

CORPORATE UPDATE

FOR CLIENT CIRCULATION ONLY

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INCOME TAX

I. Online Accounting System

On Line Tax accounting System was introduced by Income Tax Department on 1.06.2004, with the objective of dematerialization of Challans. In a dematerialization environment it is of utmost importance that the data given in the source document i.e. original paper challans is correct and complete and is correctly captured.

However the tax department, has observed certain deficiencies which they have highlighted in its recent press release, which is summarized below:

- (i) PAN of the taxpayer is either not mentioned or is incomplete or invalid;
- (ii) TAN of the Deductor is either not mentioned while depositing TDS or is incomplete or invalid.

(iii) While depositing TDS through challan ITNS 281, instead of writing TAN of the deductor, PAN of the deductor is written.

(iv) In some cases of companies, while depositing advance tax/self-assessment tax through challan ITNS 280, major head code 0021 (pertaining to Income-tax on "other than companies") has been ticked instead of major head code 0020 (pertaining to Income-tax on 'companies' – also known as Corporation tax).

As such it is suggested to take care major of the following points to avoid the data deficiencies:

- (i) In case of payments through challan ITNS 280 (for payments other than TDS), correct PAN of the taxpayers must necessarily be quoted on challans. Please remember PAN has 10 alpha-numeric characters with first five alphabets followed by four numerals

<p>and one alphabet.</p> <p>(ii) Where tax is being paid by a company through challan ITNS 280, major head code 0020 should be ticked.</p> <p>(iii) In case of deposit of TDS, Challan No. ITNS 281 should be used and reformatted TAN of the deductor must be quoted. Entire TAN database is available on www.incometaxindia.gov.in. In case TAN has not been allotted application can be filed at any TIN Facilitation Centre. PAN of the deductor should not be quoted in place of TAN.</p> <p>II. Amendments To Rule 114B</p> <p>Rule 114B specifies transactions under which all persons are required to quote PAN/GIR No. In view of the fact that now GIR No. is not allotted before allotment of PAN, the words 'GIR No.' where ever appearing in the said Rule have been removed.</p> <p>Following additional transactions have been specified for mandatory quoting of PAN:</p> <p>(i) Making an application to any banking company to which the Banking Regulation Act, 1949 (10 of 1949), applies (including any bank or banking institution referred to in section 51 of that Act) or to any other company or institution, for issue of a credit card;</p>	<p>(ii) Payment of an amount of fifty thousand rupees or more to a Mutual Fund for purchase of its units;</p> <p>(iii) Payment of an amount of fifty thousand rupees or more to a company for acquiring shares issued by it;</p> <p>(iv) Payment of an amount of fifty thousand rupees or more to a company or an institution for acquiring debentures or bonds issued by it;</p> <p>(v) Payment of an amount of fifty thousand rupees or more to the Reserve Bank of India, constituted under section 3 of the Reserve Bank of India Act, 1934 (2 of 1934) for acquiring bonds issued by it.</p> <p>Consequential amendments have also been brought about in Form No. 60 – “Form of declaration to be filed by a person who does not have PAN and who enters into any transaction specified in Rule 114B”. (Notification No. 288/2004 dated 01.12.2004)</p> <p>III. Application for allotment of Tax Deduction and Tax Collection Account Number</p> <p>The CBDT has vide notification no. 294/2004 dated 8.12.2004 substituted Form 49B – ‘Form of Application for allotment of Tax Deduction Account Number’ with the new Form 49B. The new form has been</p>
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prescribed for application for allotment of both Tax Deduction Account Number and Tax Collection Account Number.

Rule 114A which contains rules for application for allotment of Tax Deduction Account Number has also been substituted with the new Rule, 114A. Under the new Rule, an application for Tax Deduction and Collection Account shall be made:

- (i) in a case where a person has deducted tax or collected tax in accordance with the provisions of Chapter XVII under the heading 'B.-Deduction at source or 'BB.-Collection at source', as the case may be, prior to the 1st day of October, 2004, on or before the 31st day of January, 2005;
- (ii) in a case where a person has,
 - (a) deducted or deducts tax in accordance with the provisions of Chapter XVII under the heading 'B.-Deduction at source; or
 - (b) collected or collects tax in accordance with the provisions of Chapter XVII under the heading 'BB.- Collection at source'.

on or after the 1st day of October, 2004, within one month from the end of the month in which the tax was deducted or collected, as the case may be, or the 31st day of January, 2005, whichever is later.

IV. Furnishing of Annual Information Return

Section 285BA on furnishing of 'Annual Information Return' by assesseees was introduced in Finance Act, 2003 with a view to providing a mechanism wherein the flow of information regarding the material financial transactions, entered into by a taxpayer with other persons is automatic so that the same can be utilized for widening and deepening of the tax base.

The section was substituted by Finance 2004, which became effective from Assessment Year 2005-06. The CBDT has now vide Notification No. 288/2004 dated 01.12.2004 introduced new rule, Rule 114E, prescribing classes of persons and nature and value of transaction for which an Annual Information Return is to be furnished. The said rule is reproduced below:-

“Annual Information Return

114E.

- 1) The annual information return required to be furnished under sub-section (1) of section 285BA shall be furnished in Form No. 65 and shall be verified in the manner indicated therein.

<p>(2) The return referred to in sub-rule (1) shall be furnished by every person mentioned in column (2) of the Table (See Annexure on Page No. 8) below in respect of all transactions of the nature and value specified in the corresponding entry in column (3) of the said Table, which are registered or recorded by him during a financial year beginning on or after the 1st day of April, 2004:-</p> <p>(3) The return referred to in sub-rule (1) shall be furnished to the Commissioner of Income-tax (Central Information Branch):</p> <p>Provided that with the Board has authorized an agency to receive such return on behalf of the Commissioner of Income Tax (Central Information Branch), the return shall be furnished to that agency.</p> <p>(4) (a) The return comprising Part A and Part B of Form No. 65 referred to in sub-rule (1) shall be furnished on computer readable media being a floppy (3.5 inch and 1.44 MB capacity) or CD-Rom (650 MB or higher capacity) or Digital Video Disc (DVD), along with part-A thereof on paper.</p> <p>(5) The return referred to in sub-rule (1) shall be furnished on or before 31st August, immediately following the financial year in which the transaction is registered or recorded.</p>	<p>(6) The return referred to in sub-rule (1) shall be signed and verified by-</p> <p>(a) in a case where the person furnishing the return is an assessee as defined in clause (7) of section 2 of the Act, by a person specified in section 140 of the Act;</p> <p>(b) in any other case by the person referred to in column (2) of the Table below sub-rule (2);”</p> <p>Form No. 65 “Form of Annual Information Return” is annexed in the attached excel file. It may be noted that under Section 271FA of the Income Tax Act, 1961 penalty has been imposed for failure to furnish the return in prescribed time at the rate of Rs. 100/- for every day during which the failure continues.</p> <p>V. Valuation of Rent Free Accommodation Provided by an Employer</p> <p>As per the first proviso to Rule 3(1) of the Income Tax Rules, 1962, the Perquisite value of Rent Free accommodation is not taxed in the hands of employee who has been provided accommodation located in “Remote area” working at a mining site or an onshore oil exploration site or a project execution site or an accommodation provided in an offshore site of similar nature.</p>
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The above mentioned proviso has been substituted vide notification no. 277/2004 dated 3.11.2004. Text of the new proviso is reproduced below:-

“Provided that nothing contained in this sub-rule shall apply to any accommodation provided to an employee working at a mining site or an on-shore oil exploration site or a project execution site, or a dam site or a power generation site or an off-shore site which,-

(i) being of a temporary nature and having plinth area not exceeding 800 Square feet, is located not less than eight kilometers away from the local limits of any municipality or a cantonment board; or

(ii) is located in a remote area.”.

VI. Valuation of Free Meals Provided by Employer

Under Rule 3(7) of the Income Tax Rules, 1962 the words “free meals” have been substituted by “free food and non alcoholic beverages”.

VII. Small Amendment in Form 16

In consequence to the introduction of rebate u/s 88D, by Finance Act 2004, the following amendments has been made in Form 16., vide notification no. 289/2004 dated 02.09.2004;

(a) in item 13, for sub-item II, the following sub-item shall be substituted, namely:-

“II. (a) Under section 88B Rs.....;
(b) Under section 88C Rs.....;
(c) Under section 88D Rs.....;

(b) for item 14, the following item shall be substituted, namely:

“14. Aggregate of tax rebates at 13 above. [(f)+II(a)+II(b)+II(c)]” Rs.....”

VIII. Amendments in Form 13 and Form No. 27D

Form 13 –“Form of application by a person for a certificate under section 197 and section 206(9) of the Income Tax Act, 1961, for no deduction/collection of tax at a lower rate” has been amended vide notification no. 285/2004 dated 30.11.2004 to take effect of new section 194LA-“TDS on payment of compensation on acquisition of certain immovable property” and section 206 C(1C) – “TCS on payments received under a

contract or license or lease etc. for transfer of any right or interest in any parking lot or toll plaza or mine or quarry”.

Consequential amendments have also been made in Form 27D – “Form of Certificate of collection of tax at source u/s 206C” of the Income Tax Act, 1961’.

IX. DTA With Malaysia

Vide Notification No. GSR 667(E) dated 12.10.2004, the Central Government has notified new agreement between the Government of Malaysia and the Government of the Republic of India for avoidance of Double taxation and prevention of fiscal evasion with respect to taxes on income. Main features of the new agreement are the introduction of the following Articles:

1. Article 13 Fees for Technical services (Tax Rate of 10% has been specified)
2. Article 14 Independent Personal services
3. Article 22 Other Income.

Further, there is a change in definition of “Resident” in the Article 4. The provisions of the new agreement shall have effect in India from 04.04.2004 and earlier treaty will cease to have effect on the said date.

X. DTA With Sudan, Notified

The Agreement between the Government of the Republic of India and the Government of the

Republic of the Sudan for the avoidance of Double Taxation and the prevention of evasion with respect to taxes on income, has come into force on the 15 day of April, 2004.

Now in exercise of the power conferred by section 90 of the Income Tax Act 1961, the Central Government has notified all the provisions of the said agreement vide Notification No. 271/2004, dated 1-11-2004. The Agreement shall have effect in India from 01.04.2005.

XI. DTA With Uganda

The Agreement between the Government of the Republic of India and the Government of the Republic of the Uganda for the avoidance of Double Taxation and the prevention of evasion with respect to taxes on income, has come into force on the 27 day of August, 2004.

Now in exercise of the power conferred by section 90 of the Income Tax Act 1961, the Central Government has notified all the provisions of the said agreement vide Notification No. GSR 666(E), dated 12-10-2004. The Agreement shall have effect in India from 01.04.2005.

SERVICE TAX

Notification No. 32/2004 – Service Tax dated 03.12.2004 effective from 01.01.2005

The Central Government has exempted taxable services provided by a goods transport agency to a customer from service tax, in excess of service tax calculated on a value which is equivalent to 25% of gross amount charged from customer by such goods transport agency from providing the said taxable service.

This exemption shall not apply in cases where:-

- (i) credit of duty paid on inputs or capital goods used for providing such taxable services has been taken under the provisions of CENVAT Credit Rules, 2004 or
- (ii) the goods transport agency has availed the benefit of exemption on the taxable services, equal to value of goods and materials sold by the service provider to the recipient of service, from the Service Tax.

Notification No. 33/2004 – ST dated 03.12.2004 effective from 01.01.2005

The Central Government has exempted taxable service provided by a goods transport agency to a customer, in relation to transport of fruits, vegetables, eggs or milk by road in a goods carriage, from the whole of service tax.

Notification No. 34/2004-ST dated 03.12.2004 effective from 01.01.2005

The Central Government has exempted taxable services provided by a goods transport agency

to a customer, in relation to transport of goods by road in a goods carriage from the whole of service tax leviable thereon, where-

- (i) the gross amount charged on consignments transported in a goods carriage does not exceed Rs. 1500/- or
- (ii) the gross amount charged on an individual consignment transported in a goods carriage does not exceed Rs. 750/-.

COMPANY LAW

CARO, 2003

The Central Govt. after consultation with the Institute of Chartered Accountants of India, has amended Companies (Auditor's Report) Order, 2003. The amending notification no. GSR. 766(I) takes effect from 25.11.2004. A comparative analysis of the old clauses and new clauses of CARO, 2003 are given on page no. 9.

(Continued from page 3-Furnishing of Annual Information Return)

TABLE

SI.No. (1)	Class of person (2)	Nature and value of transaction (3)
1	A Banking company to which the Banking Regulation Act, 1949 (10 of 1949), applies (including any bank or banking institution referred to in section 51 of that Act).	Cash deposits aggregating to Rs. 10,00,000/- or more in a year in any savings account of a person maintained in that bank.
2	A banking company to which the Banking Regulation Act, 1949 (10 of 1949), applies (including any bank or banking institution referred to in section 51 of that Act) or any other company or institution issuing credit card.	Payments made by any person against bills raised in respect of a credit card issued to that person, aggregating to Rs. 200,000/- or more in the year.
3	A trustee of a Mutual Fund or such other person managing the affairs of the Mutual Fund as may be duly authorised by the trustee in this behalf.	Receipt from any person of an amount of Rs. 200,000/- or more for acquiring units of that Fund.
4	A company or institution issuing bonds or debentures.	Receipt from any person of an amount of Rs. 500,000/- or more for acquiring bonds or debentures issued by the company or institution.
5	A company issuing shares through a public or rights issue.	Receipt from any person of an amount of Rs. 100,000/- or more for acquiring shares issued by the company.
6	Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908.	Purchase or sale by any person of immovable property valued at Rs. 30,00,000/- or more.
7	A person being an officer of the Reserve Bank of India, constituted under section 3 of the Reserve Bank of India Act, 1934, who is duly authorized by the Reserve Bank of India in this behalf.	Receipt from any person of an amount or amounts aggregating to Rs. 500,000/- or more in a year for bonds issued by the Reserve Bank of India.

Continued from page no. 7-CARO, 2003

Sr.No	Order dated June 12, 2003	Order dated November 25, 2004
(1)iv	A private limited company with a paid up capital and reserves not more than fifty lakh rupees and has not accepted any public deposit and does not have loan outstanding ten lakh rupees or more from any bank or financial institution and does not have a turnover exceeding five crore rupees.	A private limited company with a paid up capital and reserves not more than rupees fifty lakh and which does not have loan outstanding exceeding rupees twenty five lakh from any bank or financial institution and does not have a turnover exceeding rupees five crore at any point of time during the financial year.
(2)c to i	Definitions – finance company, Investment company, manufacturing company, mining company, processing company, service company, trading <u>company</u> .	Omitted
(4)(iii)(a)	Has the company either granted or taken any loans, secured or unsecured to/from companies, firms or other parties covered in the register maintained under Section 301 of the Act. If so, give the number of parties and amount involved in the transactions.	(a)Has the company granted any loans, secured or unsecured to companies, firms or other parties covered in the register maintained under Section 301 of the Act. If so, give the number of parties and amount involved in the transactions.; and (b) whether the rate of interest and other terms and conditions of loans given by the company, secured or unsecured, are prima facie prejudicial to the interest of the company; and (c) whether receipt of the principal amount and interest are also regular; and (d) if overdue amount is more than rupees one lakh, whether reasonable steps have been taken by the company for recovery of the

		<p>principal and interest;</p> <p>(e) has the company taken any loans, secured or unsecured from companies, firms or other parties covered in the register maintained under section 301 of the Act. If so, give the number of parties and the amount involved in the transactions; and</p> <p>(f) whether the rate of interest and other terms and conditions of loans taken by the company, secured or unsecured, are prima facie prejudicial to the interest of the company; and</p> <p>(g) whether payment of the principal amount and interest are also regular.</p>
4(iv)	<p>is there an adequate internal control procedure commensurate with the size of the company and the nature of its business, for the purchase of inventory and fixed assets and for the sale of goods. Whether there is a continuing failure to correct major weaknesses in internal control ”</p>	<p>is there an adequate internal control system commensurate with the size of the company and the nature of its business, for the purchase of inventory and fixed assets and for the sale of goods and services. Whether there is a continuing failure to correct major weaknesses in internal control system;”</p>
4(v) (a) & (b)	<p>(a) whether the transactions that need to be entered into a register in pursuance of section 301 of the Act have been entered;</p> <p>(b) whether each of these transactions have been made at prices at the relevant time; (This information is required only in case of transactions exceeding the value of five lakh rupees in respect of any party and in any one financial year)</p>	<p>“(a) whether the particulars of contracts or arrangements referred to in section 301 of the Act have been entered in the register required to be maintained under that section; and</p> <p>(b) whether transactions made in pursuance of such contracts or arrangements have been made at prices which are reasonable having regard to the prevailing market prices at the relevant</p>

		time;”;
4(vi)	In case the company has accepted deposits from the public, whether directives issued by Reserve Bank of India and the provisions of sections 58A, 58AA of the Act and the rules framed there under, where applicable, have been complied with. If not, the nature of contraventions should be stated; If an order has been passed by Company Law Board whether the same has been complied with or not ?	In case the company has accepted deposits from the public, whether directives issued by Reserve Bank of India and the provisions of <u>sections 58A, 58AA or any other relevant provisions of the Act</u> and the rules framed there under, where applicable, have been complied with. If not, the nature of contraventions should be stated; If an order has been passed <u>“Company Law Board or National Company Law Tribunal or Reserve Bank of India or any Court or any other Tribunal”</u> shall be substituted whether the same has been complied with or not ?
4(ix)(a)		Inclusion : Service Tax
4(ix)(b)	“(b) in case dues of Sales tax /Income tax/ Custom tax/Wealth tax/ Excise duty/ cess have not been deposited on account of any dispute, then the amounts involved and the forum where dispute is pending may please be mentioned.”	“(b) in case dues of Income tax/ Sales tax /Wealth tax/ Service tax/ Custom duty/ Excise duty/ cess have not been deposited on account of any dispute, then the amounts involved and the forum where dispute is pending shall be mentioned.”
4 (xiii)(b)	Whether the company has complied with the prudential norms on income recognition and provisioning against sub-standard/ default/loss assets	Whether the company has complied with the prudential norms on income recognition and provisioning against sub-standard/ doubtful/loss assets
4(xiii)(d)	Whether the repayment schedule of various loans granted by the nidhi is based on the repayment capacity of the borrower and would be conducive to recovery of the loan amount”	Omission of the words and would be conducive to recovery of the loan amount”
4(xiv)	If the Company is dealing or trading in shares, securities,	for the words “other securities”, the words other investments shall

	debentures and other investments, whether proper records have been maintained of the transactions and contracts and whether timely entries have been made therein; also whether the shares, securities, debentures and other securities have been held by the company, in its own name except to the extent of the exemption, if any granted under section 49 of the Act;	be substituted
4(xvii)	Whether the funds raised on short-term basis have been used for long term investment and vice versa; If yes, the nature and amount is to be indicated;	“and vice-versa” shall be omitted
4(xix)	Whether securities have been created in respect of debentures issued.	for the words “securities have”, the words “security or charge has” shall be substituted