

## COMPANY LAW:

### MINISTRY OF CORPORATE AFFAIRS (MCA) UPDATES

#### ⊙ **Applicability of XBRL :**

Companies falling in the following categories will have to file their Balance Sheet (**Form 23AC**) and Profit & Loss Account (**Form 23ACA**) using the Extensible Business Reporting Language (XBRL) taxonomy for financial year commencing on or after 01.04.2011:-

1. all companies **listed** with any Stock Exchange(s) in India and their Indian subsidiaries; or
2. all companies having **paid up capital of Rupees five crore** and above; or
3. all companies having **turnover of Rupees one hundred crore** and above; or
4. all companies who were required to file their financial statements for **FY 2010-11, using XBRL.**

However, banking companies, Power companies, Non Banking Financial Companies (NBFC) and Insurance companies are exempted from XBRL filing till further order.

All XBRL filing companies are allowed to file their financial statements without any additional fee/penalty up to **15th December 2012 or within 30 days of the date of their AGM, whichever is later.**

*(General Circular No: 16/2012 dated 6th July 2012, Ministry of Corporate Affairs and Section 220 of the Companies Act, 1956)*

#### ⊙ **Form 23B and Form 23AC-23ACA- non XBRL – Extension of Date:**

Due date is extended for filing Form 23B (Appointment of Auditors) for accounting year 2012-13 up to 23/12/2012 or due date of filing (i.e. within 30 days of receipt of intimation of appointment) whichever is later.

*(General Circular No: 31/2012 dated 28th September 2012, Ministry of Corporate Affairs and Section 224 (1A) of the Companies Act, 1956)*

Due date for filing **Form 23AC and Form 23ACA** in non XBRL mode is further extended as under:

- Company holding AGM or whose due date of holding AGM is on or before 20.09.2012, time limit will be 3rd November, 2012 or due date of filing (i.e. within 30 days from the date of AGM) whichever is later.
- Company holding AGM or whose due date of holding AGM is on or after 21.09.2012, time limit will be 22nd November, 2012 or due date of filing (i.e. within 30 days from the date of AGM) whichever is later.

*(General Circular No: 30/2012 dated 28th September 2012, Ministry of Corporate Affairs and Section 220 of the Companies Act, 1956)*

⊙ **Form 66 - Submission of Compliance certificate to the Registrar**

Form 66 is to be filed by Companies having paid up capital of Rs.10 lakh to Rs. 5 crore pursuant to section 383A of the Companies Act, 1956, and rule 3(2) of the Companies (Compliance Certificate) Rules, 2001. Due date for Form 66 is within 30 days from the date of AGM.

⊙ **Form 20 B – Annual Return**

Annual return is to be filed by Companies having share capital under section 159 of Companies Act, 1956. Due date for Form 20B is within 60 days from the date of AGM.

⊙ **ROC - FEES STRUCTURE**

<b>Fees For Filing Various Documents Under Companies Act, 1956 (Except for form No 5)</b>		
<b>Nominal Share Capital</b>		<b>Fees per document</b>
1.	Less than Rs. 100000	Rs. 100
2.	Rs. 100000 less than Rs. 500000	Rs. 200
3.	Rs. 500000 less than Rs. 2500000	Rs. 300
4.	Rs. 2500000 or more	Rs. 500
<b>Form-5 For Increasing Authorised</b>		

<b>Capital</b>		
<i>On Filing Form 5, ROC fees payable is the differential amount between the fee payable on the proposed Authorized Capital and on the existing Capital i.e. incremental capital. Stamp Duty is also payable on the increased capital as applicable.</i>		
<b>Fees For Registration Of A New Company</b>		
<b>Authorized Capital</b>		<b>Fees (in Rs.)</b>
i)	Less than Rs. 1,00,000	4,000
ii)	Rs. 1,00,001- Rs. 5,00,000	4,000 + 300 for every 10,000
iii)	Rs. 5,00,001- Rs. 50,00,000	16,000 + 200 for every 10,000
iv)	Rs. 50,00,001-Rs. 1 crore	1,06,000 + 100 for every 10,000
v)	Exceeding Rs. 1 crore	1,56,000 + 50 for every Rs. 10,000 subject to maximum of Rs. 2 Cr.
<i>For enhancement of Authorized Capital or for registration of a new company, an additional stamp duty is payable at the rate applicable.</i>		

**Additional Fees for Late Filing of Document:**

<b>Document</b>	<b>Period of delay</b>	<b>Rate of Additional Fee/ Interest</b>
Form-5	Up to 1 Year	2% pm on normal fee
	More than 1 year	2.5% pm on normal fee
Other Documents (with effect from 5th December 2010) :-	i) Up to 30 days	Two times of normal filing fee
	ii) More than 30 days and up to 60 days	Four times of normal filing fee
	iii) More than 60 days and up to 90 days	Six times of normal filing fee
	iv) More than 90 days	Nine times of normal filing fee

**Other Fee to be Paid:**

<b>Inspection of File and Charges</b>	<b>Charges</b>
File Inspection	Rs.50
Charges Inspection	Rs.50
<b>Fees for Obtaining Certified Copy</b>	
Stamp Paper for Each Document	Rs.10
Court Fees on Application	Rs.5
Normal Size Paper	Rs.25 per page
Full Size Paper	Rs.50 per page

**DUE DATES CHART FOR THE MONTH OF NOVEMBER 2012 (Various Acts):**

<b>Date</b>	<b>Particulars</b>
5th	Payment of Excise Duty for the previous month
5th	Service Tax payment for the previous month (6 <sup>th</sup> if paid electronically)
7th	TDS remittance for the previous month
7th	STPI (Software Technology Parks of India) Monthly return for the previous month
10th	Monthly Excise return by all assesseees (except SSIs & EOUs) coming under CEA in Form ER - 1
10th	Monthly Excise return by EOU assesseees coming under CEA in Form ER - 2
10th	Monthly Contribution to AP Labour Welfare Fund under AP Labour Welfare Act
10th	Submission of Half yearly Return of Contribution in <b>Form 6</b> under ESI Act, 1948.
14th	Quarterly Limited Review Audit Report (in case of Audited & Unaudited Financial Results) from Statutory Auditor U/c 41 I (c) (i) of listing agreement - for Listed Companies
15th	Monthly Declaration and filing of Form (for the employees joined during the previous month ) under ESI Act, 1948
15th	Monthly Declaration and filing of Form (for the employees joined during the previous month ) under EPF & MP Act, 1952
15th	Submission of VAT (VAT 200) & CST (CST - VI) return along with the Payment due for the previous month after considering input credit
20th	Payment of contribution under EPF & MP Act, 1952 (including 5 days of grace)
21st	Payment of contribution under Employees State Insurance Act, 1948
21st	Remittance of WCT TDS under the AP VAT Act
25th	Monthly Return of contribution under EPF & MP Act, 1952 in Form 12 A
25th	Monthly Return of Employees qualifying for the first time under EPF & MP Act, 1952 in Form 5
25th	Monthly return of Employees leaving organisation under EPF & MP Act, 1952 in Form 10
25th	Nomination forms to be submitted by New Joinees for the month under EPF & MP Act, 1952 in Form 2
30th	Notification of Vacancies under EE (CNV)Act, 1959
30th	Renewal of Registration under the AP Shops and Establishments Act
30th	Payment of Profession Tax for the employees

## INCOME TAX:

⦿ **Cost Inflation Index for FY 2012-13:**

Central Government has notified Cost Inflation index for the financial year 2012-2013 to be **852**. (Notification No. 38/2012 dated 17-09-2012)

⦿ **Income Tax Slab Rate for Financial year 2012-13 (AY- 2013-2014)**

Sr.No	Tax Rate	Resident Senior Citizen (Age 60-80yrs)	Resident Very Senior Citizen (Age above 80yrs)	Others
1	0%	Upto 2,50,000	Upto 5,00,000	Upto 2,00,000
2	10%	2,50,001 to 5,00,000	-	2,00,001 to 5,00,000
3	20%	5,00,001 to 10,00,000	5,00,001 to 10,00,000	5,00,001 to 10,00,000
4	30%	Above 10,00,000	Above 10,00,000	Above 10,00,000

**Note:**

- **Surcharge on Income tax:** There will be no surcharge on income tax payments by individual taxpayers from FY 2011-12 (AY 2012-13).
- **Education Cess on Income tax:** The amount of income-tax shall be increased by Education Cess on Income Tax at the rate of **two percent** of the income-tax.
- **Secondary and Higher Education Cess on Income-tax:** From Financial Year 2007-08 onwards, an additional surcharge

is chargeable at the rate of **one percent** of income-tax.

- Education Cess, and Secondary and Higher Education Cess are payable by both resident and non-resident assesseees.
- **Corporate Tax** will be 30% and cess at the rate of three percent of the income-tax is payable. Thus effective rate of tax is **30.9 percent**. Surcharge will be applicable only if net income of the company exceeds one crore in the financial year.

**SUMMARY OF IMPORTANT JUDGEMENTS:**

<b>Sr. No</b>	<b>Tribunal/ Court</b>	<b>Area/ Section covered</b>	<b>Nature</b>	<b>Case Law</b>
<b>1</b>	Tribunal	Income tax-32	Additional depreciation is a statutory allowance & can't be limited to 50% by condition of usage of asset for 180 days.	DCIT v/s Cosmo Films Ltd. [2012] 24 taxmann.com 189
<b>2</b>	Tribunal	Income tax-269SS	Where assessee could prove genuineness of obtaining cash loan of Rs. 20,000 or more and no involvement of unaccounted or black money was traceable, penalty under section 271D could not be levied for violation of section 269SS.	DCIT v/s Akhilesh Kumar Yadav [2012] 26 taxmann.com 264
<b>3</b>	CESTAT	Service tax	Service tax paid on maintenance of garden in factory eligible for input service credit.	BASF India Ltd. v/s Commissioner of Central Excise, Mangalore
<b>4</b>	High court	Income tax-43B	Deposit of bonus payable into an earmarked bank account isn't enough compliance of section 43B.	Thanjavur textiles Ltd. v/s JCIT [2012] 25 taxmann.com 544
<b>5</b>	Tribunal	Income tax-271(1)(c)	Ignorance of law is no excuse, but ignorance of Indian laws by Non Resident is valid excuse to grant immunity from Penalty.	Emilio Ruiz Berdejo v/s DCIT [2012] 26 taxmann.com 24
<b>6</b>	Supreme Court	Income tax-271(1)(c)	'Silly mistakes' by an expert not a valid ground to levy penalty; SC drops concealment penalty against PWC.	Price Water House Coopers Pvt. Ltd. v/s CIT [2012] 25 taxmann.com 400 (SC)

**1. Additional depreciation is a statutory allowance & can't be limited to 50% by condition of usage of asset for 180 days.**

*DCIT vs Cosmo Films Ltd. [2012] 24 taxmann.com 189 (Delhi - Trib.)*

During preceding assessment year, the assessee bought some assets on which it was eligible for additional depreciation. However, it claimed only 50 per cent of additional depreciation in the preceding assessment year because assets were put to use in second half of the year. Accordingly, the balance additional depreciation was claimed by the assessee in succeeding assessment year, i.e., instant assessment year. The Assessing Officer (AO) denied the claim of assessee and made addition accordingly. On appeal, the CIT(A) confirmed the action of AO.

**On appeal, the Tribunal held in favour of assessee as under:**

1) There is no such restriction that balance of one time incentive in the form of additional sum of depreciation shall not be available in the subsequent year; and

2) The assessee is entitled to the benefit of additional depreciation as soon as he purchases the new eligible assets.

Therefore, the unclaimed additional depreciation in the preceding year was allowed in instant assessment year.

**2. MP's couldn't be said to be ignorant of law still no penalty levied on Akhilesh Yadav for violation of Sec. 269SS**

*DCIT vs Akhilesh Kumar Yadav [2012] 26 taxmann.com 264 (Agra - Trib.)*

For the relevant assessment year, assessee had taken a loan from Samajwadi Party for conversion of leasehold land into free hold land, in contravention of provisions of sec.269SS. Subsequently, AO imposed a penalty on the assessee under Sec. 271D for violation of section 269SS. CIT(A), however, deleted the penalty. The Revenue went in appeal against cancellation of penalty.

**Dismissing revenue's appeal, the Tribunal held in favour of assessee as under:**

1) The Hon'ble members of Parliament are makers of laws and couldn't be said to be ignorant of law. Further, the assessee later on became Chief Minister of the State of Uttar Pradesh, therefore, the contention of AR that assessee was of immature age and ignorant of law was of no relevance;

2) Sec. 269SS did not prohibit taking of loan in cash from political party or otherwise, therefore, the authorization to give loan to assessee in Samajwadi Party's Constitution would not be relevant criteria to decide the issue;

3) A perusal of Circular 387 of 1984 reveals that section 269SS was introduced to counter devices adopted by the tax evaders for explaining the

unaccounted cash found during search operations or for introducing their unaccounted income in the form of loans and deposits;

4) However, the AO had not made out any case that it was an unaccounted or black money used by the assessee. Since the cash transaction was confirmed by the Samajwadi Party and also not disputed by the AO, it was clear that no unaccounted income had been brought into books of assessee or his bank account;

5) It is well settled law that penalty is not automatic in each and every case and it depends upon the facts and circumstances of each case.

Hence, the assessee's case was not a fit case for levy of penalty and the CIT (A), therefore, rightly deleted the penalty.

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### **3. Service tax paid on maintenance of garden in a factory eligible for input service credit**

*BASF India Ltd. vs Commissioner of Central Excise, Mangalore*

The appellant had entered a contract with a party, where the latter was responsible for watering of the lawns, planting & pruning of trees, etc

The Service Tax paid by him on these services was claimed as Input services.

**On appeal, the CESTAT held in favour of appellant as under:**

1) Landscaping of factory or garden certainly would fall within the concept of modernization, renovation, repair, etc. of the office premises.

2) The credit rating of an industry is depended upon how the factory is maintained inside and outside the premises.

3) The Environmental law expects the employer to keep the factory without contravening any of those laws.

4) The concept of corporate social responsibility is also relevant.

5) It is to discharge a statutory obligation, when the employer spends money to maintain their factory premises in an eco-friendly, manner, certainly, the tax paid on such services would form part of the costs of the final products. The service tax paid in all these cases would fall within the input services and the assessee is entitled to the benefit thereof.

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### **4. Deposit of bonus payable into an earmarked bank account isn't enough compliance of Section 43B**

*Thanjavur Textiles Ltd. vs JCIT [2012] 25 taxmann.com 544 (MADRAS)*

In respect of the relevant assessment year, there was a dispute between management and employees as regards the percentage of bonus payable to them. Consequent to the conciliation talk, the assessee deposited the admitted percentage of bonus in a separate bank account called 'Thanjavur

Textiles Employees' Bonus Account'. The Assessing Authority opined that as per the provisions of Section 43B of the Income Tax Act, payment of bonus would be an admissible deduction if it was paid before the due date of filing the return. Therefore, mere depositing the amount in an earmarked bank account would not entitle the assessee for deduction.

**On appeal, the High Court held in favour of revenue as under:**

- 1) Requirement of section 43B is an actual payment and not deemed payment;
- 2) Even creating an irrevocable trust would not satisfy requirement of law; and
- 3) Thus, mere fact that assessee had quantified bonus payments and deposited the same in a separate account; it would not mean that the requirement of section 43B as to actual payment stood satisfied.

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**5. Ignorance of law is no excuse, but ignorance of Indian laws by Non Resident is valid excuse to grant immunity from penalty**

*Emilio Ruiz Berdejo vs DCIT [2012] 26 taxmann.com 24 (Pune - Trib.)*

The assessee was an employee of 'T' International S.A. He was deputed to India for working with 'T' India Ltd. During the course of such deputation, the assessee was in employment with

both the companies. The salary received by him from 'T' International S.A., was not disclosed in the return filed by him. In response to notice issued under section 148, assessee filed a revised return declaring such income. On completion of assessment, the AO levied concealment penalty under Section 271(1) (c).

**On appeal, the Tribunal held in favour of assessee as under:**

- 1) Penalty is not an automatic consequence of addition to income; penalty under section 271(1)(c) can come into play only when the conditions laid down under that section are satisfied;
- 2) Penalty is not leviable in case where assessee is able to provide a 'bona fide' explanation; and penalty is not leviable in cases where assessee made errors, under bona fide beliefs. Thus it was held that mistake committed by assessee could be regarded as inadvertent due to ignorance of Indian income-tax law and, thus, impugned penalty order had to be set aside.

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**6. 'Silly mistakes' by an expert not a valid ground to levy penalty; SC drops concealment penalty against PWC**

*Price Water House Coopers Pvt. Ltd. vs CIT [2012] 25 taxmann.com 400 (SC)*

The assessee-company is a management consultant with worldwide reputation.

Assessee had claimed deduction for provision of gratuity in ITR even though tax audit report stated that it was not allowable. AO overlooked the comments in tax audit report and completed assessment under Sec. 143(3) without disallowing the said provision. Subsequently, to disallow the amount of provision a notice was issued under Sec. 148 to reopen the assessment. On realization of mistake, the assessee contented that this was a genuine mistake which was also overlooked by AO before whom the tax audit report was placed. Accordingly, assessee filed a revised return and paid taxes with interest. Despite this, AO imposed penalty of 300% under Sec. 271(1) (c). Assessee's appeal against the penalty to CIT (A) was dismissed. On further appeal Tribunal reduced the penalty to 100%. On further appeal, the Calcutta High Court upheld ITAT's order just because assessee is a well-known and reputed tax consultant.

**On appeal, the Supreme Court held in favour assessee of as under:**

- 1) The assessee could make a 'silly mistake' albeit it was a reputed Chartered Accountant and have great expertise;
- 2) The fact that it was stated in tax audit report that the provision for payment was not allowable indicates that the assessee had made a computation error in its return of income;
- 3) The contents of the tax audit report suggested that there was no question of the assessee furnishing any inaccurate particulars. It appeared that the all was

happened through bona fide and inadvertent error;

4) This can only be described as a human error which we are all prone to make; and

5) The absence of due care in filing ITR does not mean that the assessee is guilty of either furnishing inaccurate particulars or attempting to conceal its income.

Therefore, it was held that as per the peculiar facts of the instant case, imposition of penalty on assessee was not justified.

## SERVICE TAX:

### ⦿ Reverse Charge Mechanism

With effect from 1st July, 2012, as notified by Notification No. 30/2012-Service Tax dated 20th June, 2012 the Central Government extends the ambit of service tax to be borne by Service recipient which are as follows:

- Services provided by individual or a firm of advocates or arbitral tribunal to any business entity located in the taxable territory.
- Support Services by Government or local authorities excluding, renting of immovable property and services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994 to any business entity located in the taxable territory.
- Renting or hiring of any Motor Vehicle, Supply of Manpower or security services (Notification No.46/2012-Service Tax dated 7th August, 2012), Works Contract Service by any individual, HUF, firm (Including AOP) to a business entity registered as a body corporate both being located in a taxable territory.
- Service provider located in Non Taxable Territory and Service Recipient located in Taxable Territory.
- Services by a director of a company to the said company as notified by Notification No. 45/2012-Service Tax dated 7th August, 2012.

In case of Reverse charge mechanism, Point of Taxation is **Date of payment** to service provider

### ⦿ Notification No. 47/2012-SERVICE TAX dated 28th September, 2012

In the Service Tax Rules, 1994 rule 7(2) has been amended and it states that the return to be submitted in **Form ST-3** by 25th October, 2012 shall cover the **period between 1st April to 30th June, 2012** only.

### ⦿ Order No: 3/2012 dated 15th October, 2012

The Central Board of Excise & Customs (CBEC) **extended the date of submission of the return** for the period 1st April 2012 to 30th June 2012, from 25th October, 2012 to 25th **November, 2012**.

### ⦿ Penalty For Late Filing Of Return

Penalty under section 70(1) is as given below:

Day wise default criteria	Penalty Amount (Rs.)
< 15 days	500 Rs. per day
> 15 days but < 30 days	1000 Rs. per day
> 30 days	1000 Rs. fix plus Rs. 100 per day or Rs. 20,000/- maximum

Note: From the current year, the return needs to be filed **quarterly** to bring in line with GST. Thus the maximum penalty payable by an assessee is now **Rs.80,000/-** (this can be waived in case of bonafide reasons for non-filing of NIL returns by the Superintendent).

## ⦿ Time Limit for issue of Invoice:

The time limit provided under rule 4A(1) to issue invoice/bill/challan is increased from 14 days to **30days** from the date of completion of provision of service or receipt of payment, whichever is earlier w.e.f 1<sup>st</sup> April, 2012. For service providers providing banking and financial services, the said time limit is extended to 45 days.

## ⦿ Levy of Service Tax on Railway Passengers Travelling from 1st October 2012 :

- No Service Tax to be levied on Tickets issued prior to 1st October, 2012.
- In case of cancellation of tickets issued on or after 1st October 2012, the applicable amount including Service Tax to be refunded by railways.
- In compliance of the provisions contained in Finance Bill 2012 and subsequent notifications issued by Ministry of Finance, the Service Tax in case of railway travel will be levied on the fare of passenger services in the following classes from tomorrow i.e. **1<sup>st</sup> October 2012:-**

(i) AC First Class,

- (ii) Executive Class,
- (iii) AC-2 tier Class,
- (iv) AC-3 tier class,
- (v) AC Chair Car class,
- (vi) AC Economy class and
- (vii) First Class.

Since an **abatement of 70%** has been permitted on passenger services by Ministry of Finance, the Service Tax will be charged on 30% of total fare including reservation charge, development charge, superfast surcharge which would be calculated as follows:-

1. Service Tax of 12% will be charged on 30% of fare (equivalent to 3.6% on the total fare)
2. Education Cess of 2% on Service Tax will be added (equivalent to 0.072% on total fare) and
3. Higher Education Cess of 1% on Service Tax will also be added (equivalent to 0.036% on total fare)
4. Total Service Tax implication will be (i) + (ii) + (iii) = **3.708% on the total fare.**

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*This communication is intended to provide a general information, guidance on various professional subject matter and should not be regarded as a basis for taking decisions on specific matters. In such instances, separate advice should be taken.*