Preface

This issue of newsletter sums up the regular legal updates during the month of February'15. We understand there was high expectations riding on the Budget 2015. A lot of promises have been made and he has mentioned that even an elephant moves slow but surely. By and large it is expected that the favourable investment climate is here to stay added with other expected simplified procedures.This news letter contains some of the extracts of the economic survey 2015 .The budget highlights will be issued separately as a special edition.

CA. V. Thiagarajan
Partner

Corporate Law

Companies (Indian Accounting Standards) Rules, 2015

i. Ind AS has been notified effective from 1st April 2015 for specified class of companies.

ii. Any company may comply with the Indian Accounting Standards (Ind AS) for financial statements for accounting periods beginning on or after 1st April, 2015, with the comparatives for the periods ending on 31st March 2015 or thereafter.

iii. The following companies shall comply with the Indian Accounting Standards (Ind AS) for the accounting periods beginning on or after 1st April, 2016, with comparatives for the period ending 31st March 2016 or thereafter, namely;
- Listed companies in stock exchanges inside or outside India and having net worth of Rs.500 crore or more.
- UnlistedCompanies having net worth of Rs.500 crore or more.
- Holding, subsidiary, joint venture or associate companies of companies specified above.

iv. The following companies shall comply with the Indian Accounting Standards (Ind AS) for the accounting periods beginning on or after 1st April, 2017, with comparatives for the period ending 31st March 2017 or thereafter, namely;
- Listed companies in stock exchanges inside or outside India and having net worth of less than Rs.500 crores.
- Unlisted Companies but having net worth of Rs.250 crore or more but less than Rs.500 crore.
- Holding, subsidiary, joint venture or associate companies of companies specified above.

v. For all other companies the Accounting Standards as specified in Annexure to the Companies (Accounting Standards) Rules, 2006 shall continue to apply.

vi. Overseas subsidiary, associate, joint venture and other similar entities of an Indian company may prepare its standalone financial statements in accordance with the requirements of the specific jurisdiction:
Provided that such Indian company shall prepare its consolidated financial statements in accordance with the Indian Accounting Standards (Ind AS) either voluntarily or mandatorily if it meets the criteria as specified above.

vii. Indian company which is a subsidiary, associate, joint venture and other similar entities of a foreign company shall prepare its financial statements in accordance with the Indian Accounting Standards (Ind AS) either voluntarily or mandatorily if it meets the criteria as specified above.

viii. Any company opting to apply the Indian Accounting Standards (Ind AS) voluntarily for its financial statements shall apply consistently.

ix. All other details are provided in the referred notification.
[NOTIFICATION [F.NO.01/01/2009/CL-V(PART)], DATED 16-2-2015]

Amendments to the Companies Act, 2013

SMALL COMPANY – DEFINITION AMENDED

i. The definition of "small company" in the new Companies Act 2013 has since been amended as the existing definition containing the word "or" for satisfying the conditions prescribed under sub-clause (i) & (ii) created confusion.

ii. Accordingly, as per amended sec 2(85) of the Companies Act, 2013 a small company means a company, other than a public company, which satisfies both the below prescribed conditions-
(i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; and
(ii) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees:
Provided that nothing in this clause shall apply to—
(A) a holding company or a subsidiary company;
(B) a company registered under section 8; or
(C) a company or body corporate governed by any special Act;]

Loans & Investment by a Company – Section 186 amended

i. Section 186 of the Companies Act, 2013 deals with loans and investments by a company, and specifies the conditions and restrictions applicable to the same.

ii. However, exceptions are provided to banking, insurance or housing finance companies.

iii. In clause (b) of sub-section (11) of section 186 of the Companies Act, 2013 in the absence for exemption to a banking company or an insurance company or a housing finance company making acquisition of securities in its ordinary course of business, a difficulty has arisen that such companies cannot make any acquisition of securities in their ordinary course of business;

iv. Hence, sub-clause (iv) has been added to provide for the same.
The above amendments have been given effect vide Order dated 13-02-2015 under Companies (Removal of Difficulties) Order 2015.

Rectification of mistakes/addl docs-MCA e-portal

i. Presently, any application, form or document submitted to the Registrar of Companies is scrutinised and any additional information or document called for, if any, shall be submitted to the Registrar within the prescribed time limit.

ii. The procedure for submitting additional information has been since amended to provide the same vide Form No. GNL-4 to be filed electronically with MCA.

iii. Rule 10 of the Companies (Registration of Offices and Fees) Amendment Rules, 2014 has been amended to provide for the above procedure through Companies (Registration of Offices and Fees) Amendment Rules, 2015 vide Notification dated 24 February 2015.

FEMA / RBI

FDI - REPORTING UNDER FDI SCHEME ON THE E-BIZ PLATFORM

i. With a view to promoting the ease of reporting of transactions under foreign direct investment, the Reserve Bank of India, under the aegis of the e-Biz project of the Government of India has enabled the filing of the following returns with the Reserve Bank of India viz.

- Advance Remittance Form (ARF) - used by the companies to report the foreign direct investment (FDI) inflow to RBI; and
- FCGPR Form - which a company submits to RBI for reporting the issue of eligible instruments to the overseas investor against the above mentioned FDI inflow.

ii. The design of the reporting platform enables the customer to login into the e- Biz portal, download the reporting forms (ARF and FCGPR), complete and then upload the same onto the portal using their digitally signed certificates.

iii. The Authorized Dealer Banks (ADs) will be required to download the completed forms, verify the contents from the available documents, if necessary by calling for additional information from the customer and then upload the same for RBI to process and allot the Unique Identification Number (UIN).

iv. The ARF and FCGPR services of RBI are operational on the e-Biz platform from February 19, 2015.

v. A user manual has also been provided for ease of operation which is annexed to the above Circular.

[A.P. (DIR SERIES 2014-15) CIRCULAR NO.77, DATED 12-2-2015]

vi. The online reporting on the e-Biz platform is an additional facility to the Indian companies to undertake their ARF and FCGPR reporting and the manual system of reporting as prescribed in terms of A.P. (DIR Series) Circular No. 102 dated February 11, 2014 would continue till further notice.

IMPORT OF GOODS INTO INDIA : FORM A-1 DISPENSED WITH

i. Presently, in terms of the A.P.(DIR Series) Circular No. 82 dated February 21, 2012 applications by persons, firms and companies for making payments, exceeding USD 5,000 or its equivalent towards imports into India must be made in Form A-1.

ii. To further liberalize and simplify the procedure the requirement of submitting request in Form A-1 to the AD Category –I Banks for making payments towards imports into India has been dispensed with.

iii. AD Category – I Banks however, need to obtain all the requisite details from the importers and satisfy itself about the bonafides of the transactions before affecting the remittance.

[A.P. (DIR SERIES 2014-15) CIRCULAR NO.76, DATED 12-2-2015]

DIRECT TAXES

Interest u/sec . 234A not payable if self asst tax paid before filing the return of income – CBDT clarifies following Supreme Court ruling

i. Currently, interest u/sec 234A is being charged even if self assessment tax is paid before filing the return of income.
ii. The CBDT has issued Circular No. 2/2015 dated 10.02.2015 on the issue of chargeability of interest u/s 234A following a Supreme Court ruling.
iii. The CBDT has pointed out that in CIT vs. Prannoy Roy 309 ITR 231 (SC), the Supreme Court has held that interest u/s 234A of the Act on default in furnishing return of income shall be payable only on the amount of tax that has not been deposited before the due date of filing the return for the relevant assessment year.
iv. The CBDT has accordingly reviewed the present practice of charging interest u/s 234A of the Act on self-assessment tax paid before the due date of filing the return of income.
v. The CBDT has decided that no interest u/s 234A of the Act is chargeable on the amount of self-assessment tax paid by the assessee before the due date of filing the return of income.

Levy of late filing fee for TDS u/sec 234E held constitutionally valid by the Bombay High Court

i. The Bombay High Court has held that the late filing of TDS returns by the deductor causes inconvenience to everyone and s. 234E levies a fee to regularize the said late filing.
ii. The fee is not in the guise of a tax nor is it onerous. The levy is constitutionally valid. Rashmikant Kundalia vs. UOI (Bombay High Court)
iii. Following the above ruling, it is expected that all defaulting assessees will have to pay the fee.

EXTRACTS FROM ECONOMIC SURVEY 2015

The question in every single mind on the Budget 2015 is – expecting 'Big Bang Reforms' from the Modi government post the massive political win last year presently their first full term budget.The economic survey gives a careful worded thought on the same.

Bing Bang reforms are the exception rather than the rule. India today is not in crisis, and decision-making authority is vibrantly and frustratingly diffuse. Not only are many of the levers of power vertically dispersed, reflected in the power of the states, policy-making has also become dispersed horizontally. The Supreme Court and the Comptroller and Auditor General have all exerted decisive influence over policy action and inaction. Moreover, some important reforms such as improvements to tax administration or easing the cost of doing business, require persistence and patience in their implementation, evoked in Max Weber's memorable phrase, "slow boring of hard boards". Hence, Big Bang reforms as conventionally understood are an unreasonable and infeasible standard for evaluating the government's reform actions. Equally though, the mandate received by the government affords a unique window of political opportunity which should not be foregone. India needs to follow what might be called "a persistent, encompassing, and creative incrementalism" but with bold steps in a few areas that signal a decisive departure from the past and that are aimed at addressing key problems such as *ramping up investment, rationalizing subsidies, creating a competitive, predictable, and clean tax policy environment, and accelerating disinvestment.*

Macro-economic status:

The changing fortunes of India have been nothing short of dramatically positive (Figure 1.1). Inflation has declined by over 6 percentage points since late 2013, and the current account deficit has shriveled from a peak of 6.7 percent of GDP (in Q3, 2012-13) to an estimated 1.0 percent in the coming fiscal year. Foreign portfolio flows (of US$ 38.4 billion since April 2014) have stabilized the rupee, exerting downward pressure on long-term interest rates, reflected in the yield on 10-year government securities, and contributed to the surge in equity prices (31 percent since April in rupee terms, and even more in US dollars, ranking it the highest amongst emerging markets). In a nearly 12-quarter phase of deceleration, economic growth averaged 6.7 percent but since 2013-14 has been growing at 7.2 percent on average, the later based on the new growth estimates.

India ranks amongst the most attractive investment destinations, well above other countries.

Outlook for Growth: In the short run, growth will receive a boost from lower oil prices, from likely monetary policy easing facilitated by lower inflation and lower inflationary expectations, and forecasts of a normal monsoon. Medium-term prospects will be conditioned by the "balance sheet syndrome with Indian characteristics," which has the potential to hold back rapid increases in private sector investment.

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"That service is the noblest which is rendered for its own sake"
*- **Mahatma Gandhi***