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HIGHLIGHTS IN THIS EDITION

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Executive Director
WTS India

Dear Reader,

Lok Sabha on May 6, 2015 had passed the much awaited Constitution (122nd Amendment) Bill, 2014 on Goods and Services Tax ("GST") with 2/3rd majority.

With no consenus in sight and the Modi Government facing a defeat in the Rajya Sabha, the long-pending GST Constitutional Amendment Bill was on Tuesday, May 12, 2015 referred to a Select Panel after the opposition insisted on its legislative scrutiny.

The Select Committee is scheduled to submit its report in the first week of the monsoon session of Parliament so that the Government can debate the GST Constitutional Amendment Bill and get it passed by the middle of this fiscal year.

The move may delay the roll out of GST from April 1, 2016. The only hope for the GST Constitutional Amendment Bill will now be in the monsoon session of Parliament in July as the Budget session ends in May.

In my opinion it is not very likely that the law will so quickly pass, other compromises are needed to get the votes for that substantial change in indirect taxation and the hopes for simplification and reforms are not so easy to be fulfilled- nowhere- also not in India.

Yours sincerly

Finance Bill, 2015 enacted

During consideration of the Finance Bill, 2015 by the Parliament (Lok Sabha), as presented by the Union Finance Minister on 28th February, 2015, few amendments were made to the proposals as originally made. The amended Finance Bill has now received the assent of the President of India on 14th May, 2015. The major amendments as proposed in the amended Bill, as passed by both the houses namely Lok Sabha and Rajya Sabha, with respect to taxes are as under:

Income-Tax

I. Definition of 'income' expanded | *Author: Jatinder Singh, New Delhi*

In respect of subsidy or grant or any incentive received from the government, the tax treatment i.e. whether it was a capital receipt not liable to income tax or a revenue receipt liable to tax was depending on the nature of such subsidy, grant or incentive and the purpose for which it was provided to the assessee.
It has now been proposed to consider any type of assistance from Central Government or State Government or any authority or body or agency in the form of a subsidy or grant or cash assistance or duty draw back or waiver or concession or reimbursement (by whatever name called) as 'income' taxable under the Income-tax Act, 1961 ("the Act"), irrespective of purpose of the subsidy or whether such amount is received in cash or in kind. However, the subsidy or grant or reimbursements which as per provisions of the Act are to be reduced from the 'Actual Cost' of the depreciable capital assets, shall not be considered as 'income'.

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II. Period of holding and cost of acquisition of shares acquired by a non resident on redemption of Global Depository Receipts ("GDR") | *Author: Jatinder Singh, New Delhi*

It is proposed to insert a new clause to provide that where the shares are acquired by a non resident on redemption of GDR held by such non-resident, the period of holding for such shares shall be reckoned from the date on which request for such redemption was made. It is also proposed that cost of acquisition of such shares shall be the price of such shares prevailing on any recognized stock exchange on the date on which a request for such redemption was made.

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III. Place of Effective Management ("POEM") in the case of a company | *Author: Jatinder Singh, New Delhi*

The Finance Bill, 2015 proposed to substitute the criteria for considering a company as 'resident in India'. As per the proposal as initially made, a foreign company could become resident in India, if it had 'place of effective management' in India 'at any time' during the year.
Based on concerns expressed and in order to avoid disputes and unnecessary litigation, it is now proposed to omit the term 'at any time' from the amendment as proposed by the Finance Bill, 2015.

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IV. Eligible Investment Fund | *Author: Jatinder Singh, New Delhi*

The Finance Bill, 2015 inserted a new section 9A providing for a tax treatment in the case of Eligible Investment Fund, wherein it was provided that the activities of the Eligible Investment Fund shall not constitute a business connection in India if it satisfies certain conditions as specified therein.
It is now proposed to relax the following 3 conditions in the case of an investment fund set up by the Government or the Central Bank of a foreign state or a Sovereign fund or such other fund as may be

notified by the Central Government:
i) the fund has a minimum of twenty-five members who are, directly or indirectly, not connected persons;
ii) any member of the fund along with connected persons shall not have any participation interest, directly or indirectly, in the fund exceeding ten per cent.;
iii) the aggregate participation interest, directly or indirectly, of ten or less members along with their connected persons in the fund, shall be less than fifty per cent.;

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V. Investment in new plant or machinery in notified backward areas | *Author: Jatinder Singh, New Delhi*

A new section 32AD was inserted to provide for additional deduction in respect of new asset to an undertaking or enterprise set up for manufacture or production of any article or thing on or after 01/04/2015 in any backward area notified by the Central Government in this behalf, in the State of Andhra Pradesh or in the State of Telengana. It is now proposed to extend the provisions of this section to the undertaking or enterprise set up in the State of Bihar and West Bengal also.
Similarly, the benefit in respect of grant of additional depreciation, over and above the normal amount as permissible to other assessees, has also been allowed to the State of Bihar and West Bengal alongwith the State of Andhra Pradesh and the State of Telengana.

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VI. Interest paid for acquisition of capital assets not allowed as deduction | *Author: Jatinder Singh, New Delhi*

As per the provisions of section 36(1)(iii), any interest paid for extension of existing business or profession was not allowed as revenue expenditure for the period beginning from the date on which the capital was borrowed for acquisition of capital asset till the date on which such asset was first put to use.
It is proposed to delete the reference to 'interest paid for extension of existing business or profession'. Accordingly, interest paid shall not be allowed as revenue expenditure if the capital is borrowed for acquisition of capital asset, whether for 'extension' of existing business or profession or otherwise.

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VII. Deduction for bad debts | *Author: Jatinder Singh, New Delhi*

Under the provision of section 36(1)(vii), the deduction for bad debts was allowed on the condition that such debt is written off as irrecoverable in the accounts of the assessee for the said year.
It is now provided that if an amount has been included as income on the basis of Income Computation and Disclosure Standards, which however is not provided in the Books of Accounts, and such amount has become irrecoverable, then deduction shall be allowed for bad debt even though the same is not recorded in the books of accounts.

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VIII. Minimum Alternate Tax ("MAT") | *Author: Jatinder Singh, New Delhi*

The Finance Bill, 2015 had proposed to exempt Foreign Institutional Investors (FIIs) from the provisions of MAT in respect of capital gains arising on transactions in securities (other than short term capital gains arising on transactions on which Securities Transaction Tax is not chargeable). However, such benefit was limited to capital gains income only. Further, in respect of foreign companies, no such provision was proposed.

It is now proposed that in the case of a foreign company, the following incomes and corresponding expenditure will be excluded from MAT:
a) capital gains arising on transactions in securities
b) interest, royalty or fees for technical services

if such income is credited to the profit and loss account and the income-tax payable thereon under the normal provisions of the Act is less than 18.5%.

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IX. Amendment in Section 139 regarding filing of return of income by certain persons | *Author: Jatinder Singh, New Delhi*

The Finance Bill, 2015 had proposed The Finance Act, 2012 made an amendment to section 139, which requires any person (Resident and Ordinarily Resident) who has any asset (including any financial interest in any entity) located outside India or any signing authority in any account located outside India, to furnish return of income, whether or not it was otherwise liable to furnish return of income.
It is now proposed to extend such provisions to a person who holds such assets/signing authority outside India, whether as a 'beneficial owner or otherwise', 'at any time' during the year or is a 'beneficiary' of any assets (including financial interest in any entity) located outside India 'at any time' during the year. The terms 'beneficial owner' and 'beneficiary' have also been defined.

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Service Tax | *Author: Shashank Goel, New Delhi*

The penalty provisions contained under section 76 and section 78 were proposed to be substituted by the Finance Bill, 2015. It was proposed that:
a) Where service tax and interest is paid within 30 days of the date of service of notice under section 73(1), no penalty shall be payable under section 76.
b) Similarly, where service tax and interest is paid within 30 days of the date of service of notice under the proviso to section 73(1), penalty under section 78 shall be 15% of such service tax.

It has now been provided that:

a) In case payment is made as per (a) above pursuant to notice under section 73(1), the proceedings in respect of such service tax and interest shall be deemed to have been concluded.
b) In case payment is made as per (b) above pursuant to notice under the proviso to section 73(1), the proceedings in respect of such service tax, interest and penalty shall be deemed to have been concluded.

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TAX DIRECT TAX
Recent Decisions

I. Provision for inventory obsolescence made, though not reduced from value of inventory, is an allowable deduction | *Author: Jatinder Singh, New Delhi*

In a recent judgment in the case of IBM India Ltd. [2015] 55 taxmann.com 515, the Karnataka High Court (HC), held that the provision for obsolescence made for inventory, in compliance with AS-2, is an allowable deduction, as accounting treatment and presentation in financial statements of transactions should be covered by a substance and not merely by legal form .
The Appellant was engaged in the business of manufacture and trading of computer hardware. The Appellant had filed his return of income for the assessment year 2001-02 wherein it had debited to Profit and Loss Account of a sum of Rs.5,79,77,000/- under the head "Provision for obsolescence in inventory". The Assessing Officer rejected the claim on the ground that the provision for obsolescence in inventory was a contingent claim and the same cannot be allowed as an expenditure for that year. Aggrieved by the said order, the Appellant preferred an appeal to the Commissioner (Appeals) ["CIT (A)"].

The CIT (A) held that the provision for obsolescence

in inventory is an allowable deduction as the hardware manufactured by the Appellant had become obsolete due to changed technology. Aggrieved by the said order, the revenue preferred an appeal to the Tribunal.
The Tribunal upheld that order of the first Appellate Authority. Aggrieved by the same, the revenue appealed before the HC.
The revenue contended before the HC that when once the items have become obsolete and its market value has become nil, they should be reduced from the value of the inventory. Instead, the Appellant had created a provision for obsolescence and claimed its benefit, which was not permissible in law.

The Appellant contended that it had given complete details of provision for obsolescence made in respect of various products/spares. Further, the said provision had been created in accordance with the method of accounting regularly employed by the Appellant and a similar provision for obsolescence aggregating to Rs.6,06,27,459/- has been created in the earlier years too. Such provision had been created essentially in a situation, where the market value of the stock and spares in hand as on the last date of the financial year, was lower than the cost of such stock and spares. The said accounting treatment was in compliance with the provisions of Accounting Standard-2 issued by the Institute of Chartered Accountants of India which states that the closing stock would need to be valued at cost or net realizable value whichever is lower.

On considering the above, the HC held that what is to be seen is how the assessee is maintaining the accounts regularly, and the accounting treatment and presentation in financial statements of transactions should be covered by a substance and not merely by legal form. In the said case, the material clearly demonstrated that instead of showing inventory valuation as nil in the profit and loss account, the cost price of the items were given in profit and loss account and a provision was made for obsolescence in inventory showing that the market value as nil. Accordingly, the appeal of revenue was dismissed.

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II. ITAT Mumbai bench held that transaction in derivative market which included foreign currency and call option/ put option could not be termed as speculative in nature | *Author: Jatinder Singh, New Delhi*

In a recent judgment in the case of IVF Advisors Private Limited [2015] 55taxmann.com469, the Mumbai Tribunal held that derivatives include foreign currency and call option/ put option, and transactions in such derivative cannot be termed as speculative in nature.
The Appellant was an investment management consultant. During the year under consideration, the Appellant had claimed loss on foreign currency futures. The Assessing Officer (AO) disallowed the said loss holding that it was a speculation loss within the meaning of section 43(5) of the Income Tax Act, 1961 ("the Act"). Aggrieved by the order of the AO, the Appellant carried the matter before Commissioner (Appeals) ["CIT (A)"].
The CIT(A) found that the Appellant is not engaged in manufacturing or merchanting business and was a dealer and investor in stock and shares. Therefore, the loss earned by the Appellant on account of transactions in foreign currency future was not in the nature of hedging loss, as such loss was not earned in the course of guarding against loss through future price fluctuation in respect of contracts for actual delivery of goods manufactured. The CIT(A) thereby confirmed the assessment order holding that the AO has correctly held that such loss was a speculation loss within the meaning of section 43(5) of the Act.

The Appellant subsequently filed an appeal before the ITAT, wherein it was argued that the contracts entered by the Appellant cannot be said to be of speculative in nature because the contracts have ultimately been settled by the delivery of Forex.
The Tribunal carefully perused the contentions of both the parties and the various relevant provisions of the Act, Securities Contract Regulation Act, 1956 and also took note of the meaning of derivative as provided on Securities and Exchange Board of India's (SEBI) website. Further, it also placed reliance on the decision of Madras High Court in the case of Rajshree Sugar & Chemicals Ltd. v. Axis Bank Ltd. AIR 2011 Mad 144, wherein the term derivative has been defined to include foreign currency as an underlying security of the derivative.
On considering the above, the Tribunal held that since Appellant has either entered into call option or put option and on the settlement day either the Appellant has paid US dollar on the settlement day or has taken delivery of US dollar, such transactions cannot be termed as speculative in nature and appeal filed by the Appellant is allowed.

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III. Interest rate to be market determined corresponding to currency of loan advanced | *Author: Jatinder Singh, New Delhi*

Recently, the High Court of Delhi, in the case of CIT v Cotton Naturals (I) Pvt. Ltd. [ITA No. 233/2014] ('the assessee') held that terms and conditions of commercial business relationship as agreed and undertaken are not to be rewritten or obliterated and actual business transactions that are legitimate cannot be restructured. Accordingly, the interest

rate for loan advanced by Indian company to its foreign subsidiary should be market determined and applicable to the currency of loan instead of what the assessee would have earned by giving loans in Indian markets.
The assessee was engaged in manufacture and exports of rider apparels. For the purpose of marketing and promoting its exports to US, the assessee had incorporated a subsidiary in US, which was wholly owned by it and its two shareholders.
For Assessment Year (AY) 2007-08, the assessee selected the Comparable Uncontrolled Price ("CUP") method to benchmark the interest received on loan advanced to its AE (US subsidiary). The assessee declared that the interest received at the rate of 4 % was comparable with the export packing credit rate obtained from independent banks in India.
The Transfer Pricing Officer ("TPO") observed that the assessee would have earned higher interest by giving loans in the Indian market and the arm's length interest rate was determined at 14% p.a. The Dispute Resolution Panel ("DRP") confirmed the TP addition, however granted partial relief by reducing the interest rate to 12.20%, based on Prime Lending Rate ("PLR").
The Income Tax Appellate Tribunal ("ITAT") held that domestic PLR would have no applicability and LIBOR should be considered as the benchmark rate for interest transaction. The ITAT noted that the assessee had arrangement for a loan with Citi Bank, for less than 4% interest. Further, since the assessee's profits were exempt under Section 10B, it would not benefit by shifting profits outside India. Also the loan agreement was for fixed rate of interest. Therefore, it was held that the interest charged by the assessee was at arm's length.

Upon appeal by the Revenue, the HC placing reliance on its earlier rulings in case of EKL Appliances Limited and Sony Ericsson Mobile Communication India Private Limited held that transfer pricing determination is not primarily undertaken to re-write the character and nature of the transaction except for permissible exceptions. The TP provisions do not permit the Revenue authorities to decide whether or not a transaction should have been entered. Actual business transactions that are legitimate cannot be restructured.

The HC held that the comparison for application of CUP method has to be with comparables and not with what options or choices which were available to the assessee for maximizing returns. The interest rate should be the market determined interest rate applicable to the currency of loan.

Also referring to Rule 10B of the Income Tax Rules, 1962, the HC held that interest payment would have reference to the year in which the loan was granted in case of a long term loan and the interest rate has to be compared with the LIBOR prevailing at the time of granting loan.

However, the HC observed that the TPO was right in rejecting computation of ALP on the basis of interest rate on export credit as these were special schemes floated by the RBI for encouraging and facilitating exports and the rates fixed under export credit did not reflect comparable market rates.

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TAX DIRECT TAX
Recent Notification

I. Return forms notified for assessment year 2015-16 put on hold for reconsideration |
Author: Jatinder Singh, New Delhi

The Central Board of Direct Taxes had notified return forms ITR-1,2 & 4S vide Notification No. 41/2015 dated April 15, 2015, which sought details in respect of foreign travel and bank account of tax payers. Facing criticism for seeking too much information, the government has put the new forms for reconsideration, in order to provide simplified return forms.

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Foreign Exchange Management Act

I. Export of Goods and Services – Project Exports | *Author: Ruchi Sanghi, New Delhi*

As per the extant provisions under Foreign Exchange Management Act, 1999 ("FEMA") relating to Project Exports of Goods and Services, Authorised Dealer Banks ("AD Banks")/ Exim Bank ("EB") were permitted to grant post-award approvals without any monetary limit and permit subsequent changes in the terms of post award approval in accordance

with the relevant FEMA guidelines / regulations.
Further, in terms of the revised Memorandum of instructions on Project and Service exports, EB in participation with commercial banks in India is eligible to extend Buyer's credit upto the limit of USD 20 million to foreign buyers in connection with export of goods on deferred payment terms and turn key projects from India.
With a view to further liberalising the procedure and considering that the Working Group structure has been dismantled, it has been decided to withdraw the abovementioned limit of USD 20 million for Buyer's credit extended to foreign buyers in connection with export of goods on deferred payment terms and turn key projects from India. The Memorandum of Instructions on Project and Service Exports (PEM) has been revised accordingly.

[Source: A.P. (DIR Series) Circular No. 93 dated April 1, 2015]

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II. Foreign Direct Investment ("FDI") – Insurance Sector | *Author: Ruchi Sanghi, New Delhi*

Under the erstwhile provisions of the Foreign Direct Investment ("FDI") Policy, FDI upto 26% was permitted under the automatic route in the Insurance Sector, subject to specific conditions.
Recently, the Government of India ("GoI") has introduced certain changes in the FDI policy for insurance sector, vide Press Note No. 3 (2015 Series) dated March 2, 2015, issued by the Department of Industrial Policy and Promotion ('DIPP'), Ministry of Commerce & Industry ("MoC&I"), GoI [The copy of the relevant Press Note has been enclosed as Annexure - I] read with A.P. (DIR Series) Circular No. 94 dated April 8, 2015 GoI [The copy of the relevant Circular has been enclosed as Annexure - II].
The salient features of the revised regulatory regime for the insurance sector inter alia include:
- Foreign investment in Indian insurance company shall be limited up to forty-nine percent of the paid up equity capital, which shall include the foreign investment by Foreign Portfolio Investors ("FPI"), Foreign Institutional Investors ("FII"), Qualified Foreign Investors ("QFI"), Foreign Venture Capital Investors ("FVCI"), Non-Resident Indians ("NRI") and Depository Receipts ("DR");
- FDI up to 26 percent shall be under automatic route and beyond 26 percent and up to 49 percent shall be under Government approval route;
- Foreign investment in the Insurance Sector is subject to compliance of the provisions of the Insurance Act, 1938 and the condition that companies bringing in FDI shall obtain necessary license from the Insurance Regulatory & Development Authority of India for undertaking insurance activities.
- An Indian insurance company shall ensure that its ownership and control remains at all times in the hands of resident Indian entities;
- Any increase of foreign investment of an Indian insurance company shall be in accordance with the pricing guidelines specified by RBI under the FEMA.
- The Terms 'Control', 'Equity Share Capital', 'Foreign Direct Investment' (FDI), 'Foreign Investors', 'Foreign Portfolio Investment', 'Indian Insurance Company', 'Indian Company', 'Indian Control of an Indian Insurance Company', 'Indian Ownership', 'Non-resident Entity', 'Public Financial Institution', 'Resident Indian Citizen', 'Total Foreign Investment' will have the same meaning as provided in Notification No. G.S.R 115 (E), dated 19th February, 2015 [The copy of the said Notification has been enclosed as Annexure - III]

[Source: A.P. (DIR Series) Circular No. 94 dated April 8, 2015]

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III. FDI in Pension Sector | *Author: Ruchi Sanghi, New Delhi*

The GoI has allowed foreign investment in the pension sector upto 49%, subject to specific conditions. While FDI up to 26% is covered under the automatic route, FDI beyond 26% and upto 49% shall require Foreign Investment Promotion Board (FIPB) approval. [The copy of the relevant Press Note has been enclosed as Annexure - IV]

In terms of the above, the specific conditions inter alia include the following:

- FDI in the Pension Funds is allowed as per the Pension Fund Regulatory and Development Authority Act, 2013 ("PFRDA Act").

- Foreign entities bringing in foreign equity investment are required to obtain necessary registration from the Pension Fund Regulatory and Development Authority and comply with other requirements as per the PFRDA Act and Rules and Regulations framed there under for so participating in Pension Fund Management activities in India.

The said FDI limit of 49% includes foreign investment by FPI, FII, QFI, FVCI, NRI and DR.

[Source: Press Note No. 4 (2015 Series) dated April 24, 2015, DIPP, MoC&I, GoI]

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I. Parliament approves the Companies (Amendment) Bill, 2014 | *Author: Rakhi Chanana, New Delhi*

The Union Cabinet approved the introduction of Companies (Amendment) Bill, 2014, in the Parliament on December 2nd 2014, to make certain amendments in the Companies Act, 2013 ("The Act") and the same was passed by Lok Sabha on 17th December, 2014. Again on 29th April, 2015, the Union Cabinet gave its approval for moving some more amendments in the Act, which was passed by Lok Sabha on 07th May, 2015 and approved by Rajya Sabha on May 13th 2015, as the Companies (Amendment) Bill, 2014.

The major amendments made to the Companies Act, 2013 by the above bill are as follows:-

a) Removal of Minimum Paid Share Capital (for ease of doing business)

b) Doing away with the requirement of filling a declaration by a Company before commencement of business or exercising its borrowing powers. (for ease of doing business)

c) Making Common Seal optional, & consequential changes for authorization for executions of documents (for ease of doing business)

d) Specific punishment for deposits accepted under the new Act is proposed to be prescribed. This was left out in the Act inadvertently. (To remove an omission)

e) Public inspection of Board Resolutions filled with Registrar of Companies is proposed to be prohibited. (to meet corporate demand)

f) Including provision for writing off past losses/depreciation before declaring dividend for the year. (This was missed in the Act but included in the Rules.)

g) Rectifying the requirement of transferring equity shares for which unclaimed/unpaid dividend has been transferred to the IEPF even though subsequent dividend(s) has been claimed. (To meet corporate demand)

h) It is proposed to provide for prescribing the thresholds beyond which fraud shall be reported to the Central Government below the threshold, it will be reported to the Audit Committee. Disclosure for the latter category also to be made in the Board Report. (Demand of auditors)

i) Exemption u/s 185 (Loans to Directors) provided for loans to wholly owned subsidiaries and guarantees/securities on loans taken from banks by subsidiaries. (This was provided under the Rules but being included in the Act as a matter of abundant caution).

j) Empowering Audit Committee to give omnibus approvals for related party transactions on annual basis. (Align with SEBI policy and increase ease of doing business)

k) Replacing special resolution with ordinary resolution for approval of related party transactions by non-related shareholders. (Meet problems faced by large stakeholders who are related parties)

l) Exempt related party transactions between holding companies and wholly owned subsidiaries from the requirement of approval of non-related shareholders. (Corporate demand)

m) Bail restrictions to apply only for offence relating to fraud u/s 447.

n) Winding Up cases to be heard by 2 member Bench instead of a 3 member Bench. (Removal of an inadvertent error)

o) Special Courts to try only offences carrying imprisonment of two years or more. (To let magistrate try minor violations)

p) Rationalizing the procedure for laying draft notifications granting exemptions to various classes of companies.

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Important Dates to Remember

Particulars	Date
Deposit of TDS for the month of May, 2015	June 7, 2015
Deposit of Service Tax for the month of May, 2015	June 5, 2015 (by e-payment – June 6, 2015)