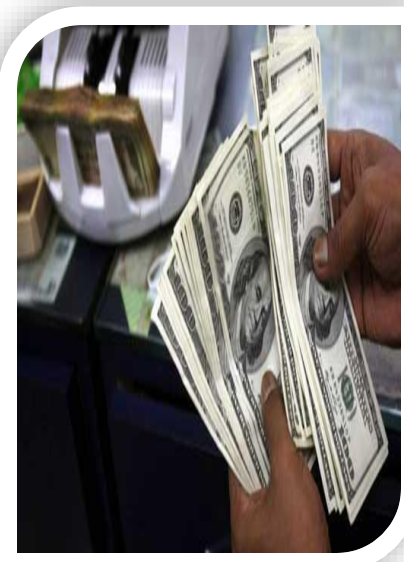


Apple buys Topsy in pursuit of more Twitter tips

Apple has bought Topsy Labs in a deal that will provide the iPhone maker with more insights about the chatter on Twitter. Topsy pores through the stream of conversations occurring on Twitter to identify trends and people influencing public opinion.

12 FDI proposals worth Rs 822 cr cleared: Govt

The Government of India has approved twelve (12) proposals of Foreign Direct Investment (FDI) amounting to Rs 821.63 crore including that of Swedish fashion major Hennes & Mauritz who got the approval to invest about Rs 720 crore. Other FDI proposals include that of Bay Capital Investment Ltd, Mauritius; Viacom 18 Media Pvt Ltd; Hawco Petrofer LLP, Bangladesh and Green Destinations Holdings, Mauritius etc.



PM calls meet to push disinvestment

Prime Minister Manmohan Singh has convened a high-level meeting on 02.12.2013 to push forward the disinvestment programme to achieve the budgetary target of Rs 40,000 crore in the current fiscal. Issues concerning Coal India, Bharat Heavy Electricals Ltd (Bhel), Hindustan Zinc and Balco are likely to be discussed.

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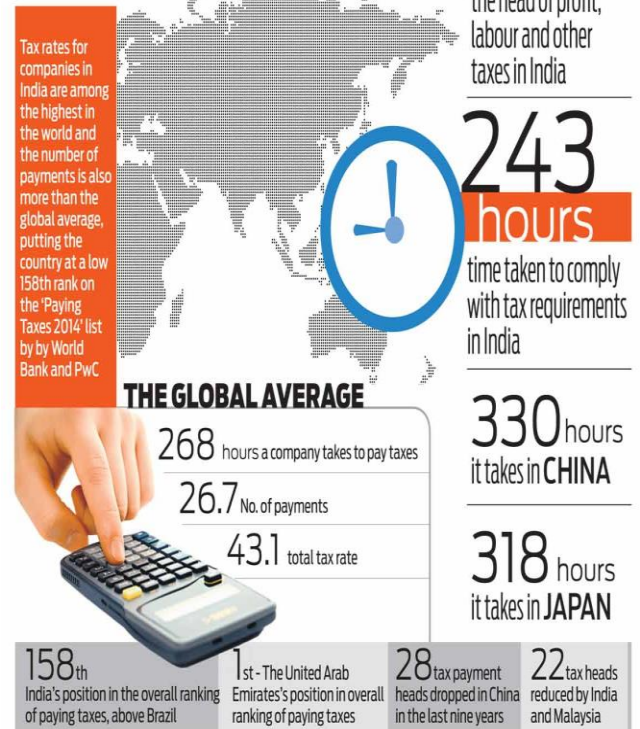
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India's corporate tax rates among highest globally: World Bank, PwC report

Tax rates for companies in India are among the highest in the world and the number of payments is also more than the global average, putting the country at a low 158th rank on the Paying Taxes 2014 list. However, time taken for tax payments is relatively less in India, which is rated ahead of China and Japan where it takes 318 hours and 330 hours, respectively, to comply with tax regulations, according to a World Bank and PwC report.

India's corporate tax rates among highest globally



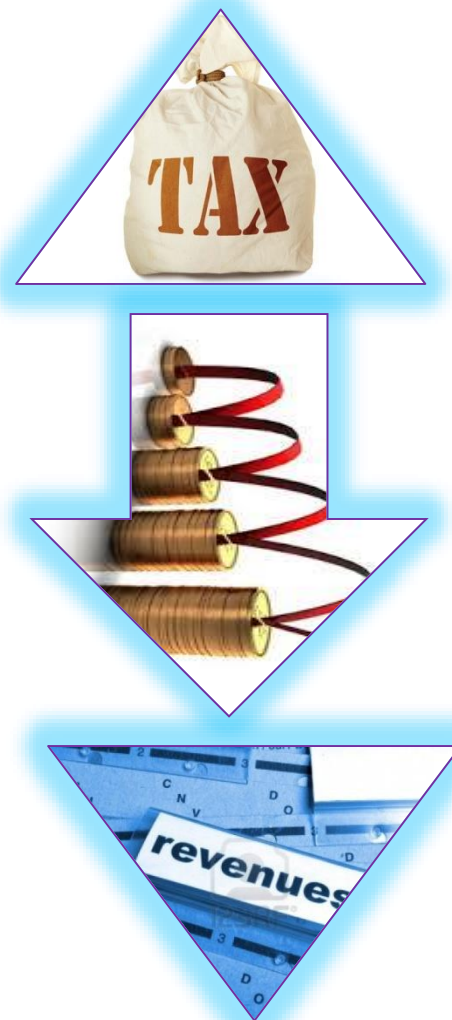
E-payment of tax above Rs 1 lakh a must

To increase compliance and widen the tax net, the government made it mandatory for traders to make online payment of excise duty and service tax for amounts exceeding Rs 1 lakh. Earlier, those with dues of Rs 10 lakh and above were required to electronically pay their taxes. “It has now been decided to reduce the threshold of mandatory e-payment from Rs 10 lakh to Rs 1 lakh for both central excise and service tax payment with effect from January 1, 2014,” the Central Board of Excise and Customs (CBEC) said.



Better intelligence sharing yields Rs. 78 crore additional tax revenue

Finance Ministry has achieved Rs. 78 crore additional income during 2012-13 due to better intelligence sharing among central and state tax authorities engaged in checking the leakage of revenue. The move to set up the REICs has led to a significant increase in the quantum of revenue collected. While in 2012-13, an amount of Rs. 78.32 crore has been realised, the collection for 2011-12 was Rs. 16.70 crore,



RBI designates 29 bank branches to collect advance income tax.

Reserve Bank has designated 29 bank branches, including public and private banks to collect income tax payment in advance of the due date to avoid last minute rush towards March-end. State Bank of India, ICICI Bank, HDFC Bank, Axis Bank, Allahabad Bank, Punjab National Bank, Oriental Bank of Commerce, Bank of Baroda are among the bank branches that have been designated to collect these advances from tax assesseees.



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MINISTRY OF CORPORATE AFFAIRS

Clarification with regard to applicability of provision of Section 372A of the Companies Act, 1956. No. 17/202/2013-CL-V

In a scenario wherein Section 185 i.e. Loan to directors of the Companies Act, 2013 was notified while Section 186 of such Act relating to Loan and Investment by Companies was not notified, lot of confusion was created in the industry especially pertaining to loans etc. to wholly owned subsidiaries. The Government has now clarified that Section 372A of the Companies Act 1956 shall continue to be effective till the notification of Section 186 of the Companies Act, 2013.

For more information regarding the issues and explanation on this circular please follow the link <http://www.capoc.in/detail/18933.aspx>

SERVICE TAX

CBEC VCES Clarification Circular No.174/9/2013 November 26th,2013

□ In connection with the Service Tax Voluntary Compliance Encouragement Scheme (VCES), the CBEC has issued a Circular No.174/9/2013 – ST dated 25.11.2013 clarifying several issues that were raised in interactive sessions with the trade which have not been specifically clarified hitherto or clarified adequately

□ The Service Tax Voluntary Compliance Encouragement Scheme (VCES) has come into effect from 10.5.2013. Most of the issues raised with reference to the Scheme have been clarified by the Board vide circular Nos. 169/4/2013-ST, dated 13.5.2013 and No. 170/5/2013-ST, to be taken by the field formations for effective implementation of the Scheme.

For more information regarding the issues and explanation on this circular please follow the link <http://www.capoc.in/detail/19006.aspx>

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RAMONA GARWARE v. DEVE PAINTS LTD& ANR [BOM]

Criminal Writ Petition No. 1222 Of 2013

Applicable Section: Companies Act, 1956 - Section 630

Whether Wife of deceased employee occupying the flat - dispute between the wife and mother of the deceased - whether wife could claim right to possession of the flat as rightful independent tenant?

Brief Facts:

Petitioner was married to a WTD of the company, and had possession of a flat provided by the company. The company was taken over by the respondents under an agreement thereafter the respondent company issued notice to the director of the company to vacate the flat .The WTD filed the declaration suit. Thereafter the respondent company instituted present complainant under 630 of the Companies act. In the meanwhile due to personal differences the wife of the director left the flat. Thereafter the director passed away and as per directions of the Will the possession of the flat was handed over to his wife. However the mother of the deceased locked the premises and as a result a suit u/s 6 of the specific relief Act was filed by the Wife of the deceased. In the suit filed by the respondent, the mother of the deceased was impleaded as plaintiff in his place which was objected to by the wife .

Held:

The petition was dismissed

Reason:

- ❑ That possession of Flat is with her as an independent rights as tenant, is a defence, not yet settled in any competent forum as the matter is pending before Supreme Court.
- ❑ Section 630 obliges an officer or an employee [heirs and legal representatives would be included in the term “officer or employee of a company] to return the property of the company and the petitioner cannot stake independent claim to retain the flat, as she is bound to face impact of Section 630 of Companies Act.

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Kathiroor Service Cooperative Bank Ltd vs. CIT (Supreme Court)

November 13th, 2013

S. 133(6): AO empowered to launch fishing and roving enquiry with a view to detect tax evasion.

Facts of the case:

The ITO issued a notice u/s 133(6) to the assessee-bank u/s 133(6) of the Act calling for general information regarding details of all persons who have made cash transactions and time deposits of Rs. 1,00,000/- and above for the period of three years between 01.04.2005 and 31.03.2008.

Point of dispute :

The assessee claimed that section 133(6) does not empower the ITO to conduct a roving or fishing enquiry into the affairs of the assessee or regarding the deposits made by its customers. It was also contended that the AO can only seek “case specific” or “area specific” information u/s 133(6). The High Court dismissed the Writ Petition.

Held:

On appeal by the assessee to the Supreme Court HELD dismissing the appeal .The legislative intention behind section 133(6) was to give wide powers to the income-tax department for checking evasion of tax effectively. The intention of the statute is not restrictive but is wide and the AO has the power to call for general information .

ITO vs. Gope M. Rochlani (ITAT Mumbai)

September 5th, 2013

Explanation 5 to s. 271(1)(c): Undisclosed income offered in belated return filed u/s 139(4) eligible for immunity from penalty

Facts of the case:

Pursuant to a search and seizure action u/s 132 on 16.10.2008, the assessee offered undisclosed income of Rs. 1.25 crore to tax in the statement recorded u/s 132(4) for AY 2008-09. The assessee filed the return of income on 31.10. 2009. The AO held that as the return had been filed late, it was beyond the “due date” specified in clause (b) of Explanation 5A to section 271(1)(c) and so penalty had to be levied . The CIT(A) reversed the order of AO. On appeal by the department to the Tribunal HELD dismissing the appeal

Analysis of Section:

Explanation 5A to s. 271(1)(c) provides that if during the course of search, the assessee is found to be the owner of any asset or income which has not been shown in the return of income which has been furnished before the date of search and the due date for filing the return of income has expired, the assessee is deemed to have concealed the particulars of his income or furnish inaccurate particulars of income and liable for penalty.

In other words if the income is offered in the return is filed by the due date, no penalty can be imposed. The question is whether the due date in Explanation 5A encompasses a belated return filed u/s 139(4). The due date can be very well inferred as due date of filing of return of income u/s 139(4) because wherever the legislature has provided the consequences of filing of the return of income u/s 139(4), then the same has also been specifically provided, e.g. Section 139(3) which denies the benefit of carry forward of losses u/s 72 to 74A if the return of income is not filed within the time limit provided u/s 139(1).

Decision of the case:

In absence of such a restriction, the limitation of time of “due date” cannot be strictly reckoned with s. 139(1). Even a belated return filed u/s 139(4) will be entitled to the benefit of immunity from penalty

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Intercontinental Consultants & Technocrats Pvt. Ltd. v. Union of India 2013 (29) S.T.R. 9 (Del.)

Whether expenditure like travel, hotel stay, transportation and the like incurred by service provider in course of providing taxable service should be treated as consideration for taxable service and included in value for charging service tax?

Observations of the Court:

The above question came up for consideration before the Delhi High Court. The High Court noted that as per Rule 5(i) of the Service Tax (Determination of Value) Rules, 2006), expenditure/costs, such as travel, hotel stay, transportation, etc. incurred by service provider in course of providing taxable service has to be treated as consideration for taxable service and included in value for charging service tax.

The High Court observed that since section 67(i) of Finance Act, 1994 is subject to provisions of Chapter V - which includes section 66 (now section 66B) – the value of taxable services has to be in consonance with section 66 which levies tax only on taxable service. Thus, there is an inbuilt mechanism to ensure that only taxable service are evaluated under section 67 which provides that value of taxable service is the gross amount charged by service provider ‘for such service. However, rule 5(i) goes far beyond the charging provisions as it includes the expenditure and costs - which are incurred by the service provider “in the course of providing taxable service” - in the value of the taxable service.

The High Court elaborated that power to make rules could not exceed or go beyond the section which provides for charge or collection of service tax. The High Court clarified that even though section 94 prescribes every rule framed by Central Government before each House of Parliament, which have power to modify them; the same cannot add any greater force to the Rules than what they ordinarily have as species of subordinate legislation.

The High Court further observed that rule 5(i) may also result in double taxation, if expenses like air travel tickets, had already been subjected to service tax. The High Court was of the view that double taxation can be imposed only when it is clearly provided for and intended. It can never be enforced by implication.

Decision of the case:

The High Court, therefore, held that rule 5(i) of the Rules runs counter and is repugnant to sections 66 and 67 of the Act and to that extent it is ultra Virus the Finance Act, 1994.

Note: It may be noted that the since the Delhi High Court didn't refer to other judgments in this regard, which sought to include reimbursements as part of taxable value, it may be challenged at the Supreme Court.

Wipro Ltd. v. Union of India 2013 (29) S.T.R. 545 (Del.)

Whether filing of declaration of description, value etc. of input services used in providing IT enabled services (call centre/BPO services) exported outside India, after the date of export of services will disentitle an exporter from rebate of service tax paid on such input services?

As per N/N 12/2005 ST dated 19.04.2005, rebate is granted of the whole of the duty paid on excisable inputs or the whole of the service tax and cess paid on all taxable input services used in providing taxable service exported out of India.

Facts of the case:

In the instant case, the appellant rendered IT-enabled services such as technical support services, customer-care services, back-office services etc. to clients outside the country. For rendering such services, the appellant used input services such as night transportation, recruitment, training, bank charges etc. The appellant claimed rebate of the service tax paid by it on such input services, used in providing the output services which were exported during a particular time period, under the said notification. However, the declaration required under para 3.1 of the notification was filed only after the export of the services i.e., after the particular time period during which the services were exported and for which the rebate claim was filed. The rebate claims were rejected by the Department on the ground that the prescribed procedure, as laid down in Notification No.12/2005, for obtaining the rebate was not followed by the appellant.

Observations of the Court:

The High Court observed that nature of the services was such that they were rendered seamlessly, on continuous basis without any commencement or terminal points. It was impossible for the appellant to not only determine the date of export but also anticipate the call so that the declaration could be filed “prior” to the date of export.

The High Court opined that except the description of the input services, the appellant could not provide the value and amount of service tax payable as any estimation was ruled out by the use of the word “actually required” and the bill/invoice for the input services were received by the appellant only after the calls were attended.

Further, the High Court also observed that one-to-one matching of input services with exported services was impossible since every phone call was export of taxable service but the invoices in respect of the input-services were received only at regular intervals, viz. monthly or fortnightly etc. Thus, the High Court was of the view that in the very nature of things, and considering the peculiar features of the appellant's business, it was difficult to comply with the requirement “prior” to the date of the export.

Decision of the case:

The High Court, therefore, allowed the rebate claims filed by the appellants and held that the condition of the notification must be capable of being complied with as if it could not be complied with, there would be no purpose behind it.

The image features a monochromatic blue color scheme. The background is a soft, light blue with a subtle, repeating pattern of stylized flowers and leaves. The text "Seasons Greetings" is centered in a white, elegant cursive font. The overall aesthetic is clean and serene, typical of a seasonal greeting card.

*Seasons
Greetings*

Thank
You!

For any suggestions & Queries

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