

February 2019

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

Quick Budget Highlights

- Tax assessment will be done electronically within 2 years.
- IT returns processing in just 24 hours
- Standard deduction increase from 40,000 to 50,000
- Ceiling Limit of TDS u/s 194A (TDS on Interest) has increased from 10,000 to 40,000.
- Ceiling Limit of TDS u/s 194I (TDS on rent) has increased from 1,80,000 to 2,40,000.
- Capital tax Benefit u/s 54 has increased from investment in one residential house to two residential houses.
- Full Tax Rebate upto Rs 5 lakh annual income after all deduction.
- Bonus will be applicable for workers earning 21000 monthly
- Tax free Gratuity limit increase to 20 Lakhs from 10 Lakhs

Case Law Updates

One bogus donation may be sufficient to establish that the activities of the trust are not genuine: *[Supreme Court Commissioner of Income Tax (Exemptions), Kolkata Vs. Jagannath Gupta Family Trust – Feb 01, 2019]*

Registration of assessee trust u/s 12AA was cancelled for receiving a bogus donation but High Court by impugned order restored registration holding that one bogus donation would not establish that activities of trust are not genuine. Held that reason assigned by High Court is erroneous and runs contrary to plain language of section 12AA(3). The said revolving transaction of money through donor is nothing but money laundering which will run contrary to the objects of the trust.

No addition can be made on the basis of entries found during search and seizure of a third party which are on loose papers *[High Court of Madhya Pradesh: Bench at Indore PCIT, Indore Vs. Sri Pukhraj Soni – Feb 06, 2019]*

During a search conducted in premise of a third party, sheets and diary was recovered where in an entry was found in respect of amount given to Mr. Pukhraj Soni of Rs. 2.5 crore and, therefore, a notice was issued under Section 148 to the assessee. Held that to make an entry relevant thereunder it must be shown that it has been made in a book, that book is a book of account and that book of account has been regularly kept in the course of business. Unbound sheets of paper in whatever quantity, though filled up with one continuous account, are not book of account. Therefore, the

incriminating materials in form of random sheets, loose papers, computer prints, hard disk and pen drive etc. are inadmissible in evidence.

Capital gain exemption cannot be denied for the reason that the plot of land was purchased in the name of the HUF [ITAT, Ahmedabad, Kanaiyalal Muljibhai Patel Vs. ITO, Ahmedabad- Feb 20, 2019]

For the purposes of Section 54F, the new residential house need not be purchased by the assessee in his own name. It is moreover to be noted that the assessee in the present case has not purchased the new house in the name of a stranger or somebody who is unconnected with him. Having regard to the rule of purposive construction and the object which Section 54F seeks to achieve exemption under section 54F shall be granted.

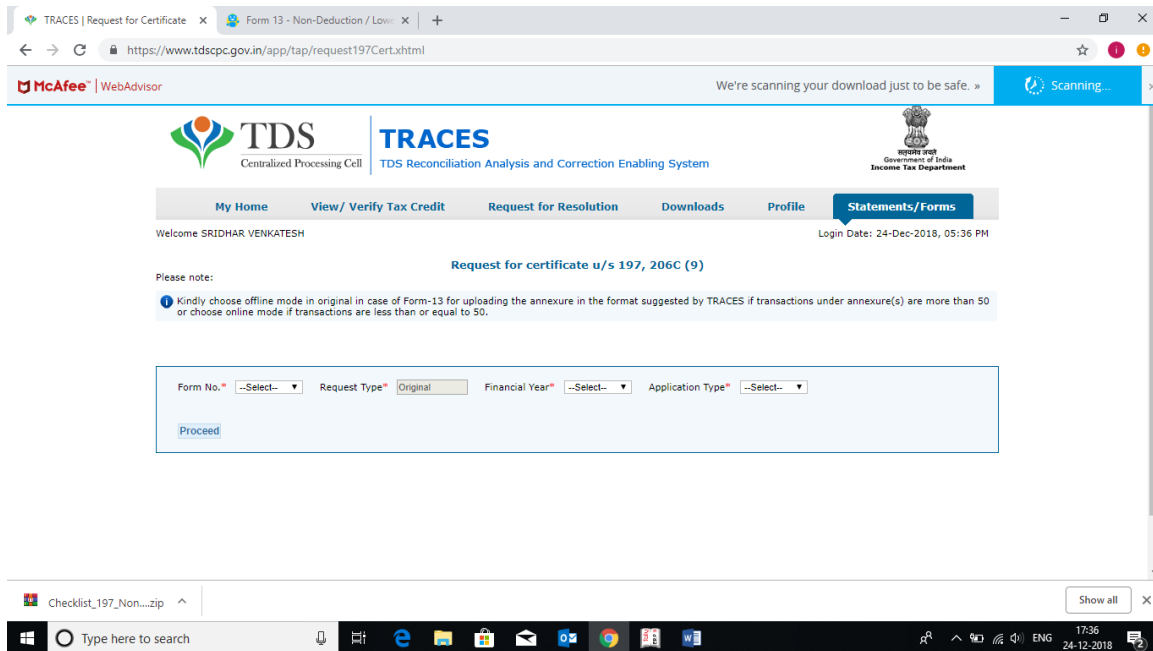
(CA Reshu Agrawal)

INTERNATIONAL TAX UPDATE

International Taxation – Feb 2019 Updates

Online Application Process For Filing TDS Exemption/Lower TDS Certificate

- Reference to notification of Govt of India (Ministry of Finance) dated October 25, 2018, now all TDS Exemption Certificate/Lower TDS Certificate has to be prepared and submitted online.
- For the online application, initially the applicant need to create an account on the TRACES website i.e. www.tdscpc.gov.in.
- In the case of NRIs, OCIs, PIOs, the registration need to be done in the tax payer category.
- After entering into the homepage select “Request for form 13” under statements/Forms tab.



- Select the relevant Financial Year and Form and Proceed.
- In the next step, documents to be attached at relevant places, in following manner:
 - Estimated tax computation (to be attached at template provided by site)
 - Income tax return for the last 4 AY
 - Other Relevant Documents (eg In case of property sale matter by NRI docs can be Property purchase deed, sale MOU, passport copy etc)
- On doing above, portal will process the application and generate Request Number and ask for verification.
- Verification can be done by using DSC or E-verification through Net Banking.
- After submission we can trace our request through Request Number.
- Hereafter, the application shall be processed at the jurisdictional Assessing Officer level.
- On verifying the documents at AO office, AO may provide a date of hearing on online portal along with email.
- After doing needful wrt hearing etc, the AO will issue the TDS Exemption or Lower TDS Certificate.

(FCA Sulabh Lohia)

INDIRECT TAX UPDATES

GST UPDATES

1) GST rate cut on Housing Segment

Recently, the GST Council has proposed various recommendations in its 33rd GST Council meeting held on February 24, 2019 to boost the Residential Segments of the real estate sector. All these proposals would be effective from April 1, 2019.

A) Revised rate chart for construction services w.e.f. 01.04.2019:-

- a) Residential properties:-
 - Affordable Housing Segment*:- 1% (without ITC)
 - Others:- 5% (without ITC)
- b) Commercial properties:- 12% (with ITC)

*Definition of Affordable housing:-

- In terms of metropolitan cities:-

A residential house/flat of carpet area of 60 square meters having value upto Rs. 45 Lacs. Both conditions have to be fulfilled simultaneously.

Metropolitan cities are Bengaluru, Chennai, Delhi NCR (Limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (whole of MMR).

- In terms of non-metropolitan cities:-

A residential house/flat of carpet area of 90 square meters having value upto Rs. 45 Lacs. Both conditions have to be fulfilled simultaneously.

B) GST Exemption on TDR/JDA, Lease (Premium), Floor space Index:-

GST council has recommended that Intermediate tax on development rights, such as Transfer of development rights, Joint Development agreement, Long Term Lease (Premium), Floor space Index shall be exempted only for such residential property on which GST is payable.

2) Miscellaneous

- i) GST ITC on vehicles as per new amendments in CGST Act, Now business can get GST ITC on vehicles which is used for transportation of Goods, passenger vehicle seating capacity more than 13.
- ii) GSTN portal should allow rectification of mistake while filing GST return. Delhi High Court has passed welcome Decision in this regards. Tax Payer should be allowed to rectify mistakes in GST Return as many times as they want.
- iii) Central Government has extended due date for filing the period for submitting the declaration in Form GST TRAN – 1 from January 31, 2019 to March, 2019 for the class of registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal and whose cases have been recommended by the council.

(CA Puneet Goel)

FEMA UPDATES

Foreign Exchange Management Act 1999 'FEMA' and Other RBI Regulations –Feb 2019
Updates – FCA Sulabh Lobia

FEMA FAQ SERIES

Remittance of Assets

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 extant regulations made or directions issued thereunder may be referred to.

Q1. What is meant by Remittance of Assets?

Answer: 'Remittance of assets' means remittance outside India of funds representing a deposit with a bank or a firm or a company of:

1. provident fund balance
2. Superannuation benefits a
3. mount of claim or maturity proceeds of Insurance policy
4. sale proceeds of shares, securities, immovable property or any other asset held in India

Q.2 Who is a Resident?

Ans. Resident as defined in Sec 2(v) ² of FEMA, 1999. Further, the onus is on the individual to prove his/ her residential status, if questioned by any authority.

Q.3 What is meant by 'not permanently resident'?

Ans. Not permanently resident means a person resident in India for employment of a specified duration (irrespective of length) or for a specific job duration which does not exceed three years.

Q4. Which are the cases related to Remittance of Assets for which prior approval of RBI is to be sought for effecting the remittance?

Answer: RBI approval is required if:

- (i) Remittance is in excess of USD 1,000,000 (US Dollar One million only) per financial year:
 - a. on account of legacy, bequest or inheritance to a citizen of foreign state, resident outside India; and
 - b. by NRIs/ PIOs out of the balances held in NRO accounts/ sale proceeds of assets/ the assets acquired by way of inheritance/ legacy.
- (ii) Hardship will be caused to a person if remittance from India is not made to such a person.

For more faqs kindly refer:

<https://www.rbi.org.in/Scripts/FAQView.aspx?Id=33>

(FCA Sulabh Lobia)

OTHER UPDATES

COMPANY LAW UPDATES

Form INC22A – ACTIVE Company Tagging

The Ministry of Corporate Affairs through a notification dated 21st February 2019 has introduced the Companies (Incorporation) Amendment Rules, 2019. Under the new rules, all companies registered before 31st December 2017 are required to file eForm ACTIVE (Active Company Tagging Identities and Verification) – INC22A on or before 25th April 2019. Failure to file e-Form Active will lead to a penalty of Rs.10,000.

Information Submitted in ACTIVE Form

In the ACTIVE Form, the company is required to furnish the following particulars:

1. Name of the Company
2. Registered Office of the Company
3. Photo of the registered office of the Company in which one of the Directors of the Company is the present – internal and external photo
4. Location of registered office on Map (Latitude / Longitude)
5. Email – OTP verification required
6. Details of Directors, DIN and Status of DIN
7. Details of Statutory Auditor
8. Details of Cost Auditor (if applicable)
9. Details of Company Secretary (if applicable)
10. Details of CEO or Managing Director
11. Details of CFO (if applicable)
12. Details of Annual Filing for FY2017-18 (AOC-4 & MGT-7)

Requirements for Filing ACTIVE Form

To file Form INC22A or ACTIVE, the company must have filed its annual return for the FY2017-18. If a company is struck off or under the process of **striking-off** or liquidation, the Form not be filed.

Not Filing Form 22A

If a company does not file Form 22A or ACTIVE before 25.04.2019, then the company would be marked as ACTIVE non-compliant. Once a company is marked as ACTIVE non-compliant, it would not be able to file or effect any of the following changes:

- Changes in authorised capital (Form SH-07)
- Changes in paid-up capital (Form PAS-03)
- Changes in Director (Form DIR-12). Cessation would be allowed.
- Changes in Registered Office (Form INC-22)
- Amalgamation or Merger (INC-28)

If a company filed Form INC22A or ACTIVE after 25.04.2019 a penalty of Rs.10,000 would be applicable. On payment of the penalty and filing of all overdue returns, the company would be marked again as ACTIVE compliant.

Form DPT-3 – Return of Deposits

Ministry of Corporate Affairs, vide notification dated 22nd January 2019, published the Companies (Acceptance of Deposits) Amendment Rules, 2019. With the said amendment, the MCA has made it necessary for all companies registered in India to file Form DPT-3 on or before 22nd April 2019.

Applicability of Return of Deposits

Form DPT-3 filing must be made by all companies other than a Gov company company. Hence, all private limited company, OPC, limited company or Section 8 Company would be required to file Form DPT-3.

DPT-3 Due Date

The Companies (Acceptance of Deposits) Amendment Rules, 2019 has mentioned that all companies would be required to file Form DPT-3 one-time on or before the 22nd of April 2019. In the return, the company must provide details of outstanding receipt of money or loan by a company but not considered as deposits from 1st April 2014 upto 22nd January 2019.

Alert for all Companies required to appoint full time COMPANY SECRETARIES

All Those Companies Whose Paid Up Capital Is 5 Crore Or Above Will Have To Appoint A Whole Time Company Secretary To Keep The Status Active Of The Company.

Important Update on MSME-I

Applicability	All companies who get supplies of goods and services from the micro and small enterprises and payment to such vendors exceed 45 days.
Filing to be done	Need to file a one time return in Form MSME – 1 by 21st Feb 2019 followed by half yearly returns.
What to Report	Need to give the details of such identified vendors, amount of payment outstanding exceeding 45 days, the reason of delay in payment.
Consequences of wrong or delay or non-filing	Penalty on company Rs 25,000 Every officer in default - Minimum fine Rs. 25,000 which may extend to Rs. 300,000 or Imprisonment which may be extended to 6 months or both.

DPT-3 Mandatory Information of Loan to ROC - FAQs

1. Whether every company needs to file e-form DPT-3 as per rule 16A.

All the Companies (Whether, Small, Non Small, Private, Public, OPC, etc.) required to file DPT-3 after publication of these rules.

2. What is due date for filing of e-form DPT-3 in Rule 16A?

Due date of Filing of e-form DPT-3 in rule 16A is 22nd April, 2019. Because form required to file within 90 days of publication of these rules. (22nd January, 2019 + 90 days)

3. Whether DPT-3 required filing for Secured or Unsecured Loan or Both?

Yes, DPT-3 required for filing for both secured and unsecured Loan.

4. Whether DPT-3 required for ECB received by Company?

As per rule 16A DPT-3 required to file for each and every loan received by Company. Therefore, one can opine that if Company has received ECB in such case Company have to mandatorily file e-form DPT-3.

5. Outstanding Loan and outstanding receipt of money in relation to which period required to be report under this rule.

Outstanding receipt of Money and Loan from 1st April, 2014 to 22nd January, 2019 (i.e. date of publication of notice) is required to report in e-form DPT-3..

6. If Company received loan from Holding Company or Subsidiary Company or Associate Company. Whether company need to file DPT-3.

As per rule 16A DPT-3 required to file for each and every loan received by Company. Therefore, Company required to file e-form DPT-3 even for loan received from H,S and Associate.

7. If a company not having any outstanding loan or outstanding receipt of money as on 22.01.2019 (i.e. date of publication of rules). Whether company need to file e-form DPT-3.

As per rule 16A DPT-3 Every Company other than Government Company shall file a onetime return of outstanding receipt of money or loan by a company but not considered as deposits. Therefore, one can opine that in the above mentioned situation there is no need to file e-form DPT-3.

8. If some outstanding receipt of money or loan had become due before 01st April, 2014, still continuing and outstanding in record of Company. Whether such outstanding loan or receipt required to report in DPT-3.

As per rule 16A DPT-3 required to file for each and every loan received by Company outstanding as on date of publication of these rules (22.01.2019). Therefore, one can opine that such outstanding loan is required to report to ROC in e-form DPT-3.

9. If Company received loan after 01st April, 2014 but such loan is not outstanding as on 22.01.2019 (date of rules). Whether company need to report such loan in DPT-3.

As per language of Rule 16A, company has to report outstanding Loan and outstanding receipt of money to Roc in DPT-3. If Company has already paid Loan and such loan is not outstanding in record of Company. There is no need to inform such loan to ROC.

10. If company doesn't accept loan or doesn't having any outstanding Loan. Whether need to file DPT-3,

If there is no outstanding Loan or company doesn't accept any loan there is no need to file e-form DPT-3 with ROC.

(Himani Saxena – MBA Finance)