

June 2018

TAPF NEWSLETTER



Updates by Tax & Accounting Professional Forum (TAPF)

PREFACE

Tax and Accounting Professional Forum (TAPF) is a group of Chartered Accountants, Financial Consultants and Other Professionals.

Reference to various new Laws & Government Policies and also time to time regular amendments & updates in various Laws, TAPF has developed a monthly news update system. This monthly news update system aims to provide needful & relevant information to various segments including Business Entities, Individuals, Foreign Investors, NRIs.

Though the information provided in this letter are prepared by qualified and well experienced professionals, however, TAPF hereby advise all it's readers to seek separate professional advise (as per the facts of matter) before acting on it's information.

DIRECT TAX UPDATES

INCOME TAX

Instant ePAN allotment system launched by Income Tax Department

Instant ePAN allotment facility has been provided by IT Department free of cost. This facility shall be available for limited time period on first come first serve basis for valid Aadhaar holders.

PAN – Aadhaar linking Deadline extended

CBDT extends PAN-Aadhaar linking deadline till March 31, 2019.

PAN Mandatory for non-residents director in a company in India

Finance Act, 2018 has introduced clause (v) and (vi) to sub-section (1) to Section 139A to include the following categories of persons who are also now required to obtain their PAN card.

1. Every resident, other than individual, which enters into a financial transaction of an amount aggregating to Rs. 250,000/- or more in a financial year. (Here word written is every resident for protecting the amendment made u/s 206AA)

2. Every person who is a Managing Director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer or office bearer of the person referred to in above clause or any person competent to act on behalf of the person referred to in above clause.

This signifies that every person, whether resident or non-resident in India, who is a director in an Indian Company that has financial transaction of Rs. 250,000/- or more in a financial year will have to compulsory obtain Indian PAN card.

Penalty for failure to comply with this provision: If any person fails to comply with the provisions of obtaining PAN card as stated above, the Assessing Officer may, under section 272B of The Indian Income Tax Act, levy penalty of a sum of Rs. 10,000/- for such default.

Bonds Introduced u/s 54EC

Central Government notifies " Power Finance Corporation Limited 54EC Capital Gain Bond" and "Indian Railway Finance Corporation Limited 54EC Capital Gains Bond"

issued by Power Finance Corporation Limited and Indian Railway Finance Corporation Limited (IRFCL) vide Notification No. 27/2018 and 28/2018 respectively-Income Tax for the purpose of exemption under section 54EC of Income Tax Act, 1961.

Revised Return can be filed even after notice issued by Income Tax Department has been received

Section 139(5) of Income Tax Act Provides that the revised return needs to be filed within the time limit set out in the IT Act. Currently, the time limit for filing a revised return is before the expiry of twelve months from the last day of the financial year or before the completion of I-T assessment, whichever is earlier.

In recent **Judgement of Mumbai ITAT (Dated June 20, 2018)**, the assessee had filed revised return after receiving notice u/s 143(2) disclosing Long Term Capital Gain (LTCG) of Rs 50 Lakh. However, since he has invested the proceed in purchasing new residential property he had claimed deduction u/s 54. Thus no capital gain tax was offered.

Assessing Officer during assessment rejected the revised return of income but had taken the higher income offered in revised return. Only Section 54 deduction was rejected.

ITAT held that the I-T Act does not bar a taxpayer from filing a revised I-T return after issue of notice under Section 143 (2). Hence, IT was directed to allow the deduction subject to fulfilment of conditions prescribed for such deduction.

(CA Reshu Agrawal)

INTERNATIONAL TAX UPDATE

International Taxation – June 2018 Updates

(Ahmedabad ITAT – Mere Non-Furnishing of Tax Residency Certificate ('TRC') Cannot Disentitle Treaty Benefits)

Ahmedabad ITAT rules that mere non-furnishing of TRC cannot per se be treated as a trigger to disentitle the treaty benefits; During relevant AYs 2013-14 and 2014-15, assessee company paid installation/commissioning charges to a US entity without deducting TDS on the ground that absent 'make available', payment does not constitute Fees for Included Services under Article 12 of India-US DTAA; Rejects Revenue's stand that in view of specific provision contained u/s 90(4), treaty benefits were not available to US entity in absence of a TRC; ITAT clarifies that Sec 90(4), in the absence of a non-obstante clause, cannot be construed as a limitation to the treaty superiority u/s 90(2) over domestic law, further clarifies that "It can only be pressed into service as a provision beneficial to the assessee."; Highlights that GAAR provision u/s 90(2A), which starts with a non-obstante clause, it is the only rider to the treaty override provision set out in Sec 90(2); Further cites Punjab and Haryana HC ruling in Scro BPO P Ltd. – *Source Taxsutra*

(FCA Sulabh Lohia)

INDIRECT TAX UPDATES

GST UPDATES

- 1) The Central Board of Indirect Taxes and Customs (CBIC) has clarified that IGST would be levied and collected only when the goods are cleared for home consumption from the customs bonded warehouse, i.e., at the time of filing the ex-bond bill of entry.
- 2) Sale of a Going Concern by a Business House will not attract GST, as per an order by the Authority for Advance Ruling (AAR). The Karnataka bench of the AAR gave its ruling based on an application filed by Rajashri Foods Pvt. Ltd.
- 3) The Karnataka Advance Ruling Authority (AAR) recently held that the Goods and Services Tax (GST) is leviable on the rent paid / payable for premises, taken on lease by a Hospital.
- 4) Goods Detained under GST laws cannot be Released unless Adequate Security is furnished: Kerala HC
- 5) Supply of Priority Sector Lending Certificates to attract GST under Reverse Charge.
- 6) Union Minister Dharmendra Pradhan said that Petrol, diesel to be under GST soon as the state owned oil industry is losing Rs 200 billion annually in terms of input credit.
- 7) Authority for Advance Ruling (AAR) in Andhra Pradesh has ruled that warehoused duty-free ship stores, which stock goods imported without payment of duty and sell to outbound ships, will be liable to pay GST on supplies made to Indian naval ships, coast guard ships and ocean-going ships.
- 8) GST on applicable rates to be charged on labour & spares in case of car service where same is shown separately. Circular 47/21/2018-GST of 8.6.18.
- 9) GST is applicable on additional interest in case of default in installment payment & late payment charges on credit card dues. CBIC FAQs (Jun 2018).
- 10) The Central Government is likely to offer granting GST refunds to foreign tourists at airports at the time of exit. Initially, only purchases made by tourists from big retailers would be eligible for GST refunds.

- 11) GST registrants can approach Jurisdictional tax officer with valid documents to change the e-mail and mobile number recorded against their GST Identification Number (GSTIN).
- 12) Centralized registration in case of GTA under GST - a transporter who is registered in more than one State or UT having same PAN, may apply for a unique common enrolment number by submitting the details in FORM GST ENR-02.
- 13) CBIC modifies Procedure for Interception of Conveyance and clarifies that only Such Goods or Conveyances should be detained in respect of which the Violation of the GST provisions has been made vide Circular No. 49/23/2018-GST dated 21-06-2018.
- 14) The Authority for Advance Ruling (AAR), Gujarat has ruled in the case of Del Credere agent (DCA) appointed by the supplier of goods, that no GST on interest amount charged on Security Deposit/short term loan given by the DCA to the supplier of goods.
- 15) Services provided by TP Ajmer Distribution Ltd. (TPADL) with respect to the non-tariff charges recovered from their customers are not eligible for exemption and TPADL is liable to pay tax on the aforesaid recovery made from their customers – AAR, Rajasthan in TP Ajmer Distribution Ltd. (2018 (6) TMI 1196).
- 16) A senior revenue official said the GST Implementation Committee (GIC), headed by the Revenue Secretary, has decided to keep in abeyance GST provisions relating to reverse charge mechanism, tax deducted at source (TDS) and tax collected at source (TCS) for another three months till September, 2018 end. Notification No.12/18 dated June 29, 2018.
- 17) In a bid to push digital payments, the government has proposed to provide a 2 percent concession on GST rate on Business to Consumer (B2C) supplies if the payment is done via digital mode subject to a ceiling of Rs 100 per transaction. The 2 percent benefit under this scheme may be extended in the form of a discount or cash back.
- 18) New Delhi, Jun 27 (PTI) The GST investigation wing has detected tax evasion of over Rs 2,000 crore in two months, and data analysis reveals that only 1 per cent of over 1.11 crore registered businesses pay 80 per cent of the taxes, a senior official said.

(CA Puneet Goel)

FEMA UPDATES

June 19, 2018 – A.P. (DIR Series) Circular No 194 of Reserve Bank of India ‘RBI’ – Liberalised Remittance Scheme (LRS) – Harmonisation of Data and Definitions

Reference to indication given in Statement on Developmental and Regulatory Policies released on June 6, 2018, it has been decided that furnishing of Permanent Account Number (PAN), which hitherto was not to be insisted upon while putting through permissible current account transactions of up to USD 25,000, shall now be mandatory for making all remittances under Liberalised Remittance Scheme (LRS).

Further, in the context of remittances allowed under LRS for maintenance of close relatives, it has been decided, to align the definition of ‘relative’ with the definition given in Companies Act, 2013 instead of Companies Act, 1956.

June 7, 2018 – A.P. (DIR Series) Circular No 194 of Reserve Bank of India ‘RBI’ – Foreign Investment In India – Reporting in Single Master Form (SMF)

With the objective of integrating the extant reporting structures of various types of foreign investment in India, RBI will introduce a Single Master Form (SMF). The SMF would be filed online.

SMF would provide a facility for reporting total foreign investment in an Indian entity {as defined in Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations 2017, dated November 7, 2017}, as also investment by persons resident outside India in an Investment Vehicle.

Prior to the implementation of the SMF, Reserve Bank would provide an interface to the Indian entities, to input the data on total foreign investment in a specified format. The interface will be available on RBI website www.rbi.org.in from June 28, 2018 to July 12, 2018. Indian entities not complying with this pre-requisite will not be able to receive foreign investment (including indirect foreign investment) and will be non-compliant with FEMA Regulations.

FEMA FAQ SERIES

Exchange Earners' Foreign Currency Account (EEFC)

These FAQs attempt to put in place the common queries that users have on the subject in easy to understand language. However, for conducting a transaction, the Foreign Exchange

Management Act, 1999 (FEMA) and the regulations made or directions issued thereunder may be referred to.

Q 1. What is an EEFC Account and what are its benefits?

Ans. Exchange Earners' Foreign Currency Account (EEFC) is an account maintained in foreign currency with an Authorised Dealer Category - I bank i.e. a bank authorized to deal in foreign exchange. It is a facility provided to the foreign exchange earners, including exporters, to credit 100 per cent of their foreign exchange earnings to the account, so that the account holders do not have to convert foreign exchange into Rupees and vice versa, thereby minimizing the transaction costs.

Q 2. Who can open an EEFC account?

Ans. All categories of foreign exchange earners, such as individuals, companies, etc., who are resident in India, may open EEFC accounts.

Q 3. What are the different types of EEFC accounts? Can interest be paid on these accounts?

Ans. An EEFC account can be held only in the form of a current account. No interest is payable on EEFC accounts.

For more faqs kindly refer:

<https://www.rbi.org.in/Scripts/FAQView.aspx?Id=21>

(FCA Sulabh Lohia)

OTHER UPDATES

COMPANY LAW

KYC of Directors

As part of updating its registry, MCA would be conducting KYC of all Directors of all companies annually through a new eform viz. DIR-3 KYC to be notified and deployed shortly. Accordingly, every Director who has been allotted DIN on or before 31st March, 2018 and whose DIN is in 'Approved' status, would be mandatorily required to file form DIR-3 KYC on or before 31st August, 2018. While filing the form, the Unique Personal Mobile Number and Personal Email ID would have to be mandatorily indicated and would be duly verified by One Time Password (OTP). The form should be filed by every Director using his own DSC and should be duly certified by a practicing professional (CA/CS/CMA). Filing of DIR-3 KYC would be mandatory for Disqualified Directors also.

After expiry of the due date by which the KYC form is to be filed, the MCA21 system will mark all approved DINs (allotted on or before 31st March 2018) against which DIR-3 KYC form has not been filed as 'Deactivated' with reason as 'Non-filing of DIR-3 KYC'.

After the due date filing of DIR-3 KYC in respect of such deactivated DINs shall be allowed upon payment of a specified fee only, without prejudice to any other action that may be taken.

Section 149- Company to have One Resident Director

A change has been made with respect to resident director. Now Section 149 requires a company to have at least one Director to have stayed in India for a total period of not less than one hundred and eighty-two days in the financial year and not the previous calendar year.

Section 168- Resignation of Directors

The proviso to Section 168 read with Rule 16 lays down requirement for a director to forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within thirty days of resignation in form DIR-11. Many of the directors do not have digital signature and the directors who are willing to resign from the board but do not have a DSC are forced to take a DSC for the limited purpose of filing form DIR-11, which may not be useful for them thereafter, if they are not on the Board of any other companies. To address this issue intimation of resignation by director is now optional.

Section 173- Meetings of Board

A proviso has been added is a critical change that when there is a meeting with physical presence, directors may participate through video conferencing or other audio-visual means on any matter specified under the first proviso.

Section 185- Loan to Directors, etc.

The section provides that it may be allowed for companies to provide loan to any other person whom the director is interested by a special resolution. The loans provided to subsidiaries must only be for the purpose of its business only.

Reduction in filing period for various forms

The immunity of 270 days beyond the due date prescribed in the respective sections is deleted and will be subject to payment of additional fees under Section 403 and condonation of delay under Section 460 of the Companies Act, 2013.

Form	Time
AOC-4	within thirty days of the conclusion of the Annual General Meeting along with the fee with Registrar of Companies.
DIR-3	within fifteen days with Registrar of Companies

The intent is to deter non-compliance by companies by reducing filing fees to zero in case of filing within the time

FAQ

1. What are the documents to be filed with RoC every year?

Invariably, the Balance Sheet and Annual Return have to be filed every year. Other documents such as, Return of Allotment (Form No. Pas-3), Change of Registered office (Form No. INC-22), Change among the Directors (Form No. DIR-12), Charges (Form No. CHG- 1, 9, 4) etc., have to be filed within the due date from the events taking place in the company as per the Companies Act, 2013.

2. What is the minimum number of directors required to form a company?

Minimum no. of directors for One Person Company: One, Private Limited Company: Two, for Public Limited Company: Three and, for producer company: Five.

(Himani Saxena – CA Final)

Due Dates in July 2018

S. No.	Particulars	Due Date
1.	TDS Deposit for the month of June 2018	July 07, 2018
2.	GSTR-1 for the month June 2018*	July 10, 2018
3.	GSTR-3B for the month June 2018	July 20, 2018
4.	GSTR-4 for the month April to June 2018	July 18, 2018
5.	GSTR-5 for the month June 2018	July 20, 2018
6.	GSTR-5A for the month June 2018	July 20, 2018
7.	GSTR-6 for the period July 2017- March 2018	July 31, 2018
8.	TDS Return for FY 2018-19 Quarter - 1	July 31, 2018
9.	Income Tax return for the FY 2017-18	July 31, 2018
10.	Reporting in Single Master Form**	July 12, 2018

*Return of outward supply whose turnover exceeds 1.5 crore.

** Reporting of Foreign Investment in india in Single Master form

(CA Saurabh Jain)

ARTICLE SECTION

Income Tax Return Filing – Due Date, Late Filing Fee

Article explains filing of Income Tax Return ('ITR') under section 139(1) with relevant Due Dates, Late Filing Fees for ITR under section 234F of the Income Tax Act, 1961 ('Act').

Due Dates of ITR – Sec 139(1)

Particulars	Due Dates	Cases
Individual, AOP/BOI, Firm	31 st July 2018	When there is no Audit.
All Assessee ie Individual, AOP/ BOI, Firm, Company	30 th September 2018	In case of Audit applicable.
Assessees (where Transfer Pricing Regulations are applicable)	30 th November 2018	In case of Transfer pricing ie cases of international transactions or specified domestic transaction.

Late ITR Filing Fee – Sec 234F

where a person required to furnish a return of income under section 139 (1), fails to do so within the time prescribed in said section, shall pay, by way of fee, a sum of,—

Amount (Rs)	Remarks
Rs 1000/-	Where the total income of the person does not exceed Five Lakh Rupees .
Rs 5000/-	Where return is furnished on or before the 31st day of December of the assessment year ie AY 2018-19.
Rs 10000/-	In any other case.

(Shruti Gupta – CA Final)