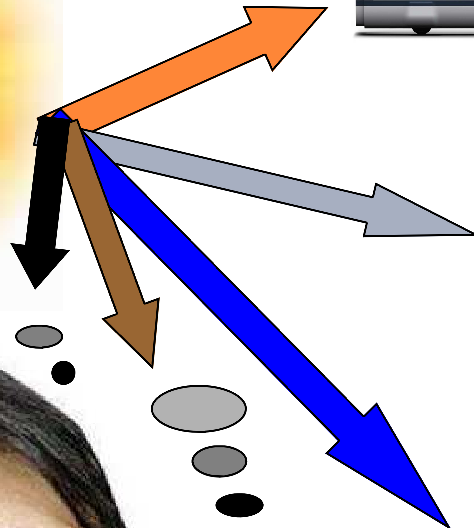
Connection

Volume III | Issue 11 | February 2015



Innovation almost always is not successful the first time out. You try something and it doesn't work and it takes confidence to say we haven't failed yet.... Ultimately you become commercially successful.

~ Clayton Christensen

Lalit Bajaj & Associates
Chartered Accountants

LBA
INNOVATE CREATE LEAD

LALIT BAJAJ & ASSOCIATES

JUST TO REMIND YOU:

- **Feb 15 - Payment of PF for January**
- **Feb 21 - Payment of ESI of January**
- **Feb 21 - Payment of MVAT & WCT TDS for January**
- **Feb 28 - Payment & Monthly Return of Maharashtra PT**

INSIDE THIS ISSUE:

Other Updates
- NFRA 2
- IFRS 4
- RBI Update 8

Direct Tax
- Case Laws 5

Indirect Tax
- Case Law 8

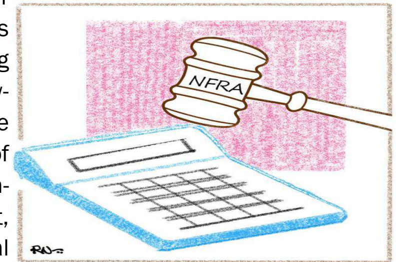
National Financial Reporting Authority

The concept of having a body such as National Financial Reporting Authority is not new as such. The Institute of Chartered Accountants of India already has many of these powers. In the Companies (Amendment) Act, 1999, new sub-sections (3A), (3B) and (3C) were inserted in section 211, which required that the every balance sheet and profit & loss account of the Company shall comply with the accounting standards, as may be prescribed by the Central Government in consultation with the National Advisory Committee on Accounting Standards (NACAS). Therefore, section 210A was enacted to constitute an Advisory Committee to be called "National Advisory Committee on Accounting Standards" to advise the Central Government on the formulation and lying down of accounting policies and accounting standards for adoption by companies or class of companies under this Act.

In Companies Act, 2013, the nomenclature of National Advisory Committee on Accounting Standards (NACAS) has been changed as National Financial Reporting Authority (NFRA) and unlike NACAS it will not merely be an advisory body but a regulatory authority for auditing, accounting and financial reporting. The role of the Authority has been extended to advice on matters related to Auditing Standards in addition to Accounting Standards and also to act as a regulatory body for accountancy profession.

Introduction

Through Section 132 of the Companies Act, 2013, the Central Government has introduced a new regulatory authority named as National Authority for Financial Reporting known as National Financial Reporting Authority (NFRA) with wide powers to recommended, enforce and monitor the compliance of accounting and auditing standards. The Companies Act, 1956 empowers the Central Government to form a Committee for recommendations on Accounting Standards which is National Advisory Committee on Accounting Standards (NACAS). This is now being renamed with enhanced powers and authority as National Financial Reporting Authority (NFRA). NFRA shall be responsible for monitoring and enforcing compliance of auditing and accounting standards and for that purpose, oversee the quality of professions associated with ensuring such compliances. The Authority shall investigate professional and other misconducts which may be committed by Chartered Accountancy members and firms. There is also a provision for appellate authority. The National Financial Reporting Authority shall be a quasi – judicial body to regulate matters related to accounting and auditing. With increasing demand of non – financial reporting, it may be referred to as a National level business Reporting Authority to regulate standards of all kind of reporting-financial as well as non – financial, by the companies in future. The Authority will also change the way of notifying of Accounting and Auditing Standards as is evident from provisions of Clauses 133 and 143 of the Companies Act, 2013.



Structure of NFRA

- Central Government will appoint maximum 15 members excluding the Chairman. Members can be whole time or part time. Chairperson should possess expertise in accounting, auditing, finance or law.
- The CG can also appoint a secretary and other employees for efficient performance of the functions of NFRA.
- Members and chairperson who are in full time employment should not to be associated with any audit firm including any related consultancy firm during their tenure and 2 years after ceasing to be a member of NFRA. They are also required to make a declaration to CG regarding no conflict of interest or lack of independence.
- The head office of the NFRA will be at Delhi but they may meet at such other place as it deems fit.

"NFRA is an important step to build up a transparent mechanism for accounting, auditing and financial reporting."

- The CG will lay down the manner in which NFRA shall meet places at which they will meet rules and procedures which they will follow for transactions.
- Form and manner to maintain books of accounts and other books in relation to accounts will be prescribed by CG in consultation with C&AG of India.
- Audit of the accounts of NFRA will be performed by C&AG and report will be forwarded to CG.
- NFRA shall prepare and forward an annual report as certified by C&AG giving its full activities to the CG which will be laid before each house of the Parliament.

Duties of NFRA

- **Compliance:** To oversee compliance of accounting and auditing standards.
- **Recommendation:** To provide recommendation to the central government regarding formulation and laying down of accounting and auditing standards.
- **Quality of service:** To oversee the quality in service of professionals in preparation of financial statements.
- **Monitor:** To ensuring proper compliances with the standards, Professional misconduct of chartered accountants as defined in sec 22 of chartered accountant act, 1949.

Powers of NFRA

- **Investigation:**

  a. Matters of professional or other misconduct.

  b. If investigation already launched by NFRA, no simultaneous proceeding will be launched by any other body.
- **Civil Court Powers:**

  a. Discovery and production of books, inspection of books and registers

  b. Summoning and enforcing attendance of persons, issuing commissions for examination

Punishment

- **Penalty:**

  a. In case of individuals, minimum Rs. 1, 00,000 and minimum 6 months and maximum 10 years.

  b. In case of firms, minimum Rs. 10, 00,000 and maximum 10 times of fees received.
- **Debarring:**

  Debarring the firm of CA or individual CA from practice for minimum 6 months and maximum 10 years.

Appeals

- The Central Government may by notification appoint an Appellate Authority consisting of a chairman and 2 other members for hearing the appeals for the person aggrieved from the orders of NFRA.
- The CG also prescribes the qualification, terms and condition of service, manner of selection of the Chairman and members of appellate authority.
- The fees for hiring appeals will also be prescribed by the CG.
- The officer authorized by appellate authority shall prepare and forward an annual report giving its full activities to the CG which will be laid before each house of parliament.

Conclusion

The introduction of NFRA is an important step to build up a transparent mechanism for accounting, auditing and financial reporting. Unlike NACAS, NFRA will not be just being an advisory body; instead it has been empowered to regulate accounting standards and auditing policies along with powers to investigate certain matters related to professional misconduct by chartered accountants in corporate bodies. Therefore, it has a huge role to play in the field of financial reporting for effective corporate governance.

Convergence with IFRS

IFRS is a set of international accounting standards stating how particular types of transactions and other events should be reported in financial statements. IFRS are issued by the International Accounting Standards Board.

IFRS are sometimes confused with International Accounting Standards (IAS), which are the older standards that IFRS replaced. (IAS were issued from 1973 to 2000.)

Why did IFRS take so much time to get implemented? (Need for IFRS)

The goal with IFRS is to make international comparisons as easy as possible. This is difficult because, to a large extent, each country has its own set of rules. For example, U.S. GAAP are different from Canadian GAAP. Synchronizing accounting standards across the globe is an ongoing process in the international accounting community.

Different Countries employ different Accounting Standards while computing the Profits of a Company. It may happen that if the Profits are computed as per US Accounting Laws the Profits are $ 100 Billion but when the same Profits are computed using the UK Accounting Laws, the Profits may turn out to be say $ 50 Billion and when computed as per the Indian Accounting Laws, it may turn out to be $200 Billion (Hypothetical Figures). Profits computed as per different accounting laws of different countries always yield different figures. So as to remove this discrepancy in Accounting across the Globe, Countries world over decided to apply uniform standards of accounting so as to arrive at uniform profits across the Globe.

IFRS & its applicability in India

IFRS refers to International Financial Reporting Standards which are applied while preparing the Balance Sheet and other Profitability Statements of a Company and are developed by the IASB. These have already been applied in more than a 100 Countries and would soon be used across the Globe.

Arun Jaitley while announcing the Budget 2014 announced that there is an urgent need to converge the current Indian Accounting Standards with the International Financial Reporting Standards (IFRS). He also announced that Ind AS (i.e. Indian standards converged with IFRS) can be adopted by Indian Companies from the Financial Year 2015--16 voluntarily and from FY 2016--17 on a mandatory basis.

Based on the International Consensus, the regulators will separately notify the date of implementation of Ind AS for Banks, Insurance Companies etc. Standards for the computation of tax would also be notified separately.

Structure of IFRS

IFRS are principal based set of standards in the sense that they establish broad rules as well as dictating specific treatments. IFRS comprise of the following:-

- International Financial Reporting Standards (IFRS) issued after 2001
- International Accounting Standards (IAS) issued before 2001
- Standards Interpretation Committee (SIC) – issued before 2001.
- Conceptual Framework for Financial Reporting (2010)

Benefits of IFRS

There are many benefits of implementing the International Financial Reporting Standards which can be broadly divided into 3 main parts –

Economy, Investors and the Industry.

- **Benefits to the Economy:** As the market expands globally, the need for a global standard is also increasing. Implementation of the International Financial Reporting Standards will benefit the economy by increasing the growth of its International Business. It facilitates the maintenance of orderly and efficient capital markets and also helps to increase the capital formation and thereby economic growth.
- **Benefits to the Investors:** Investors who are willing to invest abroad want information which is more relevant, reliable, timely and comparable across various jurisdictions. Financial statements prepared using a common set of accounting standards help investors better understand the investment opportunities as opposed to financial statements prepared using a different set of national accounting standards. For better understand-

"Goal of IFRS is make international comparisons as easy as possible"

ing of financial statements, global investors have to incur more costs in terms of the time and efforts to convert the financial statements so that they can confidently compare opportunities. Investor's confidence would be strong if the accounting standards used are globally accepted. Convergence with IFRS contributes to investors understanding and confidence in high quality financial statements.

- **Benefits to the Industry:**

A major push towards implementation of the International Financial Reporting Standards has been coming from the Industry. The reason for the same is that the Industry would be able to raise capital from foreign markets at a lower cost if it can create confidence in the minds of the foreign investor that their financial statements comply with globally accepted accounting standards. With diversity in accounting standards from country to country, enterprises which operate in different countries face a multitude of accounting requirements prevailing in different countries. The burden of financial reporting is lessened with convergence of accounting standards because it simplifies the process of preparing the individual and group financial statements and thereby reduces the cost of preparing the financial statements.

Chargeability of Interest u/s 234A

Interest under Section 234A of the Income-tax Act, 1961 (hereinafter the Act) is charged in case of default in furnishing return of income by an assessee. The interest is charged at the specified rate on the amount of tax payable on the total income, as reduced by the amount of advance tax, TDS/TCS, any relief of tax allowed under section 90 and section 90A, any deduction allowed under section 91 and any tax credit allowed in accordance with the provisions of section 115JAA and section 115JD of the Act. Since self-assessment tax is not mentioned as a component of tax to be reduced from the amount on which interest under section 234A of the Act is chargeable, interest is being charged on the amount of self-assessment tax paid by the assessee even before the due date of filing of return.

It has been held by the Hon'ble Supreme Court in the case of **CIT vs Prannoy Roy, 309 ITR 231 (2009)** that the interest under section 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 of the income-tax return for the relevant assessment year. Accordingly, the present practice of charging interest under section 234A of the Act on self-assessment tax paid before the due date of filing return was reviewed by CBDT.

The Board has decided that no interest under section 234A of the Act is chargeable on the amount of self-assessment tax paid by the assessee before the due date of filing of return of income.

This Circular may be brought to the notice of all officers for compliance.

Fine u/s 234E is Constitutionally Valid - Bombay HC

Rashmikant Kundalia vs. UOI (Bombay High Court), WRIT PETITION NO.771 OF 2014, Pronounced On : 09th February, 2015

FACTS OF THE CASE

Petitioners have challenged the constitutional validity of section 234E of the Income Tax Act, 1961. Section 234E seeks to levy a fee of Rs.200/- per day (subject to certain other conditions as set out therein) inter alia on a person who deducts Tax at Source (TDS) and then fails to deliver or cause to be delivered the TDS return/ statements to the authorities within the prescribed period.

Petitioner No.1 is a practicing Chartered Accountant who has received several notices under section 200A of the Act that were served by the Revenue on his various clients. According to the Petitioners, section 234E is ultra vires and violative of Article 14 of the Constitution of India and therefore deserves to be struck down by this Court. Consequently, even the notices issued by the Revenue ought to be set aside.

HELD BY HIGH COURT

On a perusal of sub-section (1) of section 234E, it is clear that a fee is sought to be levied inter alia on a person who fails to deliver or cause to be delivered the TDS return/statements within the prescribed time in sub-section (3) of section 200. The fee prescribed is Rs.200/- for every day during which the failure continues. Sub-section (2) further stipulates that the amount of fee referred to in sub-section (1) shall not exceed the amount of tax deductible or collectible as the case may be.

It is not in dispute that as per the existing provisions, a person responsible for deduction of tax (the deductor) is required to furnish periodical quarterly statements containing the details of deduction of tax made during the quarter, by the prescribed due date. Undoubtedly, delay in furnishing of TDS return/statements has a cascading effect. Under the Income Tax Act, there is an obligation on the Income Tax Department to process the income tax returns within the specified period from the date of filing. The Department cannot accurately process the return on whose behalf tax has been deducted (the deductee) until information of such deductions is furnished by the deductor within the prescribed time. The timely processing of returns is the bedrock of an efficient tax administration system. If the income tax returns, especially having refund claims, are not processed in a timely manner, then (i) a delay occurs in the granting of credit of TDS to the person on whose behalf tax is deducted (the deductee) and consequently leads to delay in issuing refunds to the deductee, or raising of infructuous demands against the deductee; (ii) the confidence of a general taxpayer on the tax administration is eroded; (iii) the late payment of refund affects the Government financially as the Government has to pay interest for delay in granting the refunds; and (iv) the delay in receipt of refunds results into a cash flow crunch, especially for business entities.

We find that the Legislature took note of the fact that a substantial number of deductors were not furnishing their TDS retun/ statements within the prescribed time frame which was absolutely essential. This led to an additional work burden upon the Department due to the fault of the deductor by not furnishing the information in time and which he was statutorily bound to furnish. It is in this light, and to compensate for the additional work burden forced upon the Department, that a fee was sought to be levied under section 234E of the Act. Looking at this from this perspective, we are clearly of the view that section 234E of the Act is not punitive in nature but a fee which is a fixed charge for the extra service which the Department has to provide due to the late filing of the TDS statements.

As stated earlier, due to late submission of TDS statements means the Department is burdened with extra work which is otherwise not required if the TDS statements were furnished within the prescribed time. This fee is for the payment of the additional burden forced upon the Department. A person deducting the tax (the deductor), is allowed to file his TDS statement beyond the prescribed time provided he pays the fee as prescribed unde section 234E of the Act. In other words, the late filing of the TDS return/ statements is regularised upon payment of the fee as set out in section 234E. This is nothing but a privilege and a special service to the deductor allowing him to file the TDS return/ statements beyond the time prescribed by the Act and/or the Rules. We therefore cannot agree with the argument of the Petitioners that the fee

that is sought to be collected under section 234E of the Act is really nothing but a collection in the guise of a tax.

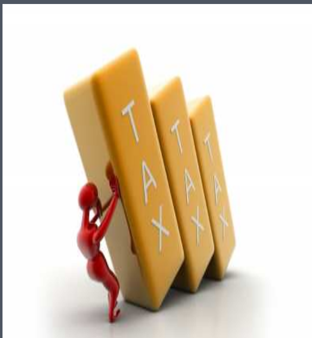
We are therefore clearly of the view that the fee sought to be levied under section 234E of the Income Tax Act, 1961 is not in the guise of a tax that is sought to be levied on the deductor. We also do not find the provisions of section 234E as being onerous on the ground that the section does not empower the Assessing Officer to condone the delay in late filing of the TDS return/statements, or that no appeal is provided for from an arbitrary order passed under section 234E. It must be noted that a right of appeal is not a matter of right but is a creature of the statute, and if the Legislature deems it fit not to provide a remedy of appeal, so be it. Even in such a scenario it is not as if the aggrieved party is left remediless. Such aggrieved person can always approach this Court in its extra ordinary equitable jurisdiction under Article 226 / 227 of the Constitution of India, as the case may be. We therefore cannot agree with the argument of the Petitioners that simply because no remedy of appeal is provided for, the provisions of section 234E are onerous. Similarly, on the same parity of reasoning, we find the argument regarding condonation of delay also to be wholly without any merit.

Therefore even looking at it from the perspective as set out in the aforesaid judgment, we are of the clear view that Section 234E of the Income Tax Act, 1961 does not violate any provision of the Constitution and is therefore intra vires, Constitution of India.

No Penalty when Service Tax Paid before issue of SCN

CCE, Panchkula Vs. M/s. Krishna Cylinders [2015 (1) TMI 1197 – CESTAT NEW DELHI]

During the course of audit it was revealed that Krishna Cylinders (**Assessee**) has not paid Service tax during the period from April 1, 2006 to March 31, 2007 on outward Goods Transportation services. However, on being pointed out by the audit team, the Assessee paid the entire amount of Service tax along with applicable interest. Thereafter, a Show Cause Notice (**SCN**) was issued to the Assessee to appropriate the amount already paid by the Assessee and for imposition of penalties under Sections 76, 77 and 78 of the Finance Act, 1994 (**Finance Act**).



Thereafter, in the Adjudication proceedings, the amount already paid by the Assessee was appropriated against the demand of Service tax and interest and various penalties under Sections 76, 77 and 78 of the Finance Act were confirmed.

On appeal being filed to the Ld. Commissioner (Appeals), the penalties under Sections 76, 77 and 78 of the Finance Act were set aside by invoking Section 80 of the Finance Act. Being aggrieved, the Revenue preferred an appeal before the Hon'ble CESTAT, Delhi.

The Revenue submitted that in the present case, the demand has been confirmed and admitted by the Assessee for the extended period of limitation. Therefore, the Assessee cannot escape the penalties. It was further submitted when extended period of limitation has been invoked and liability has been admitted by the Assessee, benefit of Section 80 of the Finance Act cannot be granted. Furthermore, relying upon the decision in the case of ***Machino Montel (I) Ltd.[2006 (202) ELT 398 (P&H)]***, it was submitted that mere deposition of the duty demand before issuance of SCN cannot give the benefit to the Assessee for non-imposition of penalty.

The Hon'ble CESTAT,Delhi after discussing Section 73 (3) of the Finance Act held that as per the provisions of

Section 73(3) of the Finance Act, the SCN was not required to be issued when Service tax along with interest has been paid by the Assessee before issuance of SCN. Further, in SCN there were no specific allegations of non-payment by way of fraud, collusion, willful misstatement or suppression of material facts.

Accordingly, it was held that although the SCN was issued to the Assessee which was not required to be issued as per Section 73(3) of the Finance Act, no penalty could be imposed.

CBEC Iner-Office Memorandum

The Central Board of Excise and Customs (**the Board**) vide **Instruction F. No. 207/07/2014-CX-6 dated January 20, 2015** has issued an instruction in respect of issuance of summons in the Central Excise and Service tax matters wherein summons have been issued to the officials of the companies to enforce recovery of dues, which are under dispute.

The Board has emphasized that the summons need not to be issued always when a simple letter, politely worded, can also serve the purpose of securing documents relevant to investigation.

The Board has issued the following guidelines regarding summons matters:

- Summons should be issued by the Superintendents with the prior approval of the officer not below the rank of Assistant Commissioner with the reasons recorded in writing;
- Where for operational reasons, it is not possible to obtain such prior written, oral or telephonic permission may be obtained from such officer and the same should be reduced to writing and intimated to the officer at the earliest opportunity;
- The officer issuing summons should submit a report or should record a brief of the proceedings in the case file and submit the same to the officer who authorised the issue of summons.
- Senior management officials such as CEO, CFO, General Managers of a large company or a PSU should not generally be issued summons at the first instance unless there are indications of their involvement in the decision making process which led to loss of revenue.

"The Board has emphasized that summons need not be issued always."

RBI Notification on Entry of Banks into Insurance Business

With the objective of increasing insurance penetration using the entire network of bank branches, the Finance Minister in the budget speech 2013-14 announced that banks will be permitted to act as insurance brokers. Consequent to the announcement, IRDA formulated and notified the IRDA (Licensing of Banks as Insurance Brokers) Regulations, 2013 to enable banks to take up the business of insurance broking departmentally. Reserve Bank of India had also issued Draft Guidelines on Entry of Banks into Insurance Business- Insurance Broking Business on November 29, 2013 for public comments.

Taking into account the comments received from various stakeholders in response to the draft guidelines, the guidelines have now been finalized & On 15th January 2015, RBI has issued a notification DBR.No.FSD.BC.62/24.01.018/2014-15 regarding the Entry of Banks into Insurance Business. Earlier, Circular DBOD.No. FSC.BC.16/24.01.018/2000-2001 dated August 9, 2000 permitted banks to set up insurance joint ventures on risk participation basis and also to undertake insurance business as agents of insurance companies on fee basis, without any risk participation by banks and their subsidiaries, consequent to the notification

of Government of India specifying "Insurance" as a permissible form of business that could be undertaken by banks under Section 6(1)(o) of the Banking Regulation Act,1949. Subsequently, banks were also permitted to undertake referral activities vide RBI circular DBOD.No.FSC.BC.27/24.01.018/2003-04 dated September 22, 2003.

Accordingly, banks may undertake insurance business by setting up a subsidiary/joint venture, as well as undertake insurance broking/ insurance agency/ either departmentally or through a subsidiary subject to the conditions. However, it may be noted that if a bank or its group entities, including subsidiaries, undertake insurance distribution through either broking or corporate agency mode, the bank/other group entities would not be permitted to undertake insurance distribution activities, ie, only one entity in the group can undertake insurance distribution by either one of the two modes mentioned above.

"No Bank is presently eligible to conduct insurance referral business"

Banks setting up a subsidiary/JV for undertaking insurance business with risk participation

Banks are not allowed to undertake insurance business with risk participation departmentally and may do so only through a subsidiary/JV set up for the purpose. Banks which satisfy the eligibility criteria (as on March 31 of the previous year) given below may approach Reserve Bank of India to set up a subsidiary/joint venture company for undertaking insurance business with risk participation:

- The net worth of the bank should not be less than Rs.1000 crore;
- The CRAR of the bank should not be less than 10 per cent;
- The level of net non-performing assets should be not more than 3 percent.
- The bank should have made a net profit for the last three continuous years;
- The track record of the performance of the subsidiaries, if any, of the concerned bank should be satisfactory.

RBI approval would factor in regulatory and supervisory comfort on various aspects of the bank's functioning such as corporate governance, risk management, etc.

It may be noted that a subsidiary of a bank and another bank will not normally be allowed to contribute to the equity of the insurance company on risk participation basis.

It should be also be ensured that risks involved in insurance business do not get transferred to the bank and that the banking business does not get contaminated by any risks which may arise from insurance business. There should be an 'arms length' relationship between the bank and the insurance outfit.

Banks undertaking Insurance broking/corporate agency through a subsidiary/JV

Banks desirous of setting up a subsidiary for undertaking insurance broking/corporate agency and which satisfy the eligibility criteria (as on March 31 of the previous year) given below may approach Reserve Bank of India for approval to set up such subsidiary/JV:

The net worth of the bank should not be less than 500 crore after investing in the equity of such company;

Other conditions are same as in case of setting up a subsidiary/JV with Risk Participation as discussed above.

Banks undertaking corporate agency functions/broking functions departmentally

Banks need not obtain prior approval of the RBI to act as corporate agents on fee basis, without risk participation/ undertake insurance broking activities departmentally, subject to IRDA Regulations, and compliance with the other conditions.

Banks undertaking referral services

In terms of IRDA (Sharing of Database for Distribution of Insurance Products) Regulations 2010, no bank is presently eligible to conduct insurance referral business.

Congratulations

Lalit Bajaj & Associates

Office No.: 5, Barsana, Salasar Brij Bhoomi,
Near Maxus Mall, Bhayander (West),
Thane - 401101, Maharashtra, India

Phone: +91 - 22 - 28180400
+91 - 22 - 28040048
E-mail: admin@bajajit.com

Innovate Create Lead

CA Manoj Fadnis
President, ICAI

CA M. Devaraja Reddy
Vice-President, ICAI

Govt. revises excise duty on branded diesel

In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.12/2012-Central Excise, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i) *vide* G.S.R. 163(E), dated the 17th March, 2012, namely:—

In the said notification, in the Table, in serial number 71, against item (ii) of column (3), for the entry in column (4), the entry "14% + Rs. 5.00 per litre or Rs. 10.25 per litre, whichever is lower" shall be substituted.

Disclaimer:

This newsletter is prepared strictly for private circulation and personal use only. This newsletter is for general guidance on matters of interest only and does not constitute any professional advice from us. One should not act upon the information contained in this newsletter without obtaining specific professional advice. Further, no representation or warranty (expressed or implied) is given as to the accuracy or completeness of the information contained in this newsletter.