

# Acquisory News Chronicle



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*“We care more than others think is wise....  
We dream more than others think is practical....  
We expect more than others think is possible....”*

**Editor: Sunaina Jhingan**  
**(Knowledge Manager with Acquisory)**

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## *Start – up India – A Campaign to Boost the Business in India*

### **Introduction**

Startup India is a drive initiated by the Government of India to build a strong ecosystem for nurturing the innovation and Startups in the Country so as to take India a Step forward in becoming a developed Country. This shall be able to generate more employment opportunities alongwith the economic growth of the Country. It has given opportunity to many unemployed persons to come with their innovative ideas and designs.

### **Setting up Process**

Startup definition for the purpose of Government Schemes, means an entity, incorporated or registered in India not prior to five years, with an annual turnover not exceeding INR 25 Crores in any preceding financial year, working towards innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property. Provided that such entity is not formed by splitting up or reconstruction, of a business already in existence.

Further the entity shall lose its existence of Startup if in any preceding financial years it has achieved the turnover of INR 25 Crores or it has completed 5 years from the date of incorporation/registration.

The Startup entity can be incorporated in either of the following form:

- Partnership firm [ a duly registered partnership deed under the Partnership Act, 1932]
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- Limited Liability Partnership [LLP] firm duly incorporated under the Limited Liability Act, 2008
- Private Limited Company incorporated under the Companies Act, 2013.

***“Startup entity means an entity incorporated or registered in India not prior to five years with an annual turnover not exceeding 25Cr and can be in the following forms- Partnership firm, LLP or a Private Limited Company”***



A proprietorship or public limited company is not eligible as Startup, whereas the One Person Company, being a Private Limited Company is entitled to be a Startup.

A business is deemed to be recognized as Startup only if it aims to develop and commercialize – a new product or service or process or a significantly improved existing product or service or process that will create or add value for customers or workflow.

For the ease of registration and other details regarding Startups the Government of India has launched the Startup India portal and mobile app w.e.f. 1<sup>st</sup> April, 2016, wherein the Action plan as to how startups have to go about doing business is completely provided.

Further to ease out the queries of the various startups the Government of India, Department of Industrial Policy & Promotion (DIPP) has release the Frequently Asked Questions (FAQs). The Government from every possible way is trying to reach out to the Startups to come up with their innovation and ideas.

The Government in order to do the proper hand holding for the startups have provided a complete action plan to the startups so that they can easily start their own ventures after duly fulfilling all the requirements.

In this regard The Ministry of Human Resource Development and the Department of Science and Technology have agreed to partner in an initiative to set up over 75 such startup support hubs in the National Institutes of Technology (NITs), the Indian Institutes of Information Technology (IIITs), the Indian Institutes of Science Education and Research (IISERs) and National Institutes of Pharmaceutical Education and Research (NIPERs). The Reserve Bank of India said it will take steps to help improve the 'ease of doing business' in the country and contribute to an ecosystem that is conducive for the growth of start-up businesses.

### **Startups Eligible for Startup India Tax Exemptions & Incentives**

As reproduced before that a business is considered a Startup under the Startup India Action Plan if it aims to develop and commercialize new products or services or process or significantly improved existing product or service or process, that will create or add value for customers or workflow.

#### *Eligibility of Startup*

- Be supported by a recommendation (with regard to innovative nature of business),

in a format specified by Department of Industrial Promotion & policy (DIPP), from an incubator established in a post graduate college in India; or

- Be supported by an incubator which is funded (in relation to the project) from Government of India (GoI) as part of any specified scheme to promote innovation; or
- Be supported by a recommendation (with regard to innovative nature of business), in a format specified by DIPP, from an incubator recognized by GoI; or
- Be funded by an Incubation Fund/Angel Fund/ Private Equity Fund/ Accelerator/ Angel Network duly registered with Securities Exchange Board of India (SEBI) that endorses innovative nature of business;
- Be funded by GoI as part of any specified scheme to promote innovation;
- Have a patent granted by the Indian Patent and Trademark Office in areas affiliated with the nature of business being promoted.

***“Startup to be eligible shall be supported by recommendation for innovative nature of business, supported by incubator which shall be funded by GOI, shall have a patent granted by the Indian patent and Trademark office”***

#### *Exemptions*

In the Budget 2016-17 to promote the Entrepreneurship the government has announced a number of incentives for Startups, allowing 100 per cent deduction of profits for three out of five years for start-ups set up during April 2016 to March 2019. Individuals and Hindu Undivided Family (HUF) setting up start-ups by deploying

capital gains from sale of residential property will also get tax relief.

Further, in order to boost the start-up ecosystem, the government has proposed to provide exemption from capital gains tax if the long term capital gains proceeds are invested in notified funds. The gains will have to be invested for at least three years to claim exemption, while the investment in the units of the specified fund shall be allowed up to Rs. 50 lakh.

***“Startups have been provided with various exemptions – 100% tax exemption for first three years of business, capital gain tax exemption and other labour laws related exemptions”***

The government has also decided to extend provisions of Section 54GB of the Income Tax Act, which would provide significant incentives to start-ups. This section provides tax relief to an individual or Hindu Undivided Family (HUF) willing to set up a start-up company by selling a residential property to invest in the shares of such company.

Other exemptions that shall be provided to Startups will be

- Refund of 80% patent fee;
- Labour & Environment Law exemptions. No inspection from PF, ESIC & Environment department for 3 years;

- Easy Exit from the Startup within 90 days.

The Startups shall be eligible for tax benefits only when they have obtained certification from the Inter-Ministerial Board, set-up for such purpose. The Inter-Ministerial Board set-up by DIPP would validate the innovative nature of the business for granting tax related benefits. However, approval from the Inter-Ministerial Board shall not in any manner, limit or absolve the Startup from any liability incurred in case of any misrepresentation / fraud arising from submission of such application and /or supporting such application.

### **Sustainability**

Whether this plan of Government of Startup India will be fruitful and whether the same will bring a revolution for the small vendors? With economy being opening to the venture capitalist the Government is of the view that Foreign Investors as well as the Domestic Investors are interested in investing money in the Startups with the innovative ideas and that can be proved to be a profitable venture. As the Government is trying to ease out norms for doing business in India it is expected that this initiative of Startup India will not only boost the economy but will have a great impact on the overall economic structure.

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## ***The Real Estate (Regulation and Development) Act, 2016 – Effect on the buyer and developers of the Property***

The Real Estate (Regulation and Development) Act, 2016 ('Act') which has received the President assent has given a long way to the Real Estate Industry to grow. The Act has given standardization norms for buyers as well as for developers which in return will be able to create a governed business practices in the Real estate Industry.

### **Need for Establishment of the Act**

The Act has been formed to establish a Regulator in the form Real Estate Regulatory Authority (RERA) which can keep an eye and regulate all the norms that shall be applicable on the Real Estate Industry. Further, the authority shall ensure sale of plot, apartment or building as the case may be, or sale of real estate project, in an efficient and transparent manner and also to protect the interest of the consumers in real estate sector. The Act also lay emphasis on establishing adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the RERA and the adjudicating officer and for matters connected therewith or incidental thereto.

The basic aim of the Act is to protect the buyers by providing a framework for reducing conflict with developers by RERA keeping a watch as the Real Estate Sector was unorganized and unregulated thus to rectify the alleged problem, a new set of norms, registrations, regulations and clearances are being created.

### **Brief Overview of the Act**

The Act overall covers various provisions in order to address the weak areas of the Real



Estate Industry in India, principally by establishing a disclosure framework and setting strict liabilities for developers and promoters irregularities.

***“Real Estate (Regulation and Development) Act, 2016 established to regulate and keep an eye on all the norms applicable on real estate industry – setting up of RERA and real estate appellate tribunals.”***

The Act lays down the setting up of RERA and real estate appellate tribunals in all states and Union Territories (except Jammu & Kashmir) within one year of its notification.

The Act provides for the mandatory registration of real estate projects with RERA where the total area of land proposed to be developed exceeds 500 square meters or more than eight apartments are proposed to be developed inclusive of all phases (where phase-wise development is proposed). It also

mandates the registration of every phase of the project separately as a Standalone project and the projects cannot be advertised, booked or sold in any form prior to registration and obtaining necessary construction approvals. The RERA have to either grant or reject the registration applications within 30 days of the receiving of the application.

***“Act to provide mandatory registration of real estate projects with RERA where the total area of land proposed to be developed exceeds 500 square meters or more than eight apartments are proposed to be developed inclusive of all phases.***

***Project disclosures to be made, defining of terms apartment, carpet area and rate of interest.  
promoters are mandated to park 70% of all project receivables in a separate account”***

Further, the promoters/developers of the ongoing project for which the completion certificate is not yet issued shall make an application to the RERA for registration of the said project within three months from the date of the commencement of the Act.

Under the Act it is being mandated to provide the publicly accessible disclosures of the project and promoter details, alongwith a self-declared timeline within which the promoter is required to complete the project. Quarterly project related disclosures also required and all the disclosures are required to be made online available.

The Act clearly defines certain terms such as ‘apartment’, ‘carpet area’ and ‘rate of interest’ which will help in standardizing sector practices. Also to further streamline the fund position, the promoters are mandated to park 70% of all project

receivables in a separate account. Drawdown from such account is permitted for land and construction costs only, in line with the percentage of project completion (as certified by an architect, an engineer and a chartered accountant). The Act also provides that the promoter can accept only upto 10% of the apartment cost prior to entering into a written agreement for sale with the consumer.

The Act also mandates that the promoter shall declare that it has legal title to the project land or authenticate validity of title, if such land is owned by another person. The promoter is also required to take insurance for title and buildings along with construction insurance.

In furtherance to the restrictions imposed on promoter in the Act, the promoter is not permitted to alter the plans, structural designs and specifications of the land, apartment or building without prior consent of two-third of the allottees. Also the promoter is not allowed to transfer or assign majority of its rights and liabilities in a project without such consent, along with RERA’s written approval.

In order to ease out the understanding for the consumers/buyers, the Act provides for the specified form of agreement for sale between promoters and consumers as may be prescribed, which shall prevent inclusion of biased provisions in it. The consumers have also been granted the right to seek relief for unilateral termination of such agreements by promoters without cause. The promoter shall be held responsible for such defects or other deficiencies for a period of 5 years from the date of delivery of possession.

The Act also ensures the registration of Real Estate Agents with RERA and makes prohibition for agents from facilitating any sale or purchase of plots/apartments in



projects without obtaining registration with RERA. The agents are required to facilitate access of project information to consumers at the time of booking and refrain from making false statements, misleading representations and indulging in unfair trade practices.

Legal recourse is also clearly provided in the Act for the consumers. The Act provides for the time bound steadfastness of complaints and disputes by the RERA's and the Real Estate Appellate Tribunals. It is evidently cited in the Act for refund of amounts paid by the consumers (alongwith the interest and compensation) for promoter's failure to give possession of the apartment in accordance with the agreement for sale, or any breach of such agreement.

For the existing projects which have not yet received the completion certificate as on the date of commencement of this Act, will be required to obtain registration with RERA within three months of such commencement.

The Act imposes monetary penalties on the promoter of up to 5% of the 'estimated cost of the project' (as determined by RERA) for disclosure related defaults, and up to 10% for other defaults, along with a maximum imprisonment of 3 years. The Consumers are also liable to a fine of up to 10% of the apartment cost or imprisonment up to 1 year for non-compliance with orders of the real estate appellate tribunal.

All the existing laws are being repealed and the Real Estate (Regulation and Development) Act, 2016 will have overriding effect on the conflicting State Laws.

### **Limitations of the Act**

Though the Act has tried to stream line the various loopholes of the Real estate industry but the Act still shows certain deficiencies

which will directly indirectly affect both the consumer and promoter. It is likely that the regulatory burden will be enhanced and increase in cost of capital and compliance.

*“limitations barring the act – no single window clearance approval, prior approval for project launch, does not establishes a definite title system for land.*

*Act lays down the strict penalties, including imprisonment, for developers if they slip up, there is no such provision in the Act to make government authorities, entrusted to oversee and enforce regulations, more accountable.”*

The Act provides for prior approval for project launch, instead of certain specific approvals as previously required, which may delay the project initiation and will restrict the supply of new properties. There is no concept of single window clearance approval system, which could further delay the projects and the act does not assign liability of project delays attributable to state agencies.

Apart from the above mentioned limitation, the Act does not establishes a definite title system for land. The Act is a standard-setting instrument for the real estate sector and performs the critical task of identifying and allocating risks associated with construction and development projects. The current approach of the Act is to uniformly regulate different types and sizes of projects and its implementation will require significant capacity building at the state-level. The Act disrupts existing sector practices to raise efficiency of the real estate market and is likely to benefit all stakeholders by imposing financial and operational discipline, accountability and diligence.

As the Act lays down the strict penalties, including imprisonment, for developers if they slip up, there is no such provision in the Act to

make government authorities, entrusted to oversee and enforce regulations, more accountable.

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## News Updates

### CORPORATE

#### Reserve Bank of India [RBI]



#### **1. Foreign Exchange Management (Deposit) Regulations, 2016.**

*“Reserve Bank of India (RBI) vide Notification No. FEMA 5(R)/2016- RB dated 1st April, 2016 has issued The Foreign Exchange Management (Deposit) Regulations, 2016 and the same shall come into force from the date of publication in the official gazette.”*

The regulation provides for the restrictions on deposits between a person resident in India and a person resident outside India. It also states the various exemptions and other details and procedures for acceptance of deposits by person other than authorized dealer/authorized bank and acceptance of deposits by an authorized dealer/authorized bank from persons resident outside India.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10325&Mode=0>

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10326&Mode=0>

#### **2. Revision of Repo Rate to 6.50 percent and Reverse Repo Rate to 6 percent.**

*“Reserve Bank of India (RBI) vide Notification No. RBI/2015-2016/357 FMOD.MAOG. No. 112 /01.01.001/2015-16 dated 5<sup>th</sup> April, 2016 has revised the Repo and Reverse Repo Rate. The Repo Rate has been revised to 6.50 percent and Reverse Repo Rate to 6 percent.”*

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10330&Mode=0>

#### **3. Reduction of Marginal Standing Facility (MSF) to 7.00 percent**

*“Reserve Bank of India (RBI) vide Notification No. RBI/2015-2016/356 FMOD.MAOG. No.113 /01.18.001/2015-16 dated 5<sup>th</sup> April, 2016 has reduced the Marginal Standing Facility (MSF) to 7.00 percent.”*

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10329&Mode=0>

#### **4. Revision of Bank Rate to 7.00 percent**

*“Reserve Bank of India (RBI) vide Notification No. RBI/2015-16/358 DBR.No.Ret.BC.90/12.01.001/2015-16 dated 5<sup>th</sup> April, 2016 has revised the Bank Rate to 7.00 percent.”*

Also the penal interest rates on shortfall in reserve requirements that are linked to the Bank Rate are revised. Penal interest rates on shortfalls in reserve requirements (depending on duration of shortfalls) - Bank Rate plus 3.0 percentage points (10.00 per cent) or Bank Rate plus 5.0 percentage points (12.00 per cent).

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10331&Mode=0>

**5. Changes in the Daily Minimum Cash Reserve Maintenance Requirement.**

*“Reserve Bank of India (RBI) vide Notification No. RBI/2015-16/359 DBR.No.Ret.BC.91 /12.01.001/2015-16 dated 5<sup>th</sup> April, 2016 has made changes in the Daily Minimum Cash Reserve Maintenance Requirement, the changed Cash Reserve Ratio stands 90 percent effective from the fortnight beginning 16<sup>th</sup> April, 2016.”*

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10332&Mode=0>

**6. Review of Applicability of Concentration of Credit/Investment Norms under the Systemically Important Non-Banking Financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2015**

*“Reserve Bank of India (RBI) vide Notification No. RBI/2015-16/363 DNBR (PD) CC.No.077/03.10.001/2015-16 dated 7<sup>th</sup> April, 2016 has reviewed the Applicability of Concentration of*

*Credit/Investment Norms under the Systemically Important Non-Banking Financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2015, wherein any non-banking financial company not accessing public funds, either directly or indirectly, or not issuing guarantees may make an application to the Bank for an appropriate dispensation from the concentration of credit/ investment norms.”*

It has now been decided that the concentration of credit/ investment norms shall not apply to a systemically important non-banking financial company not accessing public funds in India, either directly or indirectly, and not issuing guarantees.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10336&Mode=0>

**7. Revision of interest rates for Small Saving Schemes.**

*“Reserve Bank of India (RBI) vide Notification No. RBI/2015-16/362 DGBA.GAD.3175/15.02.005/2015-16 dated 7<sup>th</sup> April, 2016 has provided the details w.r.t. Revision of interest rates for Small Saving Schemes.”*

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10335&Mode=0>

**8. Release of guidelines for Priority Sector Lending Certificates (PSLCs)**

*“Reserve Bank of India (RBI) vide Notification No. RBI/2015-16/366 FIDD.CO.Plan.BC.23/04.09.01/2015-16 dated 7<sup>th</sup> April, 2016 has released guidelines for Priority Sector Lending Certificates (PSLCs), where banks can buy and sell instruments to manage the priority sector lending limits on their loan books.”*

The Government of India vide Notification dated February 04, 2016 has specified “Dealing in Priority Sector Lending Certificates (PSLCs) in accordance with the Guidelines issued by Reserve Bank of India” as a form of business under Section 6 (1)(o) of the Banking Regulation Act, 1949. Accordingly, instructions on trading in PSLCs are provided in separate Annexure. To facilitate trading in PSLCs, a trading platform is being provided through the CBS portal (e-Kuber). The detailed user manual/ instructions for trading on the platform are available through the portal.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10339&Mode=0>

#### **9. Release of Monthly Bulletin for April 2016**

*“Reserve Bank of India (RBI) vide its Press Release 2015-2016/2382 dated 11<sup>th</sup> April, 2016 has released the Monthly Bulletin for April 2016. The Bulletin includes the First Bi- Monthly Monetary Policy Statement for the year 2016-2017 and Monetary Policy Report – April 2016.”*

[https://rbi.org.in/Scripts/BS\\_PressReleaseDisplay.aspx?prid=36700](https://rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=36700)

#### **10. Rationalization and revision of reporting of Overseas Direct Investment [ODI] forms.**

*“Reserve Bank of India [RBI] vide A.P. (DIR Series) Circular No. 62 dated 13<sup>th</sup> April, 2016 has rationalized and revised the reporting of Overseas Direct Investment [ODI] forms.”*

The ODI forms are now being rationalized and revised and will comprise of the following parts-

Part I – Application for allotment of Unique Identification Number (UIN) and reporting of Remittances / Transactions:

Section A – Details of the IP(Indian Party) / RI(Resident Individuals).

Section B – Capital Structure and other details of JV/ WOS/ SDS.

Section C - Details of Transaction/ Remittance/ Financial Commitment of IP/ RI.

Section D – Declaration by the IP/ RI.

Section E – Certificate by the statutory auditors of the IP/ self-certification by RI.

Part II - Annual Performance Report (APR)

Part III – Report on Disinvestment by way of

- a. Closure / Voluntary Liquidation / Winding up/ Merger/ Amalgamation of overseas JV / WOS;
- b. Sale/ Transfer of the shares of the overseas JV/ WOS to another eligible resident or non-resident;
- c. Closure / Voluntary Liquidation / Winding up/ Merger/ Amalgamation of IP; and

- d. Buy back of shares by the overseas JV/ WOS of the IP / RI.

A new reporting format introduced for Venture Capital Fund (VCF)/Alternate Investment Fund (AIF), Portfolio Investment and overseas investment by Mutual Funds.

### **Online Reporting of Form ODI**

To provide the AD banks fast and easy accessibility to data for reference purpose, to improve the coverage and ensure proper monitoring of the flows in a dynamic environment. Accordingly, modules in online OID application have been added, wherein all the ODI forms as mentioned in this circular may be reported.

### **Non-Compliance**

Any non-compliance with respect to the instruction for submission of Form ODI Part I, Part II and Part III shall be treated as contravention of Regulation 6 (2) (vi), Regulation 15 and Regulation 16 respectively, of the FEMA Notification No 120/RB-2004 dated July 07, 2004 as amended. The Reserve Bank will take a serious view on non-compliance with the guidelines / instructions and initiate penal action as considered necessary.

**<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10351&Mode=0>**

### ***11. Issuance of Rupee denominated bonds overseas.***

***“Reserve Bank of India [RBI] vide A.P. (DIR Series) Circular No. 60 dated 13th April, 2016 has provided the details with regard to issuance of Rupee denominated bonds overseas.”***

According to the Monetary Policy Statement, the current limit of USD 51 billion for foreign investment in corporate debt, as was given in A.P. (DIR Series) circular No. 94 dated April 01, 2013, has been fixed in Rupee terms at Rs. 2443.23 billion. Issuance of Rupee denominated bonds overseas will be within this aggregate limit of foreign investment in corporate debt.

**<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10350&Mode=0>**

### ***12. Instructions with regard to Submission of Annual Performance Report [APR] under Overseas Direct Investment.***

***“Reserve Bank of India [RBI] vide A.P. (DIR Series) Circular No. 61 dated 13<sup>th</sup> April, 2016 has issued instructions with regard to Submission of Annual Performance Report [APR] under Overseas Direct Investment.”***

In order to provide AD banks greater capability to track submission of APRs and also improve compliance level in the matter of submission of APRs by the IPs / RIs, it is now advised as under:

- a. The online OID application has been suitably modified to enable the nodal office of the AD bank to view the outstanding position of all the APRs pertaining to an applicant including for

- those JV / WOS for which it is not the designated AD bank. Accordingly, the AD bank, before undertaking / facilitating any ODI related transaction on behalf of the eligible applicant, should necessarily check with its nodal office to confirm that all APRs in respect of all the JV / WOS of the applicant have been submitted;
- b. Certification of APRs by the Statutory Auditor or Chartered Accountant need not be insisted upon in the case of Resident Individuals. Self-certification may be accepted;
  - c. In case multiple IPs / RIs have invested in the same overseas JV / WOS, the obligation to submit APR shall lie with the IP / RI having maximum stake in the JV / WOS. Alternatively, the IPs / RIs holding stake in the overseas JV / WOS may mutually agree to assign the responsibility for APR submission to a designated entity which may acknowledge its obligation to submit the APR in terms of Regulation 15 (iii) of Notification, *ibid*, by furnishing an appropriate undertaking to the AD bank;
  - d. An IP / RI, which has set up / acquired a JV / WOS overseas in terms of the Regulations of the Notification, *ibid*, shall submit, to the AD bank every year, an APR in Form ODI Part II in respect of each JV / WOS outside India and other reports or documents by 31st of December each year or as may be specified by the Reserve Bank from time to time. The APR, so required to be submitted, shall be based on the latest audited annual accounts of the JV / WOS

unless specifically exempted by the Reserve Bank.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10349&Mode=0>

### ***13. Acceptance of deposits by Indian companies from a person resident outside India for nomination as Director.***

***“Reserve Bank of India [RBI] vide A.P. (DIR Series) Circular No. 59 dated 13<sup>th</sup> April, 2016 has issued clarification with respect to Acceptance of deposits by Indian companies from a person resident outside India for nomination as Director.”***

As per Section 160 of the Companies Act, 2013, it is provided that a person who intends to nominate himself or any other person as a director in an Indian company is required to place a deposit with the said company. In this context, it has come to the notice of the Reserve Bank that there is ambiguity whether such deposits will require any specific approval from the Reserve Bank under Notification No. FEMA 5(R), in cases where the deposit is received from a person resident outside India.

It is clarified that keeping deposits with an Indian company by persons resident outside India, in accordance with section 160 of the Companies Act, 2013, is a current account (payment) transaction and, as such, does not require any approval from Reserve Bank. All refunds of such deposits, arising in the event of selection of the person as director or getting more than twenty five percent votes, shall be treated similarly.

**14. Provisioning norms pertaining to fraud accounts.**

***“Reserve Bank of India [RBI] vide Notification No. RBI/2015-16/376 DBR.No.BP.BC.92/21.04.048/2015-16 dated 18<sup>th</sup> April, 2016 has amended the provisioning norms pertaining to fraud accounts.”***

In reference to circular DBR.No.BP.BC.83/21.04.048/2014-15 dated April 1, 2015 with regard to provisioning norms pertaining to fraud accounts on review it has now been decided to amend the norms in respect of all cases of fraud, as below:

- a. Banks should normally provide for the entire amount due to the bank or for which the bank is liable (including in case of deposit accounts), immediately upon a fraud being detected. While computing the provisioning requirement, banks may adjust financial collateral eligible under Basel III Capital Regulations - Capital Charge for Credit Risk (Standardised Approach), if any, available with them with regard to the accounts declared as fraud account;
- b. However, to smoothen the effect of such provisioning on quarterly profit and loss, banks have the option to make the provisions over a period, not exceeding four quarters, commencing from the quarter in which the fraud has been detected;

- c. Where the bank chooses to provide for the fraud over two to four quarters and this results in the full provisioning being made in more than one financial year, banks should debit 'other reserves' [i.e., reserves other than the one created in terms of Section 17(2) of the Banking Regulation Act 1949] by the amount remaining un-provided at the end of the financial year by credit to provisions. However, banks should proportionately reverse the debits to 'other reserves' and complete the provisioning by debiting profit and loss account, in the subsequent quarters of the next financial year;
- d. Banks shall make suitable disclosures with regard to number of frauds reported, amount involved in such frauds, quantum of provision made during the year and quantum of unamortised provision debited from 'other reserves' as at the end of the year.

**15. Foreign Investment in units issued by Real Investment Trusts, Infrastructure Investment Trusts and Alternative Investment Funds governed by Securities Exchange Board of India [SEBI] Regulations.**

***“Reserve Bank of India [RBI] vide A.P. (DIR Series) Circular No. 63 dated 21<sup>st</sup> April, 2016 has allowed Foreign Investment in units issued by Real Investment Trusts, Infrastructure Investment Trusts and Alternative Investment Funds governed by Securities Exchange Board of India [SEBI] Regulations.”***



In order to rationalize foreign investment regime for Alternative Investment vehicles and to facilitating foreign investment in collective investment vehicles for real estate and infrastructure sectors, it has been decided, to allow foreign investment in the units of Investment Vehicles registered and regulated by SEBI or any other competent authority. At present, Investment Vehicle will include the following:

- Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014;
- Infrastructure Investment Trusts (InvITs) registered and regulated under the SEBI (InvITs) Regulations, 2014;
- Alternative Investment Funds (AIFs) registered and regulated under the SEBI (AIFs) Regulations 2012.

Further, unit shall mean beneficial interest of an investor in the Investment Vehicle and shall include shares or partnership interests.

The salient features of the new investment regime are:

- a. A person resident outside India including a Registered Foreign Portfolio Investor (RFPI) and a Non-Resident Indian (NRI) may invest in units of Investment Vehicles.
- b. The payment for the units of an Investment Vehicle acquired by a person resident or registered / incorporated outside India shall be made by an inward remittance through the normal banking channel including by debit to an NRE or an FCNR account.
- c. A person resident outside India who has acquired or purchased units in accordance

with the regulations may sell or transfer in any manner or redeem the units as per regulations framed by SEBI or directions issued by RBI.

- d. Downstream investment by an Investment Vehicle shall be regarded as foreign investment if either the Sponsor or the Manager or the Investment Manager is not Indian 'owned and controlled' as defined in Regulation 14 of the Principal Regulations.
- e. In case the sponsors or managers or investment managers are organized in a form other than companies or LLPs, SEBI shall determine whether the sponsor or manager or investment manager is foreign owned and controlled.
- f. The extent of foreign investment in the corpus of the Investment Vehicle will not be a factor to determine as to whether downstream investment of the Investment Vehicle concerned is foreign investment or not.
- g. Downstream investment by an Investment Vehicle that is reckoned as foreign investment shall have to conform to the sectoral caps and conditions / restrictions, if any, as applicable to the company in which the downstream investment is made as per the FDI Policy or Schedule 1 of the Principal Regulations.
- h. Downstream investment in an LLP by an Investment Vehicle that is reckoned as foreign investment has to conform to the provisions of Schedule 9 of the Principal Regulations as well as the extant FDI policy for foreign investment in LLPs.
- i. An Alternative Investment Fund Category III with foreign investment shall make portfolio investment in only those securities

or instruments in which a RFPI is allowed to invest.

- j. The Investment Vehicle receiving foreign investment shall be required to make such report and in such format to Reserve Bank of India or to SEBI as may be prescribed by them from time to time.

Further, in terms of Regulation 4(b) (iv) of Notification No. FEMA 1/2000-RB dated May 3, 2000, foreign investment in any company or partnership firm or proprietary concern or any entity, whether incorporated or not, which is engaged or proposes to engage “in real estate business, or construction of farm houses” is prohibited. However, Explanation (i) ibid provides that “real estate business” shall not include development of townships, construction of residential /commercial premises, roads or bridges. It is now clarified that foreign investment in units of REITs registered and regulated under the SEBI (REITs) Regulations, 2014 will not be included in “real estate business” for the purpose of these regulations.

**16. Guidelines on Investment Advisory Services [IAS] offered by Banks.**

*“Reserve Bank of India [RBI] vide Notification RBI/2015-16/379 DBR.No.FSD.BC.94/24.01.026/2015-16 dated 21<sup>st</sup> April, 2016 has issued guidelines on Investment Advisory Services [IAS] offered by Banks.”*

IAS is defined and regulated by SEBI under the SEBI (Investment Advisors) Regulations, 2013, and entities offering these activities need to be registered with

SEBI. In view of the same it is advised that henceforth, banks cannot undertake IAS departmentally. Accordingly, banks desirous of offering these services may do so either through a separate subsidiary set up for the purpose or one of the existing subsidiaries after ensuring that there is an arm’s length relationship between the bank and the subsidiary.

The sponsor bank should obtain specific prior approval of Department of Banking Regulation before offering IAS through an existing subsidiary or for setting up a subsidiary for this purpose. (Setting up of any subsidiary will, as hitherto, be subject to the extant guidelines on para-banking activities of banks).

All bank sponsored subsidiaries offering IAS will be registered with SEBI and regulated as per the SEBI (Investment Advisors) Regulations, 2013, and shall adhere to all relevant SEBI rules and regulations in this regard.

IAS provided by the bank sponsored subsidiaries should only be for the products and services in which banks are permitted to deal in as per Banking Regulation Act, 1949.

The instructions/guidelines on KYC/AML/CFT applicable to the subsidiary, issued by the concerned regulator, as amended from time to time, may be adhered to in respect of customers to whom IAS is being provided.

Banks which are presently offering IAS may reorganize their operations in accordance

with these guidelines within a period of three years from the date of issue of this circular.

**17. Infrastructure Debt Funds [IDFs].**

*“Reserve Bank of India [RBI] vide Notification RBI/2015-16/381 DNBR(PD).CC.No. 079/03.10.001/2015-16 dated 21<sup>st</sup> April, 2016 has issued instructions with regard to Infrastructure Debt Funds [IDFs].”*

With reference to the Infrastructure Debt Fund-Non-Banking Financial Companies (Reserve Bank) Directions, 2011 issued vide Notification No.DNBS.233/CGM(US)-2011 dated November 21, 2011 (the Directions) prescribing detailed guidelines on the regulatory framework for NBFCs to sponsor IDFs which are to be set up as NBFCs. In terms of the extant instructions, IDF-NBFCs are allowed to raise resources through issue of bonds of minimum five year maturity. On a review, with a view to facilitate better ALM, it has been decided in consultation with the Government of India, *to allow IDF-NBFCs to raise funds through shorter tenor bonds and commercial papers (CPs) from the domestic market to the extent of upto 10 per cent of their total outstanding borrowings.*

**18. Master Direction - Issue and Pricing of shares by Private Sector Banks, Directions, 2016.**

*“Reserve Bank of India [RBI] vide Notification RBI/DBR/2015-16/21 Master Direction DBR.PSBD.No.95/16.13.100/2015-16 dated 21<sup>st</sup> April, 2016 has issued Master Direction - Issue and Pricing of shares by Private Sector Banks, Directions, 2016.”*

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10363&Mode=0>

**19. Master Direction - Amalgamation of Private Sector Banks, Directions, 2016.**

*“Reserve Bank of India [RBI] vide Notification RBI/DBR/2015-16/22 Master Direction DBR.PSBD.No. 96/16.13.100/2015-16 dated 21<sup>st</sup> April, 2016 has issued Master Direction - Amalgamation of Private Sector Banks, Directions, 2016.”*

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10364&Mode=0>

**20. Foreign Exchange Management (Remittance of Assets) Regulations, 2016.**

*“The Reserve Bank of India (RBI) vide A.P. (DIR Series) Circular No. 64/2015-16 [(1)/13(R)] dated 28th April, 2016 has repealed and superseded the Foreign Exchange Management (Remittance of Assets) Regulations, 2016 (Notification No. FEMA 13(R)/2016-RB dated April 1, 2016, hereinafter referred to as Remittance of Assets Regulations).”*

The regulation states the guidelines in respect of remittance outside India by a person whether resident in India or not, of assets in India. It provides for the permission for remittance of assets in certain cases along with the provisions where RBI permission is required.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10371&Mode=0>

**21. Import of Goods - Import Data Processing and Monitoring System (IDPMS)**

*“The Reserve Bank of India (RBI) vide A.P. (DIR Series) Circular No.65 dated 28<sup>th</sup> April, 2016 has issued guideline with regard to setting up Import Data Processing and Monitoring System (IDPMS).”*

To track the import transactions through banking system, Customs will modify the Bill of Entry format to display the AD Code of bank concerned, as reported by the importers. Primary data on import transactions from Customs and SEZ will first flow to the RBI secured server and thereupon depending on the AD code shall be shared with the respective banks for taking the transactions forward. The AD bank shall enter every subsequent activity, viz. document submission, outward remittance data, etc. in IDPMS so as to update the RBI database on real time basis. It is therefore, necessary that AD banks upload and download data on daily basis.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10372&Mode=0>

## ***22. Opening and Maintenance of Rupee / Foreign Currency Vostro Accounts of Non-Resident Exchange Houses: Rupee Drawing Arrangement***

**The Reserve Bank of India (RBI) vide A.P. (DIR Series) Circular No.66 dated 28<sup>th</sup> April, 2016 has revised the rupee drawing arrangement for opening and Maintenance of Rupee/Foreign Currency Vostro Accounts for Non Resident Exchange Houses.**

Thus in order to streamline the remittance arrangement under the Speed Remittance

Procedure and make remittances cost-effective, it has now been decided to do away with the mandated requirement of maintenance of collateral or cash deposits by the Exchange Houses with whom the banks have entered into the Rupee Drawing Arrangement. The AD banks are free to determine the collateral requirement, if any, based on factors, such as, whether the remittances are pre-funded, the track record of the Exchange House, whether the remittances are effected on gross (real-time) or net (file transfer) basis, etc., and may frame their own policy in this regard.

**Ministry of Corporate Affairs**  
**[MCA]**



**1. *New Version of e-Forms INC-1 and MR-1 available on MCA21 w.e.f. 6<sup>th</sup> April, 2016.***

*“The Ministry of Corporate Affairs [MCA] has notified e-Form INC 1 (Application for reservation of name) and e-Form MR 1 (Return of appointment of MD/WTD/Manager) w.e.f 6th April, 2016 and the same are available on MCA21 Portal.”*

**2. *Companies (Filling of Documents and Forms in Extensible Business Reporting Language) Amendment Rules, 2016***

*“The Ministry of Corporate Affairs [MCA] vide notification dated 4<sup>th</sup> April, 2016 has issued the Companies (Filling of Documents and Forms in Extensible Business Reporting Language) Amendment Rules, 2016 in furtherance to make amendment in the existing Companies (Filling of Documents and Forms in Extensible Business Reporting Language) Rules, 2015.”*

In the existing Companies (Filling of Documents and Forms in Extensible Business Reporting Language) Rules,

2015, in rule 3, for the proviso, the following proviso shall be substituted-

“Provided that the Companies in banking, insurance, power sector, non-banking financial companies and housing finance companies need not file financial statements under this rule.”

**3. *Amendments to Schedule III of the Companies Act, 2013***

*“The Ministry of Corporate Affairs [MCA] vide Notification G.S.R. 404(E) dated 6<sup>th</sup> April, 2016 has made amendments to Schedule III of the Companies Act, 2013 [hereinafter referred to as ‘Act’].*

*In Schedule III of the Act, the part w.r.t. “General Instructions for preparation of Balance Sheet and Statement of Profit and Loss of a Company” shall stand substituted with the new divisions in order to comply with the Companies (Accounting Standards) Rules, 2016 and Companies (Indian Accounting Standards) Rules, 2016.”*

The detailed notification can be downloaded from the below mentioned link:

<http://egazette.nic.in/WriteReadData/2016/168968.pdf>

**4. *New Version of e-Forms INC-2, INC-7, INC-29, MGT-10, FTE and PAS-3 available on MCA21 w.e.f. 8<sup>th</sup> April, 2016.***

*“The Ministry of Corporate Affairs [MCA] has notified new versions of e-Forms INC-2(One Person Company-Application for Incorporation), e-Form INC-7(Application for Incorporation of Company (Other than OPC)), e-Form INC-29(Integrated Incorporation Form), e-Form MGT-10 (Changes in shareholding position of promoters and top ten shareholders), e-Form FTE (Application for striking off the name of company under the Fast Track Exit(FTE) Mode), e-Form PAS-3 (Return of allotment) w.e.f 8th April, 2016 and the same are available on MCA21 Portal.”*

- 5. New Version of e-Forms AOC-4, AOC-4\_CFS, FC-2, MGT-14, INC-23 and INC-12 available on MCA21 w.e.f. 10<sup>th</sup> April, 2016.**

*“The Ministry of Corporate Affairs [MCA] has notified new versions of e-Forms AOC-4(Form for filling financial Statement and other documents with the Registrar), e-Form AOC-4\_CFS(Form for filing consolidated financial statements and other documents with the Registrar), e-Form FC-2 (Return of alteration in the documents filed for registration by foreign company), e-Form MGT-14 (Return of alteration in the documents filed for registration by foreign company), e-Form INC-23 (Application to Regional Director for approval to shift the Registered Office from one state to another state or from jurisdiction of one Registrar to another Registrar within the same State) and e-Form INC-12 (Application for grant of License under section 8) w.e.f 10th April,*

*2016 and the same are available on MCA21 Portal.”*

- 6. New Version of e-Forms DIR-12, INC-22 and MGT-7 available on MCA21 w.e.f. 11<sup>th</sup> April, 2016.**

*“The Ministry of Corporate Affairs [MCA] has notified new versions of e-Forms DIR-12 (Particulars of appointment of Directors and the key managerial personnel and the changes among them), e-Form INC-22(Notice of situation or change of situation of registered office) and e-Form MGT-7(Form for filing annual return by a company) w.e.f 11th April, 2016 and the same are available on MCA21 Portal.”*

- 7. Relaxation of additional fees and extension of last date of filing of various e-forms under the Companies Act, 2013.**

*“Ministry of Corporate Affairs [MCA] has issued General Circular No. 03/2016 dated 12th April, 2016 for Relaxation of additional fees and extension of last date of filing of various e-forms under the Companies Act.”*

It has been decided to relax the additional fees payable on e-forms which are due for filing by companies between 25<sup>th</sup> March, 2016 to 30<sup>th</sup> April, 2016 as one time waiver of additional fee as the number of stakeholders have faced problems in the new launch system V2R2.

It is also clarified if such due e-forms are filed after 10<sup>th</sup> May, 2016 no such relaxation shall be allowed.

**8. New Version of e-Forms DIR-3, DIR-6 and MGT-7 available on MCA21 w.e.f. 14<sup>th</sup> April, 2016.**

*“The Ministry of Corporate Affairs [MCA] has notified new versions of e-Forms DIR-3 (Application for allotment of Director Identification Number) and e-*

*Form DIR-6 (Intimation of change in particulars of Director to be given to the Central Government) w.e.f 14th April, 2016 and the same are available on MCA21 Portal.”*

**9. Ministry of Corporate Affairs [MCA] dated 18th April, 2016 has released Frequently Asked Questions [FAQs] with regard to MCA 21 related queries including Annual Filings, Linked filings, Cancel SRN service, Resubmission and Additional Fee waiver etc.**

[http://www.mca.gov.in/Ministry/pdf/Stakeholder\\_FAO\\_18042016.pdf](http://www.mca.gov.in/Ministry/pdf/Stakeholder_FAO_18042016.pdf)

**10. Ministry of Corporate Affairs [MCA] has implemented the General Circular No. 03/2016 dated 12th April, 2016 for Relaxation of additional fees in MCA 21 w.e.f. 21st April, 2016.**

**11. New Version of e-Forms AOC-4, INC-27 and MGT-7 available on MCA21 w.e.f. 20<sup>th</sup> April, 2016.**

*“The Ministry of Corporate Affairs [MCA] has notified new versions of e-Forms Forms AOC-4 [Form for filing financial statement and other documents with the Registrar], INC-27 [Conversion of public company into private company or private company into public company] and MGT-7 [Form for filing annual return by a company] w.e.f 20th April, 2016 and the same are available on MCA21 Portal.”*

**12. New Version of Forms INC-1, INC-7, DIR-3, MGT-6, FC-4 available on MCA21 w.e.f. 24<sup>th</sup> April, 2016.**

*“The Ministry of Corporate Affairs [MCA] has notified new versions of e-Forms INC-1 (Application for reservation of name), INC-7 (Application for Incorporation of Company (Other than OPC), DIR-3 (Application for allotment of Director Identification Number), MGT-6 (Persons not holding beneficial interest in shares), FC-4 (Annual Return of a Foreign company) w.e.f 24th April, 2016 and the same are available on MCA21 Portal.”*

**13. Clarification on the Applicability of Revised Accounting Standards**

*The Ministry of Corporate Affairs (MCA) vide Circular No. 04/2016 dated 27<sup>th</sup> April, 2016 has provided clarification with regard to the applicability of the Companies (Accounting Standards) Amendment Rules, 2016.*

The clarification has been sought by the stakeholders with regard to the accounting period for which the accounts would need to

be prepared using the Accounting Standards, as amended through the Companies (Accounting Standards) Amendment Rules, 2016.

It is clarified that the amended Accounting Standards should be used for preparation of accounts for accounting periods commencing on or after the date of notification.

***14. New versions of Forms INC-23, FC-2, INC-28, AOC-4 and INC-1 have been updated on MCA21 portal w.e.f. 29<sup>th</sup> April, 2016.***

*The Ministry of Corporate Affairs [MCA] has notified new versions of e-Forms INC-23 (Application to Regional Director for approval to shift the Registered Office from one state to another state or from jurisdiction of one Registrar to another Registrar within the same State), FC-2 (Return of alteration in the documents filed for registration by foreign company), INC-28 (Notice of Order of the Court or any other competent authority), AOC-4 (Form for filing financial statement and other documents with the Registrar), INC-1 (Application for reservation of name) w.e.f 29th April, 2016 and the same are available on MCA21 Portal.*



**Securities Exchange Board of India**  
**[SEBI]**



**1. Amendment to the Guidance Note on SEBI (Prohibition of Insider Trading) Regulations, 2015 [‘PIT Regulations’].**

*“Securities Exchange Board of India (SEBI) vide its Press Release No. 77/2016 dated 12<sup>th</sup> April, 2016 has made amendment to the Guidance Note on SEBI (Prohibition of Insider Trading) Regulations, 2015 [‘PIT Regulations’].”*

The PIT Regulations was issued on August 24, 2015 under Regulation 11 of the PIT Regulations providing guidance to the market to remove certain difficulties in the interpretation or application of the provisions of the regulations. The Guidance Note inter alia stated that buy back offers, open offers, rights issues, FPOs, bonus, etc. of a listed company are available to designated persons also, and restriction of ‘contra-trade’ shall not apply in respect of such matters.

Subsequently, the Securities and Exchange Board of India (Issue of Capital and

Disclosure Requirements) Regulations, 2009 were amended with effect from February 17, 2016 to provide for exit

opportunity to dissenting shareholders in terms of sections 13 and 27 of the Companies Act.

*Hence the Guidance Note dated August 24, 2015 on SEBI (Prohibition of Insider Trading) Regulations, 2015 has been amended with effect from February 17, 2016 to clarify that exit offer is also exempted from the restriction on contra trade under the PIT Regulations.*

**2. Draft Consultation paper on Distribution of Cash benefits through Depositories**

*“Securities Exchange Board of India [SEBI] has issued the draft Consultation paper on Distribution of Cash benefits through Depositories dated 18<sup>th</sup> April, 2016.”*

In order to enhance the investor experience and to make securities market more efficient, SEBI has considered a proposal for distribution of cash benefits through depositories. It is proposed to seek the views of various stakeholders and public on the proposal in order to take an informed decision.

For investments in various securities, investors receive cash benefits such as dividend, interest and redemption payments. At present, cash benefits are distributed directly by issuer companies to the investors

mostly through their Registrar and Transfer Agents (RTAs). Though this model has worked fine, there is further scope for improvement in the areas related to efficient tracking of payment, having a consolidated view of all benefits received, non-payment and delayed payment, updation of investor bank details, disclosure of unpaid cash benefits, etc.

[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1460979843642.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1460979843642.pdf)

**3. Frequently Asked Questions [FAQs] on SEBI (Delisting of Equity Shares) Regulations, 2009.**

*“Securities Exchange Board of India [SEBI] dated 21<sup>st</sup> April, 2016 has issued Frequently Asked Questions [FAQs] on SEBI (Delisting of Equity Shares) Regulations, 2009.”*

[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1461232028476.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1461232028476.pdf)

**4. Issuance of debt securities on private placement basis through an electronic book mechanism.**

*“Securities Exchange Board of India [SEBI] vide Circular No. CIR/IMD/DF1/48/2016 dated 21<sup>st</sup> April, 2016 has laid down a framework for issuance of debt securities on private placement basis through an electronic book mechanism.”*

The public issue of debt securities and listing of debt securities issued through public issue or on private placement basis on a recognized stock exchange is governed by

SEBI (Issue and Listing of Debt Securities) Regulations, 2008.

Regulation 31(2) of SEBI (ILDS) Regulations, 2008 inter alia provides that:-

“In particular, and without prejudice to the generality of the foregoing power and provisions of these regulations, such orders or circulars may provide for all or any of the following matters, namely:

(a) Electronic issuances and other issue procedures including the procedure for price discovery;”

Thus in order to streamline procedures for issuance of debt securities on private placement basis and enhance transparency to discover prices, it has been decided to lay down a framework for issuance of debt securities on private

placement basis through an electronic book mechanism.

[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1461236399007.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1461236399007.pdf)

## TAXATION



### **1. E-filing of Income Tax Returns (ITR) and other forms.**

*“Government of India – Ministry of Finance, Department of Revenue, Central Board of Direct Taxes (CBDT) vide Press Release dated 4th April, 2016 has issued the Release of E-filing of Income Tax Returns (ITR) and other forms – reg.”*

In pursuance to the Notification dated 31st March, 2016 of Income Tax Returns (ITR) forms for AY 2016-17 CBDT has announced the E-filing of ITRs 1 and 4S on its website

<https://incometaxindiaefiling.gov.in>

Other ITRs will be e-enabled shortly.

Further it has been mandated to E-File the newly notified Form 35 for online filing of Appeal before Commissioner (Appeal) using Digital Signature Certificate. Electronic Verification Code (EVC) option will be available shortly for other category of taxpayers. Reference may be made to Notification 11/2016 dated 1 March 2016

for the various categories of taxpayers required to file appeal online.

In pursuance of Notification No 93/2016 dated 16th Dec 2015, effective from 1 April, 2016, the following forms have been substituted by new forms and are now available for E-filing:

- i. Form 15CA -payments to a non-resident not being a company, or to a foreign company,
- ii. Form 15CB-Certificate of an accountant,
- iii. Form 15CC -Quarterly Statement Vide Notification No 3/2016 dated 14th Jan 2016, CBDT had substituted with effect from 1 April 2016, Forms 9A (Application for exercise of option under clause (2) of the Explanation to sub-section (1) of section 11 of the Income tax Act, 1961) and Form 10 (Statement to be furnished to the Assessing Officer/Prescribed Authority under subsection (2) of section 11 of the Income tax Act, 1961). These forms can be filed online using Digital Signature Certificate on the Income Tax Department's e-filing website. EVC option will be available shortly.

### **2. New functionality to taxpayers to secure their E-filing Account**

*“Government of India – Ministry of Finance, Department of Revenue, Central Board of Direct Taxes (CBDT) vide Press Release dated 4th April, 2016 has issued the Release with respect to new functionality to taxpayers to secure their E-filing Account – reg.”*

In order to ensure that taxpayers are able to secure their E-filing account against any fraudulent attempts, the Income Tax Department has introduced a new facility called the “E-filing Vault”. In order to use this facility, taxpayers can log in to their E-filing Account and under their profile page select “E-filing Vault–higher security”.

Taxpayers can then select to login with any one or multiple options of the higher security methods namely – Using Aadhaar linkage to generate OTP, Login through Net-Banking or Login using Digital Signature Certificate (DSC). Once this has been done, any future attempt to login will require the additional check of OTP using Aadhaar or the taxpayers will have to login using net banking or login using DSC. By using this facility, taxpayers can prevent anyone from logging in even if in the past they shied the user id and password. The dual factor authorization ensures higher degree of security compared to the simple User id and Password.

Similarly, taxpayers can also select how their password can be reset. Once the taxpayer has selected reset password using any one or multiple options of the higher security methods namely – Using Aadhaar linkage to generate OTP, Login through Net-Banking or Login using Digital Signature Certificate (DSC), then no other person will be able to reset taxpayer’s password even if the secret answer or E-filing OTP etc is known.

Additional EVC options using ATM, Bank Account Validation or Demat Account

Validations are shortly going to be introduced and these options will also be available for the higher level of security for login as well as resetting of password. Income Tax Department strongly advises all taxpayers to use a strong password (combination of at least one uppercase, one special character and one numeral) and select the E-filing Vault option to add an additional layer of security to their E-filing Account to login and resetting of password.

- 3. Updated version of Form ER 1 and ER 3 available offline in Excel Utility on the below mentioned link.***

**<http://centralexcisechennai.gov.in/ACESDownload%20Utilities.htm>**

- 4. CPC (TDS) Advisory for deposit of Tax deducted and Demand for TDS defaults with respect to Purchase of immovable property (form 26QB Statement cum Challan).***

The Centralized Processing Cell [CPC] (TDS) provides important advisory, for the convenience of taxpayers, who have executed any transaction for purchase of immovable property exceeding Rs. 50 Lakhs (Rupees Fifty Lakhs). The following key details to be noted for payments associated with filling of 26QB Statements-cum-challan and TDS Defaults, if any-

Filing of 26QB Statement – cum- challan

1. 26QB Statement-cum-challan can be filed (along with payment of tax), under “FORM 26QB” in “TDS on Sale of Property” on the payment portal of NSDL

2. The tax to be deposited only through the Statement-cum-challan mode (Form 26QB). No other challan, viz. Demand payment, 280/281 etc. to be used for the same.

- In case of payment against TDS defaults

a. On receipt of Default intimations from CPC (TDS), the payment against demand raised should be made through demand payment link at NSDL portal;

b. The payment of demand for closure of Defaults has to be made only through the online mode. No other challan, viz 280/281etc. should be used for payment of demand.

**5. Income Tax Department has released on 07<sup>th</sup> April, 2016 Excel e-filing utility for ITR 2, ITR 2A and ITR 3 for AY 2016-17. Department has also released JAVA utility of ITR 1 and ITR 4S.**

**6. Agreements between India and Maldives for the Exchange of Information with respect to taxes and for the Avoidance of Double Taxation of Income Derived from International Air Transport.**

*“The Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes issued a Press Release dated 11<sup>th</sup> April, 2016 with regard to signing of Agreements between India and Maldives for the Exchange of Information with respect to taxes and for the Avoidance of Double Taxation of Income Derived from International Air Transport.”*

The Agreement for the Exchange of Information with respect to Taxes is based on international standards of transparency and exchange of information. It covers taxes of every kind and description imposed by the Governments of India and Maldives. The Agreement enables exchange of information, including banking information, between the two countries for tax purposes, which will help curb tax evasion and tax avoidance.

The Agreement will enhance mutual co-operation between the two countries by having effective exchange of information in tax matters.

The second Agreement provides for relief from double taxation for airline enterprises of India and Maldives by way of exemption of income derived by the enterprise of India from the operation of aircraft in international traffic, from Maldivian tax and vice-versa. The object of the Agreement is that profits from the operation of aircraft in international traffic will be taxed in one country alone and accordingly the taxing right is conferred upon the country to which the enterprise belongs. The Agreement will provide tax certainty for airline enterprises of India and Maldives.

The Agreement further provides for Mutual Agreement Procedure for resolving any difficulties or doubts arising as to the interpretation or application of the agreement.

## **7. Exemption to Government Services from Service Tax**

**“Government of India, Ministry of Finance (Department of Revenue), Central Board of Excise and Customs (CBEC) vide Notification No. 22/2016 – Service Tax dated 13<sup>th</sup> April, 2016 has notified 10 types of government services that shall be exempted from Service Tax.”**

The Central Government, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 25/2012-Service Tax, dated the 20th June, 2012

In the said notification, in the first paragraph,-

(i) in entry 39, after the words “Services by”, the words “Government, a local authority or” shall be inserted;

(ii) after entry 53, the following entries shall be inserted, namely:-

*“54. Services provided by Government or a local authority to another Government or local authority:*

*Provided that nothing contained in this entry shall apply to services specified in sub-clauses (i),(ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994;*

*55. Services provided by Government or a local authority by way of issuance of passport, visa, driving licence, birth certificate or death certificate;*

*56. Services provided by Government or a local authority where the gross amount charged for such services does not exceed ₹5000/- :*

*Provided that nothing contained in this entry shall apply to services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994:*

*Provided further that in case where continuous supply of service, as defined in clause (c) of rule 2 of the Point of Taxation Rules, 2011, is provided by the Government or a local authority, the exemption shall apply only where the gross amount charged for such service does not exceed ₹ 5000/- in a financial year;*

*57. Services provided by Government or a local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Government or the local authority under such contract;*

*58. Services provided by Government or a local authority by way of-*

*(a) registration required under any law for the time being in force;*

*(b) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, required under any law for the time being in force;*

*59. Services provided by Government or a local authority by way of assignment of right to use natural resources to an individual farmer for the purposes of agriculture;*

60. Services by Government, a local authority or a governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution;

61. Services provided by Government or a local authority by way of assignment of right to use any natural resource where such right to use was assigned by the Government or the local authority before the 1st April, 2016:

*Provided that the exemption shall apply only to service tax payable on one time charge payable, in full upfront or in installments, for assignment of right to use such natural resource;*

62. Services provided by Government or a local authority by way of allowing a business entity to operate as a telecom service provider or use radiofrequency spectrum during the financial year 2015-16 on payment of licence fee or spectrum user charges, as the case may be;

63. Services provided by Government by way of deputing officers after office hours or on holidays for inspection or container stuffing or such other duties in relation to import export cargo on payment of Merchant Overtime charges (MOT).”.

**8. Service Tax (Determination of Value) Amendment Rules, 2016.**

*“Government of India, Ministry of Finance (Department of Revenue), Central Board of Excise and Customs (CBEC) vide Notification No. 23/2016 – Service Tax dated 13<sup>th</sup> April, 2016 has issued the*

**Service Tax (Determination of Value) Amendment Rules, 2016.”**

The Central Government hereby makes the following rules further to amend the Service Tax (Determination of Value) Rules, 2006, namely:–

1. (1) These rules may be called the Service Tax (Determination of Value) Amendment Rules, 2016.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In rule 6, in sub-rule (2), in clause (iv), the following proviso shall be inserted namely:-

*“Provided that this clause shall not apply to any service provided by Government or a local authority to a business entity where payment for such service is allowed to be deferred on payment of interest or any other consideration.”.*

**9. Point of Taxation (Third Amendment) Rules, 2016.**

*“Government of India, Ministry of Finance (Department of Revenue), Central Board of Excise and Customs (CBEC) vide Notification No. 24/2016 – Service Tax dated 13<sup>th</sup> April, 2016 has issued the Point of Taxation (Third Amendment) Rules, 2016.”*

The Central Government hereby makes the following rules further to amend the Point of Taxation Rules, 2011, namely :—

1. (1) These rules may be called the Point of Taxation (Third Amendment) Rules, 2016.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Point of Taxation Rules, 2011, in rule 7, after the third proviso, the following proviso shall be inserted namely:-

“Provided also that in case of services provided by the Government or local authority to any business entity, the point of taxation shall be the earlier of the dates on which, –

(a) any payment, part or full, in respect of such service becomes due, as specified in the invoice, bill, challan or any other document issued by the Government or local authority demanding such payment; or

(b) payment for such services is made.”.

**10. Clarifications regarding services provided by way of Assignment of Spectrum.**

“The Government of India, Ministry of Finance vide Press Release dated 14<sup>th</sup> April, 2016 has provided clarifications regarding services provided by way of Assignment of Spectrum.”

Any service provided by the Government or a local authority to a business entity has been made taxable with effect from 1st April 2016. Prior to this, only support services provided by Government to business entities were taxable. In order to clarify doubts raised by members of Industry and Trade Associations, a detailed Circular No. 192/02/2016-Service Tax dated 13 April 2016 has been issued. The Circular

addressed to the field formations of the Central Board of Excise and Customs (CBEC) explains in a Q&A form the various provisions of the notifications issued in this regard. The Circular can be accessed at <http://www.cbec.gov.in/resources/htdocs-servicetax/st-circulars/st-circulars-2016/st-circ-192-2016.pdf>

The issues raised by the telecom service providers (TSP) was whether Service Tax is payable, on instalments due after 1.4.2016, for spectrum assigned/auctioned to them in the past. It has been clarified that service tax payable, whether in full upfront or in instalments, for assignment of right to use such spectrum has been exempted from service tax. Furthermore, services provided by Government by way of allowing a TSP to operate as a telecom service provider or use radiofrequency spectrum during the financial year 2015-16 on payment of licence fee or spectrum user charges, has been specifically exempted from service tax. By these measures, Government has ensured that there is no new tax liability on the TSPs in respect of the services provided in the past.

**11. Clarifications regarding Services Provided by Government or Local Authority; Any Service Provided by the Government or a Local Authority to a Business Entity**

“The Government of India, Ministry of Finance vide Press Release dated 14<sup>th</sup> April, 2016 has provided clarifications regarding Services Provided by Government or Local Authority; Any Service Provided by the Government or a



***Local Authority to a Business Entity has been Made Taxable with Effect from 1st April 2016.”***

Any service provided by the Government or a local authority to a business entity has been made taxable with effect from 1st April 2016. Prior to this, only support services provided by Government or local authority to business entities were taxable. In order to clarify doubts raised by members of Industry and Trade Associations and mitigate the small assesseees from compliance burden, a detailed Circular No. 192/02/2016-Service Tax dated 13 April 2016 has been issued. The Circular addressed to the field formations of the Central Board of Excise and Customs (CBEC) explains in a Q&A form the various provisions of the notifications issued in this regard. The Circular can be accessed at <http://www.cbec.gov.in/resources/htdocs-servicetax/st-circulars/st-circulars-2016/st-circ-192-2016.pdf>

It may be recalled that services provided by Government or a local authority to business entities up to a turnover of Rs 10 lakh in the preceding financial year have been exempted. This would relieve small businesses from compliance burden.

In this background, the salient features of the Circular are as under:-

Services provided by Government or a local authority to another Government or a local authority have been exempted. However, this exemption is not applicable to services provided by Government or a local authority which were subjected to service tax prior to 1st April 2016 (for instance, the services of

transport of goods or passengers by Indian Railways).

Services by way of grant of passport, visa, driving license, birth or death certificates have been exempted. Further, services provided by Government or a local authority where the gross amount charged for such service does not exceed Rs 5000/- have been exempted. In case of continuous service, the exemption shall be applicable where the gross amount charged for such service does not exceed Rs. 5000/- in a financial year. Needless to say that this exemption is not applicable to the services provided by Government or a local authority which were subjected to service tax prior to 1st April 2016.

It has also been clarified that taxes, cesses or duties levied are not leviable to Service Tax. These taxes, cesses or duties include excise duty, customs duty, Service Tax, State VAT, CST, income tax, wealth tax, stamp duty, taxes on professions, trades, callings or employment, octroi, entertainment tax, luxury tax and property tax.

It has been clarified that fines and penalty chargeable by Government or a local authority imposed for violation of a statute, bye-laws, rules or regulations are not leviable to Service Tax. Further, fines and liquidated damages payable to Government or a local authority for non-performance of contract entered into with Government or local authority have been exempted.

It has been clarified that any activity undertaken by Government or a local authority against a consideration constitutes a service and the amount charged for

performing such activities is liable to Service Tax. It is immaterial whether such activities are undertaken as a statutory or mandatory requirement under the law and irrespective of whether the amount charged for such service is laid down in a statute or not. As long as the payment is made (or fee charged) for getting a service in return (i.e., as a quid pro quo for the service received), it has to be regarded as a consideration for that service and taxable irrespective of by what name such payment is called. As a result, Service Tax is leviable on any payment, in lieu of any permission or license granted by the Government or a local authority. However, services provided by the Government or a local authority by way of:

- (i) registration required under the law;
- (ii) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, required under the law,

have been exempted.

It has also been clarified that Circular No. 89/7/2006-Service Tax dated 18-12-2006 & and Reference Code 999.01/23.8.07 in Circular No. 96/7/2007-ST dated 23.8.2007 issued in the pre-negative list regime by CBE&C are no longer applicable.

Services by way of allocation of natural resources by Government or a local authority to an individual farmer for the purposes of agriculture have been exempted.

Regulation of land-use, construction of buildings and other services listed in the Twelfth Schedule to the Constitution which have been entrusted to Municipalities under

Article 243W of the Constitution, when provided by governmental authority are already exempt from service tax. The said services when provided by Government or a local authority have also been exempted from Service Tax.

Services provided by Government, a local authority or a governmental authority by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution have been exempted from service tax.

## ***12. Draft Rules for grant of Foreign Tax Credit.***

***“The Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes vide Press Release dated 18<sup>th</sup> April, 2016 has issued the Draft Rules for grant of Foreign Tax Credit.”***

The Income-tax Act, 1961 (the Act) provides that the Central Board of Direct Taxes may prescribe rules specifying the procedure for grant of relief or deduction of income-tax paid in any country or specified territory outside India, under section 90/90A/ 91 of the Act against the income-tax payable under the Act.

In this regard the draft rules for grant of Foreign Tax Credit are being laid down and are uploaded on the website of the Department at [www.incometaxindia.gov.in](http://www.incometaxindia.gov.in) for comments from stakeholders and general public.

**<http://www.incometaxindia.gov.in/Lists/Latest%20News/Attachments/25/Draft-rules->**

[for-granting-relief-or-deduction-18-04-2016.pdf](#)

**13. Delhi VAT: Amendment in form DVAT 16, 17, 30, 31 w.e.f. 12.04.2016.**

Government of NCT of Delhi issued Delhi Value Added Tax (Amendment) Rules, 2016. Return Forms DVAT-16 and DVAT-17 have been amended wherein dealers are now required to furnish details of purchases and sales in Annexure 2A and 2B along with the description of goods and their codes. Forms DVAT-30 and DVAT-31 have also been amended. Dealers are now required to maintain their records in a manner to provide details of purchases and sales along with the description of goods and their codes. Further, in respect of sales made to unregistered dealers/persons, person-wise details including their PAN shall also be furnished wherever these details have been obtained by the seller in compliance to the provisions contained under the Income Tax Act. The amended rules shall come into force on the date of their publication in the Delhi gazette.

**14. Extension of Due Date for filing Service Tax Return for the period October-March, 2015-2016 from 25th April, 2016 to 29th April, 2016**

*“The Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise and Customs vide order dated 25th April, 2016 has extended the date of filing of ST-3 returns to 29th April, 2016 from 25th April, 2016, owing to certain difficulties being faced by the taxpayers in the ACES application.”*

## OTHERS

1. **Institute of Company Secretaries of India (ICSI) has released Frequently Asked Questions (FAQs) on Limits of Secretarial Audit.**

<https://www.icsi.edu/docs/webmodules/FAQs%20on%20limits%20of%20Secretarial%20Audit%20final.pdf>

2. **Inclusion of Definition of E-Commerce in Foreign Trade Policy (2015-2020)**

*“Inclusion of Definition of E-Commerce in Foreign Trade Policy (2015-2020) – The Government of India, Ministry of Commerce & Industry, Department of Commerce, Directorate General of Foreign Trade vide Notification no. 2/2015-20 dated 11<sup>th</sup> April, 2016 has introduced the definition of e-commerce in the Foreign Trade Policy (2015-2020)”.*

The definition of e-commerce introduced under Chapter 9 of the Foreign Trade Policy (2015-2020) is –

9.17A : *“e-commerce means buying and selling of goods and services including digital products, conducted over digital and electronic network. For the purposes of merchandise Exports from India Scheme (MEIS) e-commerce shall mean the export of goods hosted on a website accessible through the internet to a purchaser. While the dispatch of goods shall be made through courier or postal mode as specified under the MEIS the payment for goods purchased on e-commerce platform shall be done through international credit/debit cards and as per the Reserve Bank of India*

*Circular (RBI/2015-16/185) [AP (DIR Series) Circular No. 16 dated September 24 2015] as amended from time to time”*

3. **Establishment of Branch office(BO) /Liaison Office (LO)/Project Offices (PO) in India by Foreign entities.**

*“The Ministry of Finance vide its Press Release dated 12<sup>th</sup> April, 2016 has eased out the measure for Establishment of Branch office(BO) /Liaison Office (LO)/Project Offices (PO) in India by Foreign entities. Under the Regulations notified by RBI vide G.S.R. 384 dated March 31, 2016 it has now been provided that the power to grant approvals for establishment of Branch Office (BO)/Liaison Office (LO)/Project Offices (PO) in India by foreign entities, would be delegated to the Authorised Dealers Category-I Banks except for a few sectors viz. Defence, Telecom, Private Security, Information and Broadcasting and Non-government organization and except a few countries.”*

Further, anyone who has been awarded a contract for a project by a Government authority/PSU would be automatically given approval to open a bank account.

Earlier these entities used to seek the approval of Reserve Bank of India (RBI) before setting-up their BO/LO/PO office in India. While Reserve Bank of India (RBI) gives permission in those cases where 100% FDI is allowed under automatic route, all other cases were referred to the Government for approval. The establishment of Branch Office

(BO)/Liaison Office (LO)/Project Offices (PO) in India by foreign entities is regulated in terms of FEMA 22/2000-RB dated May3, 2000, as amended from time to time. The foreign entities can set-up their BO/LO/PO in India without registering themselves as companies/trusts etc. under Indian Laws.

#### **4. *Guidance Note on Companies (Auditor's Report) Order, 2016 issued by ICAI.***

The Institute of Chartered Accountants of India (ICAI) has released the Guidance Note on the Companies (Auditor's Report) Order, 2016 issued by Auditing and Assurance Standards Board dated 23rd April, 2016.

The Auditing and Assurance Standards Board of ICAI has brought out Guidance Note on the Companies (Auditor's Report) Order, 2016. The same has been issued in pursuance to the notification issued by the Ministry of Corporate Affairs dated 29th March, 2016. The order shall be applicable for audit of the financial statements for the period beginning on or after 1st April, 2015. Thus its applicable for the audits of financial year 2015-16. There have been substantial changes in the new reporting requirements which were not covered under CARO 2003.

**<http://resource.cdn.icai.org/42017aasb230416.pdf>**

#### **5. *Concessions to Startups regarding Labour Laws by Ministry of Labour & Employment***

In order to promote the Start-Up ecosystem in the country and incentivizing the entrepreneurs in setting up new start-up

ventures and thus catalyze the creation of employment opportunities through them, the Ministry of Labour & Employment has issued an advisory through Press Release dated 25th April, 2016 to the States/UTs/Central Labour Enforcement Agencies for a compliance regime based on self-certification and regulating the inspections under various Labour Laws.

It has been suggested that if such start-ups furnish self-declaration for compliance of nine labour laws for the first year from the date of starting the start-up, no inspection under these labour laws, wherever applicable, will take place. The nine labour laws, included in this advisory are:

- the Industrial Disputes Act, 1947;
- the Trade Unions Act, 1926;
- the Building and Other Constructions Workers' (Regulation of Employment and Conditions of Service) Act, 1996;
- the Industrial Employment (Standing Orders) Act, 1946;
- the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979;
- the Payment of Gratuity Act, 1972;
- the Contract Labour (Regulation and Abolition) Act, 1970;
- the Employees' Provident Funds and Miscellaneous Provisions Act, 1952; and
- the Employees' State Insurance Act, 1948.

- From the second year onwards, up to 3 year from the setting up of the units, such start-ups are required to furnish self-certified returns and would be inspected only when credible and verifiable complaint of violation is filed in writing and approval has been obtained from the higher authorities.

The advisory to State Governments is not to exempt the Start-ups from the ambit of compliance of these Labour Laws but to

provide an administrative mechanism to regulate inspection of the Start-Ups under these labour laws, so that Start-ups are encouraged to be self-disciplined and adhere to the rule of law. These measures intend to avoid harassment of the entrepreneurs by restricting the discretion and arbitrariness. Punitive action shall, however, be taken whenever there is a violation of these labour laws.

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