

CORPORATE UPDATE

FOR CLIENT CIRCULATION ONLY

No. 04/04

14th May, 2004

CONTENTS

• Income Tax	1-3
• Company Law	3-4
• Service Tax	4-7
• Miscellaneous	7
• Fema	7-8
• Dates To Remember	8

INCOME TAX

I. FORM OF AUDIT REPORT PRESCRIBED UNDER SECTION 10BA

The Central Board of direct Taxes (CBDT) vide notification no. 128/2004 dated 31.3.2004, has prescribed Form no. 56H – Form of report by an accountant to be furnished by the assessee availing exemption under section 10BA of the Income Tax Act, 1961.

Section 10BA was inserted by the Taxation Laws Amendment Act 2003 (54 of 2003). Deduction under this section is available of such profits and gains as are derived by an undertaking from export out of India of all hand made articles or things which are of artistic value and which require the use of wood as the main raw material.

II. INTRODUCTION OF RULE 18DC AND FORM 10CCBB FOR ASSESSEES CLAIMING DEDUCTION UNDER SECTION 80IB

The CBDT vide notification no. 142/2004 dated 20.04.2004, has introduced new Rule 18DC and Form No. 10CCBB for assesses claiming deduction under section 80IB of the Income Tax Act, 1961.

Section 80IB, introduced by Finance Act 2002, allows assesses to claim deduction to the extent of 50% of profits and gains derived from the business of building, owning and operating “convention centers”. This is subject to conditions as laid down in the section.

New Rule 18DC prescribes conditions to be fulfilled by the convention centres with respect to area, facilities and amenities.

Form 10CCBB has been prescribed for the audit report to be furnished along with return of income.

III. NEW ONLINE TAX ACCOUNTING SYSTEM (OLTAS) TO BE INTRODUCED BY INCOME TAX DEPARTMENT FROM 1 JUNE 2004

From 1.6.2004 the Income-tax Department proposes to introduce a new system for payment of taxes called Online Tax Accounting System (OLTAS). This system will not only simplify the procedure for payment at the collecting branches of designated banks it will be a breakthrough in accounting of direct tax payments. All collecting branches of various banks have been networked and integrated with Tax Information Network (TIN) and Income Tax Department. The taxpayer friendly features of OLTAS include a single copy Challan-cum-acknowledgement form instead of the present four-copy Challan.

The salient features or the new system are mentioned below.

1. At present there are seven different types of Challans for depositing direct taxes into the government account. These will be replaced by three types of Challans : (i) A common single copy [Challan No. ITNS 280](#) for payment of Income tax, Corporation tax and Wealth tax ;(ii) A

common single copy [Challan No. ITNS 281](#) for depositing Tax Deducted at Source from corporates or non-corporates; (iii) A common single copy [Challan No. ITNS 282](#) for payment of Gift-tax, Expenditure Tax and Other direct taxes.

2. The new Challan will have fewer fields that will require to be filled up.
3. Every Challan will have a unique identification number called Challan Identification Number (CIN). The collecting bank branch will put a rubber stamp on the Challan and its counterfoil indicating a unique Challan Identification Number (CIN) comprising of seven digit BSR Code allotted by RBI to that bank branch, the date of deposit (dd/ mm/ yy i.e. six digits), and the Challan serial number in 5 digits. CIN will, therefore, be unique for each Challan through out the country and will be used for identifying the Challan in the OLTAS.
4. The new single copy Challans will have a main portion at the top and a 'taxpayer counterfoil' at the bottom. The bank will retain the main portion of the Challan and return the 'taxpayer counterfoil' duly receipted to the taxpayer.
5. Because there will be only one copy of Challan it becomes extremely important that the **Challan is correctly filled and PAN of the taxpayer and PAN/ TAN of the deductor as the case may be, is**

correctly indicated in the Challan, and that the right columns are ticked/ filled in the Challan, and that the taxpayer collects a proper stamped acknowledgement from the banks indicating the Challan Identification Number (CIN) as indicated above.

6. The collecting bank will capture the entire data of the Challan and transmit it electronically to the Income-tax Department. The bank will send the paper copy of the Challans alongwith printed scrolls to the Zonal Accounts Officers. The information received from banks will be used by the Department to give credit for the tax paid based on CIN.
7. Since the taxpayer will have only a counterfoil, the requirement to enclose proof of payment of pre-paid taxes with the return of income as contained in 'Explanation' to Section 139 (9) shall stand fulfilled if CIN of the Challans for payment of self-assessment tax and advance tax is indicated in the return of income. As the new scheme comes into force only from 1.6.2004, the Challans for Advance Tax payments made upto 31.3.2004 and Self Assessment Tax paid upto 31.05.04 will not have CIN. Therefore, in respect of Advance Tax or Self Assessment Tax paid before 1.6.2004, the Assessing Officer's copy of the Challan will have to be enclosed with the return. This will be necessary only in the current year, which is a switch over year.

8. With the help of CIN and PAN every payment will be uniquely identified resulting in correct credit for payments by taxpayers and online transmission of details of tax payments to the Income Tax Department will result in faster credit. Further, it will not be necessary to enclose a copy of Challan along with the return of income. More details of OLTAS will be soon be made available by Income Tax Department.

COMPANY LAW

Companies (Particulars of Employees) Rules, 1975

As per Notification GSR. 212(E) dated March 24, 2004, read with Section 217(2A) of the Companies Act, 1956, the Companies (Particulars of Employees) Rules, 1975 has been amended to include the following relaxations in respect of employees of **Companies engaged in "Information Technology Sector"** with regard to provisions requiring them to give details of the employees and their remuneration in the Board's Report.

The details of the following employees need not be circulated alongwith the Board's Report, where

1. The employees are posted and working in a country outside India;
2. Are not the directors or their relatives
3. Are drawing more than rupees twenty

<p>four lakh per financial year or rupees two lakh per month;</p> <p>However, these particulars shall be furnished to the Registrar of Companies; Such particulars shall also be made available to any shareholder on a specific request made by him during the course of Annual General Meeting in which the same is considered.</p> <p>“Information Technology” shall comprise of the following activities such as mentioned below:-</p> <p>Production of computer software, Information technology services, Manufacturing of information technology hardware, Manufacturing of information technology products, Manufacturing of information technology components, Computer education and training, Computer maintenance, Computer consultancy, E-commerce/internet related activities, etc.</p> <p style="text-align: center;">SERVICE TAX</p> <p><u>I Exemption from service tax on taxable services provided to a developer / unit of Special Economic Zone</u></p> <p>The Central Govt. has issued Notification no. 4 /</p>	<p>2004 dated 31.03.2004 exempting levy of service tax on taxable services, as defined in clause 105 of section 65(1) of the Finance Act, provided to a developer/unit of Special Economic Zone (SEZ) by any service provider for consumption of services within such SEZ.</p> <p>The relevant notification is reproduced below for information.</p> <p style="text-align: right;">31st March, 2004</p> <p style="text-align: center;">Notification No. 4 / 2004 - Service Tax</p> <p>In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) and in supersession of the notification of the Government of India in the erstwhile Ministry of Finance and Company Affairs (Department of Revenue), No. 17/2002-ServiceTax, dated the 21st November, 2002, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated the 21st November, 2002, vide, G.S.R.777(E), dated the 21st November 2002, except as respects things done or omitted to be done before such supersession , the Central Government being satisfied that it is necessary in the public interest so to do, hereby exempts taxable service of any description as defined in clause (90) of sub-section (1) of section 65 of the said Act provided to a developer of Special Economic Zone or a unit (including a unit under construction) of Special Economic Zone by any service provider for consumption of the services within such Special Economic Zone, from the whole of service tax leviable thereon under section 66 of the said Act, subject to the following conditions, namely:-</p> <p>(i) the developer has been approved by the Board of Approvals to develop, operate and maintain the Special Economic Zone;</p>
--	---

<p>(ii) the unit of the Special Economic Zone has be approved by the Development Commissioner or Board of Approvals, as the case may be, to establish the unit in the Special Economic Zone;</p> <p>(iii) the developer or unit of a Special Economic Zone shall maintain proper account of receipt and utilization of the said taxable services.</p> <p>Explanation – for the purposes of this notification,-</p> <p>(1) “Board of Approvals “means the combined Board of Approvals for export oriented unit and Special Economic zone units, as notified in the Official Gazette, from time to time by the Government of India in the Ministry of Commerce and Industry;</p> <p>(2) “developer” means a person engaged in development or operation or maintenance of Special Economic Zone, and also includes any person authorized for such purpose by any such developer;</p> <p>(3) “Special Economic Zone” means a zone specified as Special Economci Zone by the Central Government in the notification issued under clause (iii) of Explanation 2 of the proviso to sub-section (1) of section 3 fo the Central Excise Act, 1944 (1 of 1944).</p> <p style="text-align: right;">V. Kezo Under Secretary to the Government of India</p> <p>F. No. 305/55/2003-FTT</p> <p style="text-align: center;">*****</p> <p><u>II Clarificatory Circular</u></p> <p>Following is the text of Circular No. 76/6/2004-ST issued by the Govt. of India on 3rd March, 2004, providing clarifications on certain issues</p>	<p>e.g. imposition of penalty, delay in issue of PAN, issue of show casenotice for petty amounts etc.</p> <p style="text-align: right;">Circular No. 76/6/2004-ST 3rd March, 2004</p> <p style="text-align: center;">F.No. 137/6/2004-CX-4 Government of India Ministry of Finance Department of Revenue Central Board of Excise & Customs</p> <p>Subject: Clarification sought by PHD Chamber of Commerce and industry on various difficulties being faced by Service Tax assesses-Regarding</p> <p>The Board has received representation from PHD Chamber of Commerce and Industry with regard to general difficulties being faced by Service Tax Assessees.</p> <p>The following points are, therefore, further clarified:-</p> <ol style="list-style-type: none">1. Penalty for each service under section 75A for delay in taking single registration for more than one taxable service; &2. Penalty for each service under section 77 for delay in filing of return by assessee providing more than one taxable service <p><u>Clarification:</u> As per statutory provisions only one penalty as prescribed can be imposed.</p> <ol style="list-style-type: none">3. Delay in issue of PAN based 15 digit STC/STP Code and difficulties faced by assesses for seeking STC/STP. <p><u>Clarification:</u> The forms for registration for issue of 15 digit STC/STP code are very simple and do not create any ambiguity. If the allotment has not been done within three working days in terms of Circular 35/3/2001-CX-4 dated 27/8/2001, the assesseees may bring the same to the notice of the jurisdictional Assistant Commissioner /</p>
---	---

Deputy Commissioner / Commissioner of Central Excise who shall immediately issue necessary directions.

4. Insisting on payment of penalty before registration.

Clarification: The Circular No. 72/2/2004 dated 2nd January, 2004 provides that jurisdictional officer shall accept the declaration given by the assessee and as per the Rule 4(5) of the Service Tax Rules, 1944 grant the registration within seven days.

5. Issue of Show Cause Notice for petty amounts.

Clarification: The matter has been considered by the Board and it has been decided that for an amount of Rs. One Thousand and below towards short payment/non-payment of service tax, the jurisdictional officer should give an opportunity and allow the assessee to deposit the amount of service tax not paid alongwith interest, if any. In case the service provider pays the service tax alongwith interest within period of one month of the default in payment being pointed out, recourse should be made to section 80 of Finance Act, 1994 as amended provided the assessee fulfils the conditions therein. However, in other cases of failure on behalf of Service provider to pay the service tax and interest, if any, normal procedure shall be followed.

6. The field formations may suitably be informed.

7. A suitable trade notice may be issued.

8. Hindi version will follow.

**Manish Mohan
Under Secretary to the Government of India**

**III RECENT TREND IN SERVICE
TAX ASSESSMENT**

The Govt. of India in its Circular No.56/5/2003 dated 25th April, 2003, while exempting taxable services rendered in respect of export of services, made an observation as under:

“Service tax is destination-based consumption tax and it is not applicable on export of services”

The above expression is being interpreted by the Department in a wider manner and out of context in which it was used in the said Circular. In terms of the interpretation now being placed by the Department on this expression, the Department is subjecting even the services rendered abroad to service tax provided such services are consumed in India.

The above interpretation of the Department is against all accepted position of the service tax regulations according to which only services rendered in India are liable to service tax.

However, the stand being taken by the Department is disturbing and causing hardships to the assesses. In spite of representations made to the Government, this expression incorporated in the said Circular has not been clarified so as to exclude the liability of incidence of service tax on services rendered abroad.

Unless the Government amends the above Circular or issues suitable clarification thereto or it is set aside by a judicial authority, it is likely that the Department will interpret the above Circular in their favour and subject services rendered abroad also to service tax in India.

The above is brought to the notice of all concerned for information and necessary guidance

MISCELLANEOUS

Enhancement of wage ceiling for coverage under the ESI Act, 1948

The Central Government vide notification no. S-381012/1/2003-SSI, dated 4th March, 2004 has enhanced the wage ceiling for coverage of employees under the ESI Act from Rs. 6,500 per month to Rs. 7,500 per month (excluding remuneration for overtime work). Henceforth, all employees whose wages exceeds Rs. 6,500 per month (excluding remuneration for overtime work) but does not exceed Rs. 7,500 per month would become coverable under the ESI Act, 1948 w.e.f. 1.4.2004.

FEMA

I. Current Account Transaction – Remittance for maintenance of close relatives abroad

Presently the facility of remittance of net salary

(after deduction of taxes, contribution to provident fund and other deductions) is available to foreign nationals working in India. It has now been extended to Indian nationals employed by a overseas Company, who is on deputation to India to the office or branch or subsidiary or joint venture in India of such overseas Company.

(A.P.(DIR Series) Circular No.86 dated April 17, 2004)

II. Simplification of Trade Credits for imports into India.

The RBI has now allowed Authorised dealers to approve trade credits for import into India upto USD 20 million per import transaction for import of all items (permissible under the Exim policy) with a maturity period (from the date of shipment) upto one year. For import of capital goods, authorised dealers may approve trade credits upto USD 20 million per import transaction with a maturity period of more than one year and less than three years.

(A.P.(DIR Series) Circular No.87 dated April 17, 2004)

III. Acquisition of Foreign securities by resident individuals under ESOP Scheme

Presently a resident individual who is an employee or director of an Indian office or branch

of a foreign company in which the foreign holding is not less than 51% is permitted to acquire foreign securities under ESOP Scheme, without any monetary limit, provided the shares under ESOP are offered at a concessional price.

RBI has now dispensed with the condition that the shares should be offered at a concessional price. It has also been decided to permit sale of the shares so acquired, without obtaining prior permission of the Reserve Bank, provided the proceeds thereof are repatriated to India.

(A.P.(DIR Series) Circular No.90 dated May 3, 2004)

DATES TO REMEMBER

1. For corporate assesses, the first installment of advance tax for the financial year 2004-05 is due to be deposited on or before 15th June, 2004.
2. The last date for filing of annual TDS returns relating to financial year 2003-04 , in Form No. 26 & 24, is 30th June, 2004.