

# CORPORATE UPDATE

FOR CLIENT CIRCULATION ONLY

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## INCOME TAX

### I. REVISED PROCEDURE FOR ENCASHMENT OF INCOME TAX REFUND ORDERS

Following is the text of a recent press release dated 12.03.2004 issued by the CBDT:

For preventing misuse of fraud relating to encashment of income tax refunds, every refund order issued by the income tax department has a corresponding advise note. Vide instruction No. 15/2003 dated 6.11.2003, the Central Board of Direct Taxes have notified that in respect of refund of any amount upto Rs. 9,999/-, the advise note would be issued by the income tax department to the assessee himself together with the refund order. For refund of an amount exceeding Rs. 9,999/-, the advise note would not be sent to the

assessee, but the same would be sent to the Reserve Bank of India for necessary cross verification. Before issue of the instruction dated 6.11.2003, the monetary ceiling for issue of advice directly to the assessee was Rs. 999/-.

Under the revised guidelines, where an assessee receives a refund order for an amount upto Rs. 9,999/-, he has to deposit both the refund order and the advice note attached to it with his banker. In a case where the refund amount exceeds Rs. 9,999/- the assessee would deposit only the refund order with his banker as in respect of such refunds, the advice note would have been sent by the income tax department to the Reserve Bank of India and not to him.

### II. NOTE ON INCOME TAX CLEARANCE IN RESPECT OF PERSONS LEAVING INDIA

The Finance Act, 2003 had amended

section 230 of the Income Tax Act, 1961 w.e.f. 1st June 2003, dealing with the requirement to obtain Income Tax Clearance Certificate from Income Tax Authorities by persons leaving India.

The CBDT vide Notification no. 298/2003 dated 20.11.2003, prescribed various forms for applications & certificates and the prescribed authorities to whom these applications have to be furnished.

The new regulations governing persons leaving India are as follows:

**Persons not domiciled in India**

Under the new procedure, persons not domiciled in India who have come to India in connection with business, profession or employment and have income derived from any source in India shall be required to obtain a No Objection Certificate ( in Form no. 30B) from the prescribed authority before leaving India. The No Objection Certificate will be issued by the prescribed authority on submission of an undertaking obtained by the person, in Form no. 30A, from:

- (a) the employer of such person; or
- (b) through whom such person is in receipt of the income,

to the effect that the tax payable by such person shall be paid by the employer or the payer of income.

**Exemption:**

(a) Persons who are not domiciled in India but visit India as a foreign tourist or for any other purpose not connected with business, profession or employment can leave India without obtaining a No Objection Certificate from the prescribed authority.

(b) Exemptions contained in Notification no. SRO 961 dtd 25.5.1953.

(c ) One time Clearance Certificate can be given in case of employees having fixed tenure in India (Circular no. 546 dated 4.10.1989).

**Prescribed Authority:**

Undertaking in Form 30A is to be submitted with the Chief Commissioner of Income Tax or the Director General of Income Tax, as the case may be, who has jurisdiction over the persons not domiciled in India or any other Income Tax Authority authorized by them in this behalf.

**Persons domiciled in India**

Persons domiciled in India at the time of departure from India are required to furnish in Form no. 30C, the following particulars, with the prescribed authority;

- (a) permanent account number allotted under section 139A;
- (b) the purpose of visit outside India;
- (c ) the estimated period of stay outside India.

**Persons domiciled in India not having a Permanent Account Number (PAN):**

Persons domiciled in India to whom PAN has not been allotted or whose total income is not chargeable to income tax or who are not required to obtain PAN under the Income Tax Act, are required to furnish certificate annexed to Form no. 30C with the prescribed authority.

**Exception:**

Person domiciled in India, in respect of whom circumstances exist which, in the opinion of an Income Tax Authority render it necessary for such person to obtain a Clearance Certificate, shall not leave the territory of India unless he furnishes an Application in Form no. 31 with the prescribed authority. The Income Tax Authority, in such a case has to record its reasons therefore and obtain prior approval of the Chief Commissioner of Income Tax. The prescribed authority shall issue a Clearance Certificate in Form no. 33.

**Exemption:**

Exemption contained in Notification no. SRO 961 dated 25.5.1953.

**Prescribed Authority:**

Form 30C has to be furnished with the Chief Commissioner of Income Tax having

jurisdiction over the persons domiciled in India or any other Income Tax Authority authorized by him in this behalf.

Form 31 has to be furnished by persons domiciled in India with the Assessing Officer who has jurisdiction to assess such person.

**Liability on owner or charterer of ship or aircraft**

The owner or charterer of ship or aircraft carrying persons not domiciled in India to any place outside India is required to allow such persons to travel only after satisfying themselves that such a person is in possession of No Objection Certificate from the prescribed authority. In case of default, the owner or charterer would be liable to pay the whole or any part of the amount of tax payable by such person, as determined by the Assessing Officer.

**COMPANY LAW**

**Companies (Acceptance of Deposit) Rules**

As per the Companies (Acceptance of Deposits) Rules 1975, as amended, it is obligatory for every Director or relative of a director or member, as the case may be, of a Private Company, to furnish to the Company at the time of lending any money or making any deposit, a declaration in writing to the

effect that the money is not being given out of the funds acquired by him by borrowing or accepting from others.

## **SERVICE TAX**

### **Service Tax Credit Rules, 2002**

Clarification on Rule 3(5) issued by Central Board of Excise & Customs (CBEC) on 10.03.2004 is reproduced below for information:-

ST Circular No. 77/07/2004  
March 10<sup>th</sup>, 2004

**F.No. 137/04/2004-CX-4  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs**

**Subject: Clarification on ambiguity in the provisions of Rule 3(5) of the Service Tax Credit Rules, 2002 – regarding**

1. An issue has been raised seeking clarification on the ambiguity in the provisions of Rule 3(5) of the Service Tax Credit Rules, 2002 which reads that 'in case the service provider, opts not to maintain separate accounts of input service meant for consumption in relation to rendering of such output service which are chargeable to service tax as well as exempted services or non-taxable services, he shall be allowed to utilize service tax credit for payment of service tax on any

output service only to the extent of an amount not exceeding thirty five percent of the amount of service tax payable on such output service'.

2. It is to clarify that input service tax credit can be utilized only to the extent of 35% of the total service tax payable on all the taxable output services.
3. The field formations may suitably be informed.
4. A suitable trade notice may be issued.
5. Hindi version will follow.

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

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## **FEMA**

### **Modification in Form A2.**

The Reserve Bank of India has modified Form A2, application for drawal of foreign exchange, to incorporate the application form and the declaration in terms of section 10(5) of Fema 1999.

Specimen of Form A2 can be viewed on page no. 6.

## **ANNOUNCEMENT**

In order to meet the mandatory requirement of the Institute of Chartered Accountants of India (ICAI) on CPE (Continuing Professional Education) credit hours to be earned by every practicing Chartered Accountant, we have recently formed a study circle – 'Kasturba Gandhi Marg CPE Study Circle' with the permission, of ICAI. The Study Circle will conduct seminars and interactive sessions on various topics of interest to Chartered Accountants and other professionals, on the broad guidelines of ICAI. The first Study Circle meeting was held on February 12, 2004 on 'Audit Approach in the context of CARO, 2003'. The second seminar of the study circle was organized on March 15<sup>th</sup>, 2004 on 'Service Tax'.

Membership is open to the members of ICAI at an annual fee of Rs. 2,000/- for the calendar year 2004 and on proportionate basis for part of the year. Non-members can also attend the seminars on payment of fee, as will be announced for each seminar. Interested delegates may contact Convener Ms. Nidhi Goyal or Deputy Convener Ms. Radhika Mathur at [kgm\\_cpestudycircle@hotmail.com](mailto:kgm_cpestudycircle@hotmail.com) or at (011) 23351935/1942.

Programme of future seminars of the study circle will be intimated in advance.

## **POINTS TO REMEMBER**

1. TDS certificates to employees in respect of salary paid & tax deducted at source (TDS) for financial year 2003-04, are to be issued by 30<sup>th</sup> April, 2004.
2. Consolidated TDS certificates (other than salary) for financial year 2003-04, are to be issued by 30<sup>th</sup> April, 2004.
3. Last date for deposit of half yearly return in respect of tax collected at source (TCS) for the period 1<sup>st</sup> October, 2003 to 31<sup>st</sup> March, 2004 is 30<sup>th</sup> April, 2004.
4. Consolidated TCS certificates for tax collected during the half year ended 31<sup>st</sup> March, 2004 are to be issued by 30<sup>th</sup> April, 2004.
5. Quarterly returns in Form 27 in respect of tax deducted at source from certain payments made to non-residents for the quarter ending 31.03.2004 is to be filed by 14<sup>th</sup> April, 2004.

**Form A2**

**Annexure - V**

Application cum Declaration  
(To be completed by the applicant)

Application for drawal of foreign exchange

I. Details of the applicant -

- a. Name \_\_\_\_\_
- b. Address \_\_\_\_\_
- c. Account No. \_\_\_\_\_

II. Details of the foreign exchange required

- 1. Amount (Specify currency) \_\_\_\_\_
- 2. Purpose \_\_\_\_\_

III. I authorise you to debit my Saving Bank/Current/RFC/EEFC Account No. \_\_\_\_\_ together with your charges and

\* a) Issue a draft : Beneficiary's Name \_\_\_\_\_  
Address \_\_\_\_\_

\* b) Effect the foreign exchange remittance directly -

- 1. Beneficiary's Name \_\_\_\_\_
- 2. Name and address of the Bank \_\_\_\_\_
- 3. Account No. \_\_\_\_\_

\* c) Issue travellers cheques for \_\_\_\_\_

\* d) Issue foreign currency notes for \_\_\_\_\_

- (Strike out whichever is not applicable)

Signature

Declaration  
(Under FEMA 1999)

I, \_\_\_\_\_ declare that -

\* 1) The total amount of foreign exchange purchased from or remitted through, all sources in India during this calendar year including this application is within USD \_\_\_\_\_ (USD \_\_\_\_\_ only) the annual limit

prescribed by Reserve Bank of India for the said purpose.

\* 2) Foreign exchange purchased from you is for the purpose indicated above.

- (Strike out whichever is not applicable)

Signature

Name \_\_\_\_\_

Date:

**MOHINDER PURI & COMPANY**

(The purpose codes are on the reverse)