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NEWS CHRONICLE

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We Think About Future

We Think About Final Objective / Goal

We Think How Will It Be Achieved

We Think Risks / Problems

We Think Solutions

We Think Process

We Think About The Journey To Be Achievement

We Think About The Achievement

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Cyber Security Due Diligence in M&A Transactions – A Prerequisite

Overview

What is a Cyber Security Due Diligence? The term has been defined as ‘the review of the governance, processes and controls that are used to secure information assets.’ It can be rightly said that when you buy a Company, you’re buying their data, and one could be buying their data-security problems. In other words, cyber risk should be considered right along with financial and legal due diligence considerations.

Cyber Security is one such aspect that has become extremely vital in today's business atmosphere. Cyber due diligence is a relatively new area of due diligence which has largely emerged as a result of technological advancements and increasing data and privacy threats. Almost all formal sectors today are dependent on technology, connectivity and digital networks to varying degrees. While sectors such as media, information, telecom, software and technology services are enabled by technology, various other sectors such as marketing, banking, education, transport and medical have grown exponentially by incorporating technology as a driver to increase their performance and efficiency.

Cyber Security Due Diligence is defined as the review of governance, processes and controls that are used to secure information assets.

**Cyber
security**
the weak link in M&A

Thus with the rapidly expanding mergers and acquisitions (“M&A”) environment, companies often overlook the finer aspects of due diligence in their fervor to complete the transaction. Thus, these overlooked aspects tend to be reasons behind deal failures. It is because companies underestimate the importance of thorough due diligence on the target and take several vital things for granted at the time of closing.

However, cyber due diligence remains an unprioritized and often ignored area in most deals in India and other developing countries. This post seeks to shed light on the importance and scope of cyber due diligence in India by presenting the main risks and consequential impact on M&A deals in India. It also suggests certain strategies to mitigate cyber risks through a study of international best practices.

Risks Involved Due to a Lack of Cyber Security Due Diligence

Regardless of the type of industry, when companies make an acquisition, they are essentially investing in the intellectual property and R&D of the proposed partner organization. Typically, there are few individuals at the buyer corporation who truly understand the network systems they're about to purchase, which contain the valuable IP they're acquiring. The integrity of this data must be assessed prior to the purchase – and the team assessing it must be able to provide a level of scrutiny that ensures all areas are fully evaluated, diagnosed, and proved secure.

Threats that arise out of cyber-attacks appear in several forms. Many such threats pose serious direct and indirect financial risks to companies, a pertinent example being how the emergence

of ransomware has highlighted the ease with which cyber criminals can halt business operations for days or weeks at a time, resulting in unrecoverable loss of revenue. However, what are the initial threats that result in financial risks? These can broadly be divided into two major categories i.e. electronically stored information (ESI) data breaches and loss of deal value. ESI breach risks can be explained by further dividing them into intellectual property (IP) loss, reputation and brand impact, and remediation costs. Other hidden costs may include value of lost contracts, lost value of customer relationships and insurance premium increases.

Data Storage Breaches

There are standard clauses in purchase agreements to protect the buyer, for good reason. Any litigation, workforce issues, violation of environmental regulations, and other negatives must be known and accounted for, in order for deals to make sense at the agreed-upon price. But cyber security risks are generally unaccounted for.

The lack of focus on cybersecurity due diligence in Indian M&A transactions can lead to serious impacts on ESI and data that is stored on online databases such as the cloud. ESI refers to any data that is created, altered, communicated and stored in digital form. Examples of ESI could range from emails exchanged on the company's servers to confidential information about the company's IP and trade secrets. The two major ramifications that arise from an ESI breach are both immediate, such as a loss of IP and long term, such as a loss in brand and customer reputation.

Key cyber security risks that buyers can run into:

- **Ongoing Breach:** Probably the worst-case scenario – the target company is “owned” by an unknown attacker: any sensitive data or intellectual property might already be gone, and a public relations problem is looming. Not only is the value of the acquisition damaged, but also now the buyer must deal with the fallout, which can be a very expensive undertaking.
- **Unrevealed Previous Breach:** The target company suffered a breach in the past that is revealed to the buyer after the purchase. This is similar to the ongoing breach in that valuable data may have been lost, and the intruder could still be in the network.

- **Persistent Intruder:** The target company is host to an attacker that maintains their presence in the environment, watching and waiting. Now the purchasing company might be hosting them as well.
- **Disruption Attacks:** Is the target company vulnerable to such attacks? What is the threat landscape? Have there been denial of service (DoS) attacks in their past?
- **Dirty Environment:** While not necessarily as dangerous as a targeted attack, an environment that shows significant amounts of common malware will need cleaning and improved protection and detection capabilities.
- **Inadequate Security Program:** The acquired company has systemic cyber security issues stemming from a weak or nonexistent security program. Weak oversight and guidance will, over time, create vulnerabilities across many security areas that will take time to fix.

Loss of Confidential Intellectual Property

Surprising as it may seem, despite its widespread ramifications, cases involving IP loss due to cyber-attacks have largely remained in the shadows. It is important to note, however, that IP theft has ramifications that could metastasize over months and years. The effect of an IP loss could include forfeiting the “first to market advantage, a loss in profitability, and in the worst case – losing entire lines of business to competitors or counterfeiters”. In almost all cases, the theft involves stealing of important corporate secrets such as trade secrets, proprietary business information and even merger plans rather than publicly available information such as patents and trademarks.

Loss of brand reputation

An equally important risk that must be discussed is a company’s loss of reputation in the event of a data breach. The risk is greater for publicly traded companies since reputation and investor sentiment are key factors in determining the company’s share price on the market. Perhaps the greatest risk lies with companies that rely on user data such e-commerce companies or social media networks. In the contemporary digital age, the security of user’s personal information is closely entwined with the right to privacy and it is expected that every business organisation should recognize and protect these rights. This protection however, should not be limited only to users but also to business partners, employees and all other stakeholders. The protection of sensitive information is critical to an organization’s ability to conduct business. A reputation for strict focus on information security would not only make an organisation a trusted business partner, it could also result in a significantly higher price of acquisition by an acquiring company.

Role of Cyber Security Due Diligence in M&A Transactions

Firms engaged in mergers and acquisitions need to ensure from the outset that their communications are taking place in a cyber-secure environment. Online data rooms are rich targets for cyber criminals. The flow of information between buyers, targets and their consultants is particularly tempting, so a secure online data room is essential, but in and of itself, may not be enough. Cybersecurity in the context of M&A is about much more than keeping the process secure: it is key to the value of the deal.

The acquisition of one firm by another requires that the buyer determine the value of the target corporation. This necessarily includes an assessment of risk and compliance issues. The extent to which a target corporation has maintained a cybersecurity strategy, and has the requisite systems and processes in place, is a major risk and compliance consideration.

No buyer wants to acquire a business whose systems may be compromised, or whose system security has not been maintained to a high level. The issue is not just risk, but valuation as well. It follows that M&A due diligence in today's digital environment necessarily involves inquiry into and assessment of the target corporation's cybersecurity history, systems and processes.

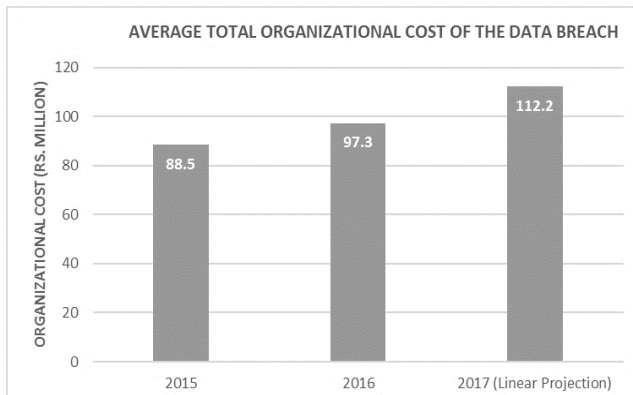
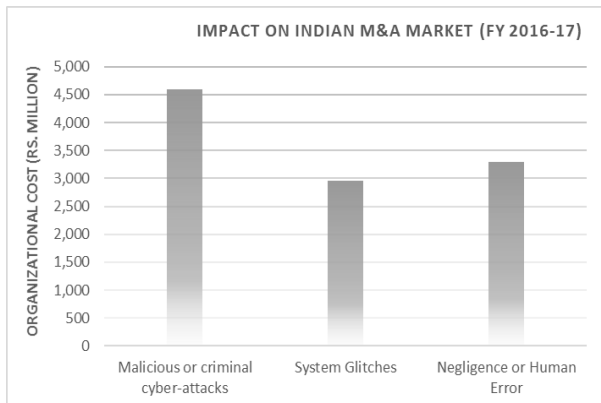
Typically, the primary aim of due diligence over a target is to help the acquirer determine a fair price to pay for acquisition. The price so arrived at is inversely proportional to the quantum of risks uncovered.

The lack of cyber due diligence does not merely impact the pricing of the target company; it also has the potential to seriously hamper envisaged synergies at the post-merger integration stage. Integrating the electronic network and data of the target post - acquisition to the network of the acquiring company may be extremely problematic if the target's network infrastructure is weak or flawed. These issues may dilute the benefits of other synergies by adding to further costs in building and revamping cyber infrastructure, often making the transaction counter-productive or resulting in failure.

Momentous Impact on M&A in the Indian Market

The potential impact on Indian M&A looks grey given the substantial amount companies are spending in solving post data breach problems. Indian companies have especially faced the brunt of not incorporating cybersecurity checks into their due diligence process. A 2016 data breach study by the Ponemon Institute that focuses on the costs of data breaches in India, reveals some important and worrying numbers.

The average per capita cost of a data breach increased from Rs. 3,396 in 2015 to Rs. 3704 in 2016. The average total organizational cost of the data breach increased from Rs. 88.5 million in 2015 to Rs. 97.3 million. Further based on linear projection analysis forecast we estimate a rise in average total organizational cost of the data breach by 15% resulting in Rs. 112.2 million.



Malicious or criminal cyber-attacks resulted in a total cost of Rs. 4,596 million this year, system glitches cost Rs. 2,953 million and negligence or human error cost Rs. 3,301 million. Financial institutions, services, industrial and technology companies are the industries with higher data breach costs. A cursory analysis of these figures reveals the loss an acquiring company may have to face due to lapses in the target company's cybersecurity framework. All in all, none of the figures reveal a very promising picture for successful M&A deals in the Indian market and it is high time that cybersecurity due diligence took a major role in due diligence processes in Indian M&A transactions.

Lessons to be learnt from International Best Practices

In order to safeguard against cyber threats, malware and other data protection and security related problems, companies across the world have, in recent years started adopting certain mitigation practices. While conducting due diligence of the target company, a potential acquirer should check *inter alia* whether the following measures have been adopted and the extent of liability covered by them:

1. Cyber security insurance:

One of the best ways of mitigating risks associated with cyber security is to purchase cyber insurance for the organization. Typically, internet based risks, technology infrastructure and other data related risks are outside the ambit of traditional commercial insurance products. Hence, there is a need for a specialized product which can safeguard the organization against cyber risks. Cyber insurance offers several benefits; it provides *inter alia* first- party coverage against losses arising out of hacking, malware infection, theft/ destruction of confidential data, etc. in addition to other allied services

such as timely security-audits, providing investigation services post cyber-attacks, etc. It also provides a unique funding mechanism, which helps businesses affected by cyber-attacks recuperate from major losses and resume day-to-day operations in a smooth manner.

Although cyber insurance is becoming the norm in most jurisdictions having a mature market, it is not the case in India as the market for cyber insurance products is not large as compared to other insurance products.

In the Indian market, only a handful of players such as HDFC Ergo, Tata AIG and ICICI Lombard offer cyber insurance services. However, due to the high premiums charged by these service providers, only a handful of large companies are able to afford them, leaving most of the small and medium sized businesses vulnerable to cyberattacks. Moreover, there is a general perception among Indian companies that such expenditures are unnecessary. This is the result of a lack of awareness and foresight which in the long run will prove catastrophic for technology dependent companies.

2. Security Program Assessment (SPA):

Evaluating digital resilience of the target company is a wise decision. Digital resilience is a highly valued intangible asset which is factored into the price of the transaction. A properly conducted SPA discloses a comprehensive report indicating all potential cyber risks which a company faces and also helps devising mitigation strategies. It also detects areas which need further protection. Having an updated SPA report at the time of acquisition increases the price of the target company as the risks faced by the acquirer are significantly lowered. In the present scenario, most companies in India do not undertake SPA, mainly due to lack of awareness of the risks they face and the benefits which they could gain from taking such measures.

Conclusion

Written cybersecurity policies are useless unless they are successfully implemented. They need to meet the applicable standards, not only on paper, but in fact, and on an ongoing basis. Best of class cybersecurity strategies ensure that policies are implemented, and remain implemented, with compliance audits that are conducted on a regular basis. It is not uncommon to see requirements for compliance audits in cyber insurance policies. Nor is it uncommon to see them in vendors' contracts, especially where the vendor's product or service is critical to the purchaser's business, or where the vendor has access to the purchaser's servers or communication systems.

It is high time that Indian companies woke up to realize the importance of cyber due diligence as it is estimated a rise in average total organizational cost of the data breach by Rs. 112.2 million. Given the increasing trend of multi-sectoral M&A activity, Indian companies would do well to follow the norms of matured markets and adopt precautionary and risk mitigating strategies to protect their organization's data from cyber threats and hackers.

Thus, with the market opening for more and more M&A transactions it is the need of the hour that Indian Companies realize the need of Cyber Security Due Diligence and how well the Industry players in the field of Due Diligence Services can help the Indian Companies to cover Cyber Security in the Due Diligence process.

SEBI Major Amendments – Simplifies Out Rules for InvITs, REITs; open gates for FPIs

Securities Exchange Board of India (SEBI) in its meeting held on 23rd September, 2016, considered several matters. Some of the major changes that have taken place are-

➤ *Amendment to SEBI Regulations to permit Foreign Portfolio Investors (FPIs) to trade directly in Corporate Bonds without a broker*

Under the extant regime, FPIs are required to go through stock brokers to access the corporate bond market. While domestic institutions such as Banks, Insurance Companies, Pension Funds etc. are permitted to bypass stock brokers for accessing the bond market, SEBI has decided to extend this privilege to Category I and Category II FPIs, by making amendments to Securities Contracts (Regulation) Rules, 1957.

It is observed that by way of amendments to the Stock Exchanges and Clearing Corporation Regulations, 2012, SEBI also increased the limit of shareholding of Foreign Institutional Investors in Indian Stock Exchanges to 15% from 5%, and allowed FPIs to acquire shares of unlisted stock exchanges.

➤ *Relaxation of norms for InvITs and REITs – Amendments proposed to the SEBI (Infrastructure Investment Trusts) Regulations, 2014 and SEBI (Real Estate Investment Trusts) Regulations, 2014*

Following extensive public consultation to boost the Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs) in India, SEBI has made proposal to allow both the vehicles to invest in two level SPV structure through holding company (Holdco), subject to sufficient shareholding in the Holdco and the underlying SPV and several others safeguards. The Holdco in both vehicles would have to distribute 100% cash flows realized from the underlying SPVs and at least 90% of the remaining cash flows.



SEBI has also reduced the mandatory sponsor holding in InvITs to 15% from 25%, providing more liquidity to invest into future infrastructure assets.

REITs will be allowed to invest up to 20% in under construction assets, thus giving more flexibility to choose more lucrative projects. The definition of real estate projects has also been expanded to include hospitals and hotels.

➤ *Investment Adviser norms – Consultation paper for ‘Amendments / clarifications to the SEBI (Investment Advisers) Regulations, 2013*

SEBI shall float a consultation paper to address gaps or overlaps in regulatory standards of intermediaries, which provide investment advisory services. It will reconsider the exemptions from registration provided to mutual fund distributors and will grant three years for such distributors to gain the certification required to become advisers.

SEBI has also proposed to ban trading tips via bulk SMS and emails, and restriction on soliciting investors by offering schemes/competitions/games/leagues/etc. related to securities market and covering these activities under the advertisement code as well as under SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003.

➤ *Portfolio managers regulation - SEBI (Portfolio Managers) Regulations, 1993 to provide a framework for registration of fund managers for overseas funds, pursuant to introduction of Section 9A in the Income Tax Act, 1961*

In line with the Central Government's announcement during the Budget to encourage fund managers to operate from India, SEBI approved amendments to the portfolio manager regulations. The regulator has now inserted a new chapter into the definition of eligible fund managers which will facilitate the entry of portfolio managers located offshore by implementing the safe harbor norms, whereby they would not be taxed for being present in India through an eligible fund manager.

Since Eligible Investment Funds will be governed by the norms or disclosure requirements of the jurisdiction from where they raise funds, certain provisions of SEBI (Portfolio Managers), Regulation, 1993 shall not be applicable on Eligible Fund Managers w.r.t. their activities as portfolio managers to Eligible Investment Funds, such as – i) Disclosure Document by the portfolio manager to the client, the content of such document ii) Minimum investment requirement iii) conditions for termination of the contract iv) Inclusion of CFA from CFA Institute as an eligible qualification for principal officer of a portfolio manager.

➤ *Interest of Employees - Employee Reservation in Issues*

Employees of companies going public can now apply for shares up to Rs. 5 lakh each, higher than the current limit of Rs. 2 lakh, but this will be considered only in the event of under-subscription of the portion reserved for employees.

➤ *Compensation Agreements - Consultative Paper on Corporate Governance Issues in Compensation Agreements*

SEBI informed that it will commence public consultation on corporate governance issues in compensation agreements in case of listed companies. Such compensation agreements, when executed between private equity firms and directors/Key managerial personnel, could lead to unfair practices. Such agreements are typically reward-based wherein if the price goes up beyond a certain level, then the managing director would be given an incentive.

The consultation paper proposes to seek public comments on the possible amendments to SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations), including (i) adding a new provision that would require disclosures and prior approval of shareholders by way of an ordinary resolution and (ii) in case of existing profit sharing agreements, such agreements shall be informed to the stock exchanges for public dissemination and (iii) approval shall be obtained from their boards and shareholders within stipulated timelines.

➤ *Permanent registration to be granted to market intermediaries*

In another step aimed at improving ease of doing business, intermediaries will get to permanently register with SEBI.

SEBI already gives permanent registration to stock brokers and sub-brokers subject to their compliance with certain requirements. This benefit will now be extended to Merchant Banker Registrar to an Issue & Share Transfer Agent, Bankers to an Issue, Underwriters, Credit Rating Agency, Debenture Trustee, Depository Participant, KYC Registration Agency (KRA), Portfolio Managers, Investment Advisers, Research Analysts.

SEBI has been following a two-step process for grant of registration to market intermediaries namely initial registration for a period of 3 years / 5 years as the case may be followed by grant of permanent registration.

Considering satisfaction of “fit and proper person” criteria on a continuous basis and sophisticated on-site and offsite supervision mechanism put in place by SEBI in terms of inspections, reporting etc., SEBI Board decided that henceforth permanent registration shall be granted to the above category of intermediaries.

➤ *Increase in limit of foreign investment in Indian stock exchanges*

To Increase in limit of foreign investment in Indian stock exchanges the following amendments are made:

- i. Regulation 17 (3) of SECC Regulation has been amended to increase the limit of shareholding of foreign institutional investors mentioned therein in Indian Stock Exchanges from 5% to 15%.
- ii. Regulation 17 (4) of SECC Regulations has been amended to allow a foreign portfolio investor to acquire shares of unlisted stock exchanges through transactions outside of recognized stock exchange including the initial allotment.

RBI



1. Master Direction - Non-Banking Financial Company – Non-Systemically Important Non-Deposit taking Company (Reserve Bank) Directions, 2016

Reserve Bank of India (RBI) vide Notification No. RBI/DNBR/2016-17/44 Master Direction DNBR.PD.007/03.10.119/2016-17 dated 1st September, 2016 has issued the Master Direction on Non-Banking Financial Company – Non-Systemically Important Non-Deposit taking Company.

The Reserve Bank of India (the Bank), having considered it necessary in the public interest, and being satisfied that, for the purpose of enabling the Bank to regulate the financial system to the advantage of the country and to prevent the affairs of any Non-Systemically Important Non-Deposit taking Non-Banking Financial Company (NBFC-ND) from being conducted in a manner detrimental to the interest of investors or in any manner prejudicial to the interest of such NBFCs has issued the Non-Banking Financial Company – Non-Systemically Important Non-Deposit taking (Reserve Bank) Directions, 2016 (the Directions).

https://rbidocs.rbi.org.in/rdocs/content/pdfs/NSIND01092016_AN.pdf

2. Master Direction - Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016

Reserve Bank of India (RBI) vide Notification No. RBI/DNBR/2016-17/45 Master Direction DNBR. PD. 008/03.10.119/2016-17 dated 1st September, 2016 has issued the Master Direction on Non-Banking Financial Company – Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank).

The Reserve Bank of India (the Bank), having considered it necessary in the public interest, and being satisfied that, for the purpose of enabling the Bank to regulate the financial system to the advantage of the country and to prevent the affairs of any Systemically Important Non-Deposit taking Non-Banking Financial Company (NBFC-ND-SI) and Deposit taking Non-Banking Financial Company (NBFC-D) from being conducted in a manner detrimental to the interest of investors and depositors or in any manner prejudicial to the interest of such NBFCs has issued the Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016 (the Directions).

https://rbidocs.rbi.org.in/rdocs/content/pdfs/45MD01092016_AN1.pdf

6. Income Declaration Scheme, 2016 – Acceptance of Cash Over the Counter

Reserve Bank of India (RBI) vide Notification No. RBI/2016-17/62 DBR.No.Leg.BC.13/09.07.005/2016-17 dated 8th September, 2016 has issued instructions to banks to allow payment of tax under the scheme in cash and to allow deposit of cash over the counter. The RBI has instructed the banks to invariably accept cash deposits from all the declarants under the Scheme and to accept cash deposits, irrespective of amount, over the counters, for making payment under the Scheme through challan ITNS-286.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10599&Mode=0>

7. Security and Risk Mitigation Measures for Card Present and Electronic Payment Transactions – Issuance of EMV Chip and PIN Cards

Reserve Bank of India (RBI) vide Notification No. RBI/2016-17/63 DPSS.CO.PD No.812/02.14.003/2016-17 dated September 15, 2016 has decided not to grant any further extension beyond the respective timeline indicated in circular dated August 27, 2015 i.e. 30th September, 2016 for new issuances and full migration to EMV Chip and PIN cards.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10600&Mode=0>

8. Master Circular- Credit Facilities to Minority Communities – Modification

Reserve Bank of India (RBI) vide Notification No. RBI/2016-17/67 FIDD.GSSD.BC.No.15/09.10.01/2016-17 dated 29th September, 2016 has modified the Master Circular on Credit Facilities to Minority

Communities. The Definition of Minority Communities is being redefined and now the below mentioned communities shall be notified as Minority Community – Sikhs, Muslims, Christians, Zoroastrians, Buddhists, Jains.

Further with regard to monitoring the performance of banks in providing credit to the specified minority communities, data on credit assistance provided to members of minority communities should be furnished to Reserve Bank of India and to the Government of India, Ministry of Finance and Ministry of Minority Affairs, on half yearly basis as on the last Friday of March and September every year. The statements should reach RBI within one month from the close of each half year.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10615&Mode=0>

9. Grant of ‘Certificate of Registration’ – For carrying on the business of Credit Information – Transunion CIBIL Limited

Reserve Bank of India (RBI) vide Notification No. RBI/2016-17/69 DBR.CID.BC.16/20.16.040/2016-17 dated 29th September, 2016 has provided a new ‘Certificate of Registration’ for carrying on the business of Credit Information with new name and address to –

TransUnion CIBIL Limited
Hoechst House,
6th Floor,
193, Backbay Reclamation,
Nariman Point,
Mumbai – 400 021

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10617&Mode=0>

10. Aadhaar-based Authentication for Card Present Transactions

Reserve Bank of India (RBI) vide Notification No. RBI/2016-17/70 DPSS.CO.PD No.892/02.14.003/2016-17 dated 29th September, 2016 has provided instructions and advise banks to ensure that all new card acceptance infrastructure deployed with effect from January 1, 2017 are enabled for processing payment transactions using Aadhaar-based biometric authentication also.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10618&Mode=0>

11. Publishing of photographs of Wilful defaulters

Reserve Bank of India (RBI) vide Notification No. RBI/2016-17/71 DBR.CID. BC. No.17/20.16.003/2016-17 dated 29th September, 2016 has outlined the penal measures that should be taken by lending institutions against the borrowers declared as wilful defaulters.

It has now been decided that A lending institution can consider publication of the photographs of only those borrowers, including proprietors/ partners /directors / guarantors of borrower firms/ companies, who have been declared as wilful defaulters following the mechanism set out in the RBI instructions referred to above. This shall not apply to the non-whole time directors who are exempted from being considered as wilful defaulters unless the special conditions, in accordance with these instructions, are satisfied.

The lending institutions shall formulate a policy with the approval of their Board of Directors which clearly sets out the criteria based on which the decision to publish the photographs

of a person covered in paragraph (i) above will be taken by them so that the approach is neither discriminatory nor inconsistent.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10619&Mode=0>

12. Master Direction- Non-Banking Financial Company Returns (Reserve Bank) Directions, 2016

Reserve Bank of India (RBI) vide Notification No. RBI/DNBS/2016-17/47 Master Direction DNBS.PPD.02/66.15.001/2016-17 dated 29th September, 2016 has issued the Master Direction on Non-Banking Financial Company Returns.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10620&Mode=0>

13. Master Direction - Non-Banking Financial Companies Auditor's Report (Reserve Bank) Directions, 2016

Reserve Bank of India (RBI) vide Notification RBI/DNBS/2016-17/48 Master Direction DNBS. PPD.03/66.15.001/2016-17 dated 29th September, 2016 has issued Master Direction on Non-Banking Financial Companies Auditor's Report to every auditor of every non-banking financial companies.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10621&Mode=0>

14. Master Direction - Monitoring of Frauds in NBFCs (Reserve Bank) Directions, 2016

Reserve Bank of India (RBI) vide Notification RBI/DNBS/2016-17/49 Master Direction DNBS. PPD.01/66.15.001/2016-17 dated 29th September, 2016 has issued Master Directions on Monitoring of Frauds in NBFCs.

<https://www.rbi.org.in/Scripts/NotificationUse.aspx?Id=10622&Mode=0>

15. Investment by Foreign Portfolio Investors (FPI) in Government Securities

Reserve Bank of India (RBI) vide Circular No. RBI/2016-17/72 A.P. (DIR Series) Circular No. 4 dated 30th September, 2016 has issued circular with regard to Limits for Investment by Foreign Portfolio Investors (FPIs) in Government Securities. The limits for investment by FPIs in Central Government Securities for the next half year are proposed to be increased in two tranches, each of Rs. 100 billion from October 3, 2016 and January 2, 2017 respectively.

<https://www.rbi.org.in/Scripts/NotificationUse.aspx?Id=10623&Mode=0>

MCA



1. MCA has made Annual filing forms available for Companies Act, 1956

(Filing balance sheet and other documents with the Registrar), Form 23ACA (Filing Profit and Loss account and other documents with the Registrar), Form 23B (Information by auditor to Registrar), Form 20B (Filing annual return by a company having a share capital with the Registrar), Form 21A (Particulars of annual return for the company not having share capital), Form 66 (Form for submission of compliance certificate with the Registrar) available on MCA21 Forms Download page. Further, IEPF Forms shall be available on the IEPF portal w.e.f 7th Sep 2016.

2. MCA notifies manner of administration of IEPF under Companies Act, 2013 w.e.f. 07.09.2016

Ministry of Corporate Affairs vide Notification dated 5th September, 2016, has appointed 7th September, 2016 as the date on which the provisions of Section 124 124, sub-sections (1) to (4), (6) [with respect to the manner of administration of the Investor Education and Protection Fund] and (8) to (11) of section 125 of the said Act shall come into force.

3. IEPF Authority (Accounting, Audit, Transfer and Refund) Rules, 2016

Ministry of Corporate Affairs (MCA) vide Notification dated 5th September, 2016 has issued the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016. The rules shall come into effect from 7th September, 2016.

<http://egazette.nic.in/WriteReadData/2016/171614.pdf>

4. MCA has designated Special Courts for the States of Chhattisgarh, Manipur, Rajasthan, Punjab, Haryana, Union Territory of Chandigarh, Districts of Coimbatore, Dharmapuri, Dindigul, Erode, Krishnagiri, Namakkal, Nilgiris, Salem and Tiruppur, Union Territory of Puducherry for the purposes of providing speedy trial of offences punishable with imprisonment of two years or more under the Companies Act, 2013. The Special Courts of the above-mentioned States and UTs are provided in the notification. MCA has already designated Special Court in respect of jurisdiction of National Capital Territory of Delhi.

5. MCA notifies 8 Section of Companies Act, 2013 w.e.f. 09.09.2016

Ministry of Corporate Affairs (MCA) vide Notification dated 9th September, 2016 has notified the following provisions Legal advisers and bankers not to disclose certain information – Section 227, Powers of Tribunal, Application of certain provisions to proceedings under section 241 or section 245, Penalty for frauds by officers – Section 337, Liability where proper accounts not kept – Section 338,

Liability for fraudulent conduct of business, Power of Tribunal to assess damages against delinquent directors, etc, Liability under sections 339 and 340 to extend to partners or directors in firms or companies.

http://www.mca.gov.in/Ministry/pdf/Notification_10092016.pdf

6. Companies (Mediation and Conciliation) Rules, 2016

Ministry of Corporate Affairs (MCA) vide Notification dated 9th September, 2016 has issued the Companies (Mediation and Conciliation) Rules, 2016.

http://www.mca.gov.in/Ministry/pdf/CompaniesMediationandConciliationRules_10092016.pdf

7. MCA Notifies Remuneration Limits for the Companies having no or inadequate profits that can be enhanced without the Central Government approval

MCA vide Notification dated 12th September, 2016 has notified that the Remuneration Limits for the Companies having no or inadequate profits can be enhanced without the Central Government approval, that is, Section II of Part II has been substituted. It states that managerial person who is functioning in a professional capacity, no approval of Government is required if such managerial person is not having any interest in the capital of the Company, its holding company or any of its subsidiary companies during last 2 years on or after date of appointment and possesses graduate level qualification and specialized knowledge in field of which the Company operates. Schedule V of the Companies Act, 2013 relating to the condition to be fulfilled for appointment of Managing Director/ Whole

Time Director/ Manager has been amended.

http://www.mca.gov.in/Ministry/pdf/Notification_12092016.pdf

8. MCA has released version of new e-forms

MCA has released the revised the versions of e-Forms – Form CRA-2 (Form of intimation of appointment of cost auditor by the company to Central Government), Form CRA-4 (Form for filing Cost Audit Report with the Central Government), Form SH-8 (Letter of offer for Buy-Back), Form CHG-4 (Form for Satisfaction of Charge thereof) and Form MR-2 (Form of application to the Central Government for approval of appointment or reappointment and remuneration or increase in remuneration or waiver for excess or over payment to managing director or whole time director or manager and commission or remuneration to directors). The revised forms will be available on the portal on the portal w.e.f 22nd September, 2016 of MCA.

9. Companies (Management and Administration) Amendment Rules, 2016

Ministry of Corporate Affairs (MCA) vide Notification dated 23rd September, 2016 has made amendment to Companies (Management and Administration) Rules, 2014, these rules may be called Companies (Management and Administration) Amendment Rules, 2016.

<http://www.mca.gov.in/Ministry/pdf/CompaniesMgtAdminAmendmentRules2016.pdf>

10. MCA Revises E-forms

MCA has revised the version of e-forms - Form 23ACA (Filing Profit and Loss account and other documents with the Registrar), Form 23AC (Filing balance sheet and other documents with the Registrar), Form CHG-1 (Application for registration of creation, modification of charge (other than those related to debentures), Form CHG-9 (Application for registration of creation or modification of charge for debentures or rectification of particulars filed in respect of creation or modification of charge for debentures) and Form CRA-2 (Form of intimation of appointment of cost auditor by the company to Central Government) w.e.f 30th Sep 2016

11. Companies (Incorporation) Fourth Amendment Rules, 2016

Ministry of Corporate Affairs vide Notification dated 1st October, 2016 has issued the Companies (Incorporation) fourth Amendment Rules, 2016 wherein the revised integrated incorporation form for companies has been notified viz. “Simplified Proforma for Incorporating Companies Electronically (SPICE-INC 32)” along with electronic MoA (SPICE MoA-INC 33) and electronic AoA (SPICE AoA-INC 34) are available for filing purposes.

http://www.mca.gov.in/Ministry/pdf/CompaniesIncorporationFourthAmendmentRules_01102016.pdf

SEBI



1. Spot Price Polling Mechanism

SEBI vide Circular No. SEBI/HO/CDMRD/DMP/CIR/P/2016/78 dated 2nd September, 2016 has issued a Circular on Spot Price Polling Mechanism. The exchanges have been asked to display the spot price polling mechanism adopted for every contract on its website from September 29. They also need to give details about the contract, mechanism of spot price polling, method for arrival at spot prices, whether mechanism outsourced to any external agency and criteria for selection of these polling participants. The exchanges can assign a code such A1, A2, A3 for polling participants of a particular contract and reveal his location and price for the day. This information would be updated on exchange website every day for every contract traded on the exchange platform. The exchanges have to review on a monthly basis the prices polled by the participants to identify participants habitually polling unrealistic prices. The exchanges would have to address such complaints in a time-bound manner and keep the audit trail of all such complaints received and the steps taken for redressal.

http://www.sebi.gov.in/cms/sebi_data/attachdocs/1472814204597.pdf

2. Restrictions on Promoters & Whole-Time Directors of Compulsorily Delisted Companies

Securities Exchange Board of India (SEBI) vide Circular No. SEBI/HO/CFD/DCR/CIR/P/2016/81 dated 7th September, 2016 has issued a Circular regarding Restrictions on Promoters and Whole-Time Directors of Compulsorily Delisted Companies Pending Fulfillment of Exit Offers to the Shareholders. In terms of Regulation 24 of the Delisting Regulations, the company which has been compulsorily delisted, its whole-time directors, its promoters and the companies promoted by any such person, shall not directly or indirectly access the securities markets for a period of ten years from the date of compulsory delisting.

http://www.sebi.gov.in/cms/sebi_data/attachdocs/1473248605168.pdf

3. Daily Price Limits for Non-Agricultural Commodity Derivatives

Securities Exchange Board of India (SEBI) vide Circular No. SEBI/HO/CDMRD/DMP/CIR/P/2016/83 dated 7th September, 2016 has prescribed the Daily Price Limits (DPL) for Non – Agricultural Commodity Derivatives. The rate slabs have been set for DPL on Non Agricultural Derivatives.

http://www.sebi.gov.in/cms/sebi_data/attachdocs/1473245233159.pdf

4. Transaction Charges by Commodity Derivatives Exchanges

Securities Exchange Board of India (SEBI) vide Circular No. SEBI/HO/CDMRD/DMP/CIR/P/2016/82 dated 7th September, 2016 has prescribed the norms for regarding transaction charges to be levied by Commodity Derivative Exchanges. The Exchanges can levy different transaction charges for different commodities' contracts and even in the case of contracts of the same commodity.

http://www.sebi.gov.in/cms/sebi_data/attachdocs/1473245182317.pdf

5. Mechanism for regular monitoring of and penalty for short collection/non-collection of margins from clients

Securities Exchange Board of India (SEBI) vide Circular No. SEBI/HO/CDMRD/DRMP/CIR/P/2016/80 dated 7th September, 2016 has issued mechanism for regular monitoring of and penalty for short collection/non-collection of margins from clients. The same has been issued in continuation of rules, directions, guidelines, instructions, circulars issued by the Forward Markets Commission (FMC) or the Central Government applicable to recognized associations under the Forward Contracts Regulation Act, 1952 (FCRA).

http://www.sebi.gov.in/cms/sebi_data/attachdocs/1473243582335.pdf

6. Due Date Rate fixation Guidelines for Regional Commodity Derivatives Exchanges

Securities Exchange Board of India (SEBI) vide Circular No. SEBI/HO/CDMRD/DRMP/CIR/P/2016/79 dated 7th September, 2016 has issued the guidelines on Due Date Rate (DDR) fixation for Regional Commodity Derivatives Exchanges.

http://www.sebi.gov.in/cms/sebi_data/attachdocs/1473243536914.pdf

7. Master Circular for Mutual Funds

Securities Exchange Board of India (SEBI) vide Master Circular No. SEBI/HO/IMD/DF3/CIR/P/2016/84 dated 14th September, 2016 has released a Master Circular for Mutual Funds which is a compilation of all the circulars issued by SEBI on Mutual Funds, which are operational as on date of this circular. The Master Circular has 17 Chapters which include Governance norms, Disclosures and Reporting norms, Loads, fees and expenses, among other things. This Master Circular shall supersede the previous Master Circular CIR/IMD/DF/18/2014 dated October 01, 2014. Further, in case of any inconsistency between the master circular and the applicable circulars, the contents of the relevant circular shall prevail.

http://www.sebi.gov.in/cms/sebi_data/attachdocs/1473853843227.pdf

8. Standardization and Simplification of Procedures for Transmission of Securities

Securities Exchange Board of India (SEBI) vide Circular No. SEBI/HO/MIRSD3/CIR/P/2016/0000000085 dated September 15, 2016 has standardized and simplified the procedure for Transmission of Securities.

http://www.sebi.gov.in/cms/sebi_data/attachdocs/1474003289481.pdf

9. Unique Client Code (UCC) and Mandatory Requirement of Permanent Account Number (PAN)

Securities Exchange Board of India (SEBI) vide Circular No. SEBI/HO/CDMRD/DMP/CIR/P/2016/87

dated 16th September, 2016 has made mandatory for the members of the commodity derivatives exchanges to use Unique Client Code (UCC) for all clients transacting on the commodity derivatives exchanges. The commodity derivatives exchanges shall not allow execution of trades without uploading of the UCC details by the members of the exchange. For this purpose, members shall collect after verifying the authenticity and maintain in their back office the copies of Permanent Account Number (PAN) issued by the Income Tax Department, to all their clients.

PAN would be the sole identification number and mandatory for all entities/persons who are desirous of transacting on the commodity derivatives exchanges.

http://www.sebi.gov.in/cms/sebi_data/attachdocs/1474022564366.pdf

10. Consolidated Account Statement for Mutual Funds

Securities Exchange Board of India (SEBI) vide Circular No. SEBI/HO/IMD/DF2/CIR/P/2016/89 dated 20th September, 2016 has modified Clause A of SEBI Circular dated 18th March, 2016 where it has now been provided that a mention may be made in Consolidated Account Statement (CAS) indicating that the commission disclosed is gross commission and does not exclude costs incurred by distributors such a service tax (wherever applicable, as per existing rates), operating expenses. Further, an indicative format providing guidance on the key components which shall be reflected in half-yearly CAS is placed at Annexure A.

http://www.sebi.gov.in/cms/sebi_data/attachdocs/1474371881657.pdf

11. Permission for trading in futures contracts and modification in contract specifications at exchange level

Securities Exchange Board of India (SEBI) vide Circular No. SEBI/HO/CDMRD/DRMP/CIR/2016/88 dated 20th September, 2016 has allowed Commodity Exchanges to modify Futures Contract specifications pertaining to quality parameters. The exchanges are permitted to modify futures contract specifications related to ticker symbol, maximum order size, trading unit, delivery unit, quotation base value, tick size, delivery centres, issue related to premium /discount, quality parameters and its relevant aspects such as quantity variation and tolerance limit. The norms would come into effect immediately. Further, SEBI has asked exchanges not to change the contract specification and the launch calendar of contracts without prior SEBI approval. The exchanges are required to inform SEBI if they decide not to launch a fresh contract even after getting the approval for continuous trading.

http://www.sebi.gov.in/cms/sebi_data/attachdocs/1474368821651.pdf

12. Staggered delivery, early delivery system, early pay-in facility, penalty on delivery default, fixation of FSP and changes in expiry dates

Securities Exchange Board of India (SEBI) vide Circular No. SEBI/HO/CDMRD/DRMP/CIR/P/2016/90 dated 21st September, 2016 has issued new

norms for risk management at commodity markets to strengthen the Risk Management framework. It has also put in place measures such as staggered delivery system, fixation of final settlement price (FSP) and change in expiry date. Under the staggered delivery, in all futures contracts, tender period would start with onset of the applicable staggered delivery period. In case the day happens to be a holiday, the tender period would start from next working day. Further, Exchanges will have to provide early pay-in facility to market participants permitting them to deposit certified goods to the exchange accredited warehouse against relevant futures contracts sold. The norms would come into effect immediately.

http://www.sebi.gov.in/cms/sebi_data/attachdocs/1474451337313.pdf

13. Regulatory Framework for Commodity Derivatives Brokers

Securities Exchange Board of India (SEBI) vide Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/92 dated 23rd September, 2016 has issued a regulatory framework for Commodity Derivatives Brokers.

http://www.sebi.gov.in/cms/sebi_data/attachdocs/1474630549915.pdf

14. SEBI Board Meeting

Press Release 139/2016 dated 23rd September, 2016

Securities Exchange Board of India (SEBI) in its meeting held on 23rd September, 2016 took the following decisions-

Amendment to SEBI Regulations to permit Foreign Portfolio Investors (FPIs) to trade directly in Corporate Bonds without a broker
Amendments proposed to the SEBI

(Infrastructure Investment Trusts) Regulations, 2014 and SEBI (Real Estate Investment Trusts) Regulations, 2014

Consultation Paper for "Amendments/clarifications to the SEBI (Investment Advisers) Regulations, 2013"

SEBI (Portfolio Managers) Regulations, 1993 to provide a framework for registration of fund managers for overseas funds, pursuant to introduction of Section 9A in the Income Tax Act, 1961

Employee Reservation in Issues

Consultative Paper on Corporate Governance Issues in Compensation Agreements

Permanent registration to be granted to market intermediaries

Increase in limit of foreign investment in Indian stock exchanges

http://www.sebi.gov.in/cms/sebi_data/pdf/files/34810_t.pdf

15. Commodity derivatives – miscellaneous norms

Securities Exchange Board of India (SEBI) vide Circular No.

SEBI/HO/CDMRD/DRMP/CIR/P/2016/93

dated 26th September, 2016 has issued miscellaneous norms related to commodity derivatives.

http://www.sebi.gov.in/cms/sebi_data/attachdocs/1474888017641.pdf

16. Investor Protection Fund (IPF) and its related matters

Securities Exchange Board of India (SEBI) vide Circular No. SEBI/HO/CDMRD/DEICE/CIR/P/2016/94 dated 26th September, 2016 has issued circular with regard to constitution and Management of the Investor Protection Fund (IPF), Contributions to the IPF, Manner of filling/inviting claims from the Investors/Clients, Eligibility of claims, Determination of Legitimate Claims, Threshold limit of Claims and Disbursements of Claims from the IPF.

http://www.sebi.gov.in/cms/sebi_data/attachdocs/1474890863244.pdf

17. Enhanced Supervision of Stock Brokers/Depository Participants

Securities Exchange Board of India (SEBI) vide Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated 26th September, 2016 issued a Circular providing the Guidelines for Enhanced Supervision of Stock Brokers/Depository Participants. The Guidelines include the nomenclature for bank accounts and demat accounts which is to be uniformly followed, a Sophisticated alerting and reconciliation mechanism for monitoring the Client's Funds, Changes in the existing system of internal audit for stock brokers/depository participants and

Imposition of uniform penal action in the event of non-compliance with specified requirements. It further requires Stock Exchanges/Depositories to disseminate the information provided in the Circular on their website, make necessary amendments for attaining uniformity and communicate to SEBI the status of implementation in their Monthly Development Reports.

http://www.sebi.gov.in/cms/sebi_data/attachdocs/1474895821251.pdf

TAXATION



1. No enquiry of document relating to Income Declaration Scheme (IDS), 2016 during the course of Search

Ministry of Finance, Central Board of Direct Taxes (CBDT) vide Circular No. 32 of 2016 dated 1st September, 2016 It is clarified that wherever in the course of search under section 132 or survey operation under section 133A of Income-tax Act, 1961, any document is found as a proof for having already filed a declaration under the Income Declaration Scheme (IDS), 2016, including acknowledgement issued by the Income-tax Department for having filed a declaration, no enquiry would be made by the Income-tax Department in respect of sources of undisclosed income or investment in movable or immovable property declared in a valid declaration made in accordance with the provisions of the Scheme.

<http://www.incometaxindia.gov.in/communications/circular/ids-circular-no-32-of-2016.pdf>

2. Income Declaration Scheme 2016 – Government issues Clarifications in the form of Sixth Set of Frequently Asked Questions (FAQs)

In view of the fact that all the major queries and concerns of stakeholders have already been addressed by issue of circulars (FAQs) and also to provide stability and certainty to the Scheme, it is envisaged that no further clarifications on the Scheme shall be issued.

It is reiterated that the Scheme closes on 30.09.2016. The extension of the scheme is out of question.

3. Service Tax Exemption on renting of precincts of a religious place

Ministry of Finance, Central Board of Excise and Customs (CBEC) vide Notification No. 6th September, 2016 has provided exemption from Service Tax on renting of precincts of a religious place.

Service Tax Exemption on renting of precincts of a religious place meant for general public is been restricted to only charitable or religious trust U/s. 12AA of the Income-tax Act, 1961 or a trust or an institution registered U/s. 10(23C)(v) of Income-tax Act or a body or an authority covered under Section 10 (23BBA) of the Income Tax Act, 1961.

4. CBDT – Income Tax Return due date extended to 17th October 2016 due to IDS 2016

Ministry of Finance, Central Board of Direct Taxes (CBDT) has extended the date for filing of tax returns by assesses who are required to submit audited accounts in view of the ongoing Income Declaration Scheme (IDS) to October 17. The tax payers whose business receipts exceed Rs 1 crore or professional receipts exceed Rs 25 lakh during the previous year 2015-16 are required to file an Income Tax return accompanied by an audit report by the above mentioned due date. The reasons for extension is due to the fact that the Income Declaration Scheme, as launched by the government on June 1 to uncover black money, closes on September 30 which happens to be the last date for filing of Tax Audit Returns. Under IDS, one can come clean by paying tax, penalty and cess totalling 45 per cent of the undisclosed income.

5. GST - The Constitution (One Hundred And First Amendment) Act, 2016

The Government has amended the Constitution of India to give effect to the provisions of Goods and Service Tax Act, 2016. The amendment has brought about many changes in the Articles inter alia, the newly inserted Article 246A gives power to the Legislature of every State to make laws with respect to goods and services tax imposed by the Union or by such State. Article 269A provides for Levy and collection of goods and services tax in course of inter-State trade or commerce. Further, the newly inserted Article 279A provides for the constitution of the Goods and Services Tax Council which shall be constituted by the President within sixty days from the date of commencement of the Constitution (One Hundred and First Amendment) Act, 2016.

6. DVAT first quarter return filing due date extended to 19.09.2016

Government of National Capital Territory of Delhi, Department of Trade and Taxes, vide Circular No. 14 dated 9th September, 2016 has extended the due date of filing online return for first quarter of 2016-17 in Form DVAT-16, DVAT-17 and DVAT-48 along with required annexure/enclosures to 19/09/2016.

7. Clarification regarding Extension of Due date for both Tax Audit & ITR Filing: CBDT

Ministry of Finance, Central Board of Direct Taxes vide Instruction No. F. No. 225/195/2016-ITA II dated 14th September, 2016 has provided clarification with regard to extension of due date for Tax Audit and ITR filing.

Central Board of Direct Taxes, vide order u/s 119 of the Income-tax Act, 1961 (Act) dated 9th September, 2016, has extended the 'due date' for filing of income tax returns by the taxpayers whose accounts are audited u/s 44AB and who are required to furnish the returns of income for Assessment Year 2016-17 by 30th September, 2016 as per provisions of section 139(1) of the Act from 30th September, 2016 to 17th October, 2016. Clarifications are now being sought whether the said extension of 'due date' would also apply for getting the accounts audited in accordance with the provision of section 44AB.

Section 44AB of the Act, stipulates that the accounts are to be got audited by an accountant and furnished in the prescribed manner before the 'specified date'. The 'specified date' under Explanation (ii) to that section has been defined to be the 'due date' for furnishing the return of income under subsection (1) of section 139. Therefore, the extended 'due date' as per CBDT order dated 9th September, 2016 would also apply for the purpose of section 44AB of the Act.

8. Government notifies India-Seychelles DTAA

Ministry of Finance, Department of Revenue vide Notification No. 80 dated 8th September, 2016 has notified the Double Taxation Avoidance Agreement (DTAA) between India and Seychelles.

<http://www.incometaxindia.gov.in/communications/notification/notification802016.pdf>

9. Clarifications on the Direct Tax Dispute Resolution Scheme, 2016

Ministry of Finance, Central Board of Direct Taxes (CBDT) vide Circular No. 33 dated 12th September, 2016 has provided clarifications in the form of Frequently Asked Questions (FAQs) on Direct Tax Dispute Resolution Scheme, 2016. CBDT has clarified that assessment orders resulting in reducing loss are not eligible under the Scheme, however Scheme may be availed if an appeal is pending before Commissioner (Appeals) in respect of penalty order framed as a result of variation in quantum loss. Further, the board has clarified that where an appeal was pending before CIT(Appeals) as on 29.02.2016 and the CIT(Appeals) has already disposed of the same before making the declaration, the declaration under the Scheme cannot be filed. The scheme provides an opportunity to tax payers who are under litigation to come forward and settle the dispute in accordance with the provisions of the Scheme.

http://www.incometaxindia.gov.in/communications/circular/circular33_2016.pdf

10. Government notifies applicability of 19 Section of Goods and Service Tax (GST) from 16.09.2016

Ministry of Finance, Department of Revenue

vide Notification dated 16th September, 2016 has notified the following 19 sections of the Constitution (One Hundred and First Amendment) Act, 2016- Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19 and 20 of the said Act, shall come into force w.e.f. 16th September, 2016.

<http://egazette.nic.in/WriteReadData/2016/171758.pdf>

11. CBDT notifies India Infradebt Limited as infrastructure debt fund U/s. 10(47)

Ministry of Finance, Central Board of Direct Taxes (CBDT) vide Notification No. 83 dated 16th September, 2016 has notified M/s. India Infradebt Limited as an infrastructure debt fund for the purposes of the said clause, for the assessment year 2013-14 and subsequent assessment years.

This notification shall be subject to the following conditions, namely:-

(i) that the infrastructure debt fund shall conform to and comply with the provisions of the Income-tax Act, 1961 and Rule 2F of the Income-tax Rules, 1962 and the conditions provided by the Reserve Bank of India in this regard;

(ii) that the infrastructure debt fund shall file its return of income as required by sub-section 4C of section 139 on or before the due date.

http://www.incometaxindia.gov.in/communications/notification/notification83_2016.pdf

12. Form 64A-Income distributed by business trust – revised

Ministry of Finance, Central Board of Direct Taxes (CBDT) vide Notification No. 84 dated 16th September, 2016 has made amendment to Income Tax Rules, 1962, these rules may be called as Income-tax (22nd Amendment) Rules, 2016 and shall come into force from 1st day of April, 2016. The rules are issued in order to amend the Form 64A with regard to Income distributed by business trust.

http://www.incometaxindia.gov.in/communications/notification/notification84_2016.pdf

13. FAQs on GST- Press Release dated 21st September, 2016

Ministry of Finance vide Press Release dated 21st September, 2016 had released a Booklet containing Frequently Asked Questions (FAQs) relating to Goods and Services Tax (GST). The FAQ compilation covers broadly 24 topics with Chapters on Registration, Valuation, Input Tax Credit, Assessment, Audit, Refund, Demand and Recovery, Appeals, Advance Ruling, Offence and Penalties etc.

The FAQ will serve as a training tool for helping the officers as well as public, to get acquainted with the Model GST law and its nuances.

The journey to roll-out the Goods and Services Tax (GST) has commenced with the enactment of the 101st Constitution Amendment Act, 2016 on 8th September, 2016 and the subsequent notifications. The GST is a new fiscal law and it is necessary that tax officers and the trade are suitably aware of the law. In this backdrop, CBEC as a part of capacity building exercise has prepared a compilation of FAQ on GST.

14. Cabinet approves merger of rail budget with general budget; advancement of budget presentation and merger of plan and non-plan classification in budget and accounts

The Union Cabinet vide Press Release dated 21st September, 2016 has approved the proposals of Ministry of Finance on certain landmark budgetary reforms relating to (i) the merger of Railway budget with the General budget, (ii) the advancement of the date of Budget presentation from the last day of February to the 1st of February and (iii) the merger of the Plan and the Non-Plan classification in the Budget and Accounts. All these changes will be put into effect simultaneously from the Budget 2017-18.

Merger of Railway Budget with the General Budget:

The arrangements for merger of Railway budget with the General budget have been approved by the Cabinet with the following administrative and financial arrangements-

- (i) The Railways will continue to maintain its distinct entity -as a departmentally run commercial undertaking as at present;
- (ii) Railways will retain their functional autonomy and delegation of financial powers etc. as per the existing guidelines;
- (iii) The existing financial arrangements will continue wherein Railways will meet all their revenue expenditure, including ordinary working expenses, pay and allowances and pensions etc. from their revenue receipts;
- (iv) The Capital at charge of the Railways estimated at Rs.2.27 lakh crore on which annual dividend is paid by the Railways will be wiped off. Consequently, there will be no dividend liability for Railways from 2017-18 and Ministry of Railways will get Gross Budgetary support. This will also save Railways from the liability of payment of approximately Rs.9,700 crore annual dividend to the Government of India;

The presentation of separate Railway budget started in the year 1924, and has continued after independence as a convention rather than under Constitutional provisions.

The merger would help in the following ways:

- The presentation of a unified budget will bring the affairs of the Railways to centre stage and present a holistic picture of the financial position of the Government.

- The merger is also expected to reduce the procedural requirements and instead bring into focus, the aspects of delivery and good governance.

- Consequent to the merger, the appropriations for Railways will form part of the main Appropriation Bill.

Advancement of the Budget presentation:

The Cabinet has also approved, in principle, another reform relating to budgetary process, for advancement of the date of Budget presentation from the last day of February to a suitable date. The exact date of presentation of Budget for 2017-18 would be decided keeping in view the date of assembly elections to be held in States. This would help in following ways:

- The advancement of budget presentation by a month and completion of Budget related legislative business before 31st March would pave the way for early completion of Budget cycle and enable Ministries and Departments to ensure better planning and execution of schemes from the beginning of the financial year and utilization of the full working seasons including the first quarter.

- This will also preclude the need for seeking appropriation through 'Vote on Account' and enable implementation of the legislative changes in tax; laws for new taxation measures from the beginning of the financial year.

Merger of Plan and Non Plan classification in Budget and Accounts:

The third proposal approved by the Cabinet relates to the merger of Plan and Non Plan classification in Budget and Accounts from 2017-18, with continuance of earmarking of funds for Scheduled Castes Sub-Plan/Tribal

Sub-Plan. Similarly, the allocations for North Eastern States will also continue.

This would help in resolving the following issues:

- The Plan/Non-Plan bifurcation of expenditure has led to a fragmented view of resource allocation to various schemes, making it difficult not only to ascertain cost of delivering a service but also to link outlays to outcomes.

- The bias in favour of Plan expenditure by Centre as well as the State Governments has led to a neglect of essential expenditures on maintenance of assets and other establishment related expenditures for providing essential social services.

- The merger of plan and non-plan in the budget is expected to provide appropriate budgetary framework having focus on the revenue, and capital expenditure.

15. Cabinet approves Agreement between India and Samoa for exchange of information with respect to Taxes

The Union Cabinet vide Press Release dated 21st September, 2016 has given its approval for signing and ratification of Agreement between India and Samoa for the exchange of information with respect to Taxes.

The Agreement will stimulate the flow of exchange of information between India and Samoa for tax purposes which will help curb tax evasion and tax avoidance.

There is no financial implications at present. Only in the event of extraordinary costs exceeding USD 500, the same will be borne by India. India has similar provisions in other such tax information exchange agreement.

Salient features of the Agreement:

1. The Agreement enables the competent authorities of India and Samoa to provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the two countries concerning taxes covered by this Agreement.

2. The information received under the Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts or administrative bodies) concerned with assessment, collection, enforcement, prosecution or determination of appeals in relation to taxes covered under the Agreement. Information may be disclosed to any other person or entity or authority or jurisdiction with the prior written consent of the information sending country.

3. The Agreement also provides for Mutual Agreement Procedure "for resolving any difference or for agreeing on procedures under the Agreement.

4. The Agreement shall enter into force on the date of notification of completion of the procedures required by the respective laws of the two countries for entry into force of the Agreement.

Background:

The Central Government is authorized under section 90 of the Income Tax Act, 1961 to enter into an Agreement with a foreign country or specified territory for exchange of information for the prevention of evasion or avoidance of income-tax chargeable under the Income-tax Act, 1961. Negotiations for entering into an Agreement for the exchange of information with respect to Taxes were finalized between

India and Samoa in June, 2016 and both countries have agreed on the text of the Agreement.

16. Central Board of Direct taxes (CBDT) Signs Five (5) more Unilateral Advance Pricing Agreements (APAs); Total Number of APAs Entered Into by the CBDT Reaches 103.

Ministry of Finance vide Press Release dated 23rd September, 2016 has entered into five (5) unilateral Advance Pricing Agreements (APAs) today with Indian taxpayers. One of these Agreements has a rollback provision in it. With these signings, the total number of APAs entered into by the CBDT has reached 103.

The five (5) APAs signed pertains to diverse sectors i.e. Information Technology, Sourcing services and Investment advisory services. The 103 APAs signed so far include 4 bilateral APAs and 99 unilateral APAs. A total of 39 APAs have already been concluded in six months of the current Financial Year.

17. CBEC – Release of Draft GST Formats, Forms and Rules

CBE has released Draft GST Formats, Forms and Rules. The Board has released Draft Registration Rules & formats, Payment Rules & formats and Invoice Rules & formats for public comments. Further, CBEC has also released Draft formats for each of the Rules mentioned herein which include Application for Registration under the Act, Application for Registration for Non Resident Taxable Person, Application for extension of registration period by Casual / Non-Resident taxable person. Comments on Draft Rules and Formats may be given by 28th September, 2016.

18. CBDT Notifies Income Computation and Disclosure Standards

Central Board of Direct Taxes (CBDT) vide Notification No. 87 dated 29th September, 2016 has notified the Income Computation and disclosure Standards to be followed by all the assessee (other than an individual or a Hindu undivided family who is not required to get his accounts of the previous year audited in accordance with the provisions of section 44AB of the said Act) following the mercantile system of accounting, for the purposes of computation of income chargeable to income-tax under the head “Profits and gains of business or profession” or “Income from other sources”.

The same shall be applicable to assessment year 2017-18 and subsequent years.

<http://www.incometaxindia.gov.in/communications/notification/notification872016.pdf>

19. CBEC has revised Form ST 3 meant for Half Yearly Service Tax Return vide Service Tax (Third amendment) Rules, 2016. They shall come into force on the date of their publication in the Official Gazette. The amended Form has included a section for Krishi Kalyan Cess payable. Further, heading in Part D of the Form has also been substituted to ‘Service Tax Paid in Cash and through Cenvat Credit’.

20. Clarification for extension of due date (17th Oct 2016) apply to all assessee (CBDT Clarification dated 30th Sept 2016)

Central Board of Direct Taxes (CBDT) vide letter dated 30th September, 2016 has clarified that extension of Due Date vide F.No.225/195/2016/ITA.II dated 09/09/2016 and 14/09/2016, would apply to all assessee who are required to file their return of income by 30/09/2016.

OTHERS

1. DGFT

The Ministry of Commerce & Industry has amended the Clause 3(1)(i)(h) of Foreign Trade (Exemption from application of Rules in certain cases) order, 1993 to allow individuals to import CIF value of consumer electronic items (except hearing aids and lifesaving equipment, apparatus and appliances and parts thereof) at any one time by any person through post or otherwise for personal use upto an enhanced value of Rs. 50,000/-. Earlier to this amendment the CIF value of good imported was allowed upto Rs. 2,000/- only.

2. ESIC Raises Wage Threshold to Rs. 21,000

Employees' State Insurance Corporation (ESIC) has raised monthly wage threshold to Rs. 21,000, from the current Rs. 15,000, for coverage under its health insurance scheme and also decided to give an option to existing insured persons to continue membership even if their wage breaches the ceiling of Rs. 21,000 per month. Both the decisions will be implemented from October 1.

3. New Import policy for Marble and Travertine Blocks

Ministry of Commerce and Industry, vide Press Release dated 18th September, 2016 has notified the new import policy for Marble & Travertine Blocks, and Marble and Granite Slabs, to come into effect from 1st October 2016.

Marble and Travertine Blocks: The Quantitative Restriction on the import of Marble & Travertine Blocks, and the associated administratively cumbersome and restrictive import licensing system has been brought to an

end under the new policy coming into effect from 1st October 2016. The Minimum Import Price (MIP) for import of Marble Blocks has been reduced to US Dollars 200 per Metric Ton to address the distortions associated with an MIP. To address the interest of domestic producers, the Basic Customs Duty on import of Marble & Travertine Blocks will go up four times from the present 10% to 40% w.e.f. 1st October 2016.

Marble Slabs: With effect from 1st October 2016, the MIP on the import of marble slabs is being reduced to US Dollars 40 per Sq. Metre to address the distortion associated with an MIP. In order to address the interest of domestic producers the basic customs duty on import of marble slabs is being doubled from 10% to 20% w.e.f. 1st October 2016

Granite Slabs: With effect from 1st October 2016, the MIP on the import of granite slabs is being reduced to US Dollars 50 per Sq. Metre to address the distortion associated with MIP. In order to address the interest of domestic producers the basic customs duty on import of granite slabs is being doubled from 10% to 20% w.e.f. 1st October 2016.

The new policy balances the interests of domestic consumers, producers and processors, and ends the cumbersome licensing system for import of Marble & Travertine blocks.

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