



ACQUISORY

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*Success in the sum of small
efforts, repeated day-in and day-out.*

Editor: Sunaina Jhingan

(Knowledge Manager with Acquisory)

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AT A GLANCE

ACQUISORY NEWS CHRONICLE NOVEMBER 2017

ARTICLE

Registered Valuer and Valuation Rules Provisions Notified by MCA

MCA has notified the provisions governing valuation by registered valuers [section 247 of the Companies Act, 2013 (the Act)] and the Companies (Registered Valuers and Valuation) Rules, 2017 (the Rules), both to come into effect from 18 October, 2017. In addition, to administer and perform functions under the said rules, the MCA by way of notification on 23 October, 2017, has specified the Insolvency and Bankruptcy Board of India (IBBI) as the responsible authority.

The notified Rules lays down the criteria for individuals, partnership entities and companies to be eligible to be registered as valuers under the Act. Apart from this, the Rules contain other aspects pertaining to registered valuers and valuation as follows: - Process for registration as valuers - Recognition of registered valuer organisations - Valuation standards - Transitional arrangement

Brief Overview On The India's Ranking In World Bank's Doing Business Report 2018

India ranked 100th out of 190 countries after it implemented reforms in most indicators, including starting a business, getting credit, paying taxes and resolving insolvency. For the first time ever, India has jumped 30 positions to become the top 100th country in terms of ease of doing business ranking this year.

The World Bank's Ease of Doing Business index ranks the nation based on the 10 indicators. These indicators are: Starting a business, Dealing with construction permits, Getting electricity, Registering property, Getting credit, Protecting minority investors, Paying taxes, Trading across borders, Enforcing contracts and Resolving insolvency. Each one of these indicators carry equal weightage.

The survey conducted by World Bank covers economies of 190 countries, evaluating them on 10 specific parameters required for doing business. India has improved its standing in 6 out of these 10 indicators, the report shows.

LEGAL UPDATES

- ***RBI notifies Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017*** - The notification provides various provisions related to restrictions on investment, permission for making investment, acquisition shares, issue of shares and convertible notes, pricing guidelines, taxes and remittance of sale proceeds, reporting requirements, forms, downstream investment, prohibited activities for investment by a person resident outside India. Any investment made by a person resident outside India shall be subject to the entry routes, sectoral caps or the investment limits, as the case may be, and the attendant conditionalities for such investment as laid down in these Regulations.
- ***MCA to dispense the requirement of separately uploading of Forms 49 A & 49 B (Application for PAN & TAN)*** - MCA will soon be dispensing with the requirement of separately uploading Forms 49 A& 49B after filing Spice e-forms. Accordingly, With effect from 6P.M. of 4th November 2017, stakeholders will NOT be required to upload signed 49A/49B using "Submit application for PAN/TAN" service, in respect of any fresh SPICe submission or Resubmission cases. PAN and TAN will continue to be issued as before based on the details submitted in the SPICe form itself.
- ***Form GST TRAN-1 and Revised Form GST TRAN-1 filing due date extended to 27th December, 2017***
- ***CBEC mandates Monthly Tax Payment & filing of Form GSTR-3B till March, 2018***
- ***Form GSTR-4 for quarter July to Sep, 2017 can be submitted till 24.12.2017***
- ***CBEC extends time limit to file Form GSTR-6 for July, 2017 to 31.12.2017***
- ***PAN-Aadhaar Linking Not applicable to NRIs, PIOs, OCI*** - UIDAI has clarified that PAN - Aadhaar linking is not applicable to NRIs, PIOs and OCIs.

Registered Valuer and Valuation Rules Provisions Notified by MCA

Reliable valuations are critical to the efficient working of the capital markets, businesses, government and all its stakeholders. With growing shareholder activism, importance of independent valuations is arising all over the world, including India. Business/asset valuation is critical for strategic business decisions including fund-raising, M&A, sale/liquidation of businesses, strategic business decisions like family or shareholders disputes, voluntary value assessment, or may be vital just to comply with certain regulatory or accounting requirements in India under RBI, income tax, Companies Act, Sebi laws, etc. Better corporate go



“MCA has notified the provisions governing valuation by registered valuers [section 247 of the Companies Act, 2013 (the Act)] and the Companies (Registered Valuers and Valuation) Rules, 2017 (the Rules), both to come into effect from 18 October, 2017. In addition, to administer and perform functions under the said rules, the MCA by way of notification on 23 October, 2017, has specified the Insolvency and Bankruptcy Board of India (IBBI) as the responsible authority.”

image source- <https://www.indiamart.com/abskar-associates/property-services.html#valuer-service>

Valuation, in itself, is evolving in India and is an inexact science. Professional judgement of valuer is thus critical in any valuation exercise. However, till now, due to lack of Indian valuation standards and absence of any regulatory authority to control, guide and develop the practice of valuation in India, different valuers have been taking different assumptions leading to drastic differences in value conclusion. In many cases, the valuation also lacks uniformity and adherence to generally accepted global valuation practices. With above background, the Companies Act, 2013 (Act) had brought the concept of registered valuers to regulate the practice of valuation in India and to bring valuation in line with international standards. However, the valuer's qualification, experience, manner and process was left to be decided by the Rules.

Thus, keeping in view the above requirements The Ministry of Corporate Affairs has recently issued the Companies (Registered Valuers and Valuation) Rules, 2017 (Rules) on October 18, 2017. Simultaneously, section 247 of the Act has now come into force w.e.f. October 18, 2017. These rules contain various aspects pertaining to registered valuers . Section 247 states that any valuation of an asset of a company (including property, stocks, shares, debentures, securities, goodwill), or net worth of a company, is required to be made by a person who is registered as a valuer, and has requisite qualifications and experience in such capacity. Such a valuer may be appointed by the audit committee or board of directors of the company.

Owing to the lack of Indian valuation standards and guidelines, most of the professionals associated with business valuation adopt international valuation norms. A few valuers in collaboration with the promoters have contravened the ethical standards of valuation with the intention of making money. Hence, Ministry of Corporate Affairs (MCA) has come out with a more prudent Registered Valuers and Valuation Rules, 2017.



Registered Valuer and Valuation Rules Provisions Notified by MCA

According to The Registered Valuers & Valuation rules, 2017, valuers upon registration with a government notified authority can perform valuation (those including individuals, partnership entities and companies) under the Companies Act. The MCA has entrusted Insolvency and Bankruptcy Board of India (IBBI) for valuer registration.

The highlight of the rule is that the valuers are required to adopt internationally accepted standards along with supporting documents during valuation. It necessitates the valuation report to include purpose of valuation, appointing authority, disclosure of conflict/interest of valuer, inspections underdone and background information of the asset to be valued among others.

The credibility of this act has further been improved with the addition of clauses for prevention of unethical manipulations. This includes provisions for cancellation or suspension of certificate of registration or recognition (Rule 15), complaints against a registered valuer or valuer organisation so that it can be appropriately referred and handled according to the bye laws (Rule 16), setting up a committee to advise on validation matters for formulating valuation standards (Rule 18 & 19), punishment of contravention (Rule 20), punishment for false statement in any report, certificate or document etc. (Rule 21).

The valuation is to be done in accordance with the Companies (Registered Valuers and Valuation) Rules, 2017. The following are some of the important provisions:

➤ **Eligibility criteria.** The eligibility criteria include having the qualifications prescribed, being a member of, and being recommended by a registered valuer's organization, is of sound mind, not being a minor/adjudged bankrupt, being a resident of India, not having been punished with imprisonment for a prescribed minimum duration, being a fit & proper person, etc. Similar criteria have been prescribed for recognition of registered valuers organizations.

A partnership/company cannot become a registered valuer if its objects are anything other than rendering professional/financial services, including valuation services; it is undergoing insolvency; all partners/directors are ineligible under the CA 2013 or three or more of them are not registered valuers, or none of them are registered valuers for valuation for the asset

class that it seeks to be a registered valuer of.

➤ **Registration.** All persons who receive such registration must comply with certain prescribed conditions at all times, including continued compliance with CA 2013 and the rules, compliance with the code of conduct prescribed in the rules, etc.

➤ **Conduct of valuation.** The central government, based on the advice of a committee to be set up for valuation standards, will notify (and may, from time to time, modify) the valuation standards. Until such notification, the registered valuers are to ensure that all valuations are as per internationally accepted valuation standards, and valuation standards adopted by any registered valuers organization. Registered valuers should furnish a report, which includes the background information of the asset being valued, purpose of valuation, identity of the valuer and other experts involved in the valuation, procedures adopted, major factors taken into account for valuation, and caveats, limitations and disclaimers which limit the responsibility of the valuer.

➤ **Transitional arrangement.** All existing valuers providing valuation services on the date of commencement of the rules may continue to render their services under the rules up to 31 March 2018 until obtaining registration. If any relevant law/regulatory body requires that the valuation conducted by any person be in accordance with the rules, then the rules shall apply to such person from the date specified under such law/by regulatory body.

Any contravention of the CA 2013 or the rules by a registered valuer would lead to a minimum fine of INR 25,000 (US\$387), which may extend to INR 100,000. A valuer who has contravened provisions with the intention of defrauding the company or its members, may be imprisoned for a year, and may be fined between INR 100,000 and INR 500,000.

The notified Rules attempt to bring in standardisation in the valuation standards in India and ensure that valuation reports disclose a true and fair view and result in greater objectivity in valuation procedures. The increased transparency and fairness in the valuation system would also boost stakeholder confidence by bringing uniformity.



Brief Overview on the India's ranking in World Bank's Doing Business Report 2018

In the recent issue of World Bank's Doing Business Report 2018, India's ranking jumps 30 positions from 130th in 2016 to the 100th spot in 2017 in the World Bank's – Ease of Doing Business Index 2018. India has seen the improvement in 6 out of 10 indicators on the World Bank's Doing Business Report 2018. This jump can be attributed to major improvement in significant parameters such as starting a business, dealing with construction permits, resolving insolvency, getting electricity and getting credit, among other parameters.

The main area of parameters/reforms that helped India jump up 30 places in World Bank's Doing Business Report 2018 :

Dealing with Construction Permits:

The introduction of online single window has reduced the number of procedures as well as the time required to obtain a construction permit. This streamlined process has contributed significantly to this unprecedented jump in overall rankings

Resolving Insolvency:

The Insolvency and Bankruptcy Code, 2016 – the landmark reform that helps dissolve businesses without much complication – has been an instrumental contribution in building a conducive business climate.

India has moved up 33 places from the previous year with regard to resolving insolvency in this year's Doing Business Index. This drastic jump can be credited to the enactment of the landmark Insolvency and Bankruptcy Code that was approved by Parliament in May 2016, with certain provisions imposed in August 2016 to bring India's legal and institutional machinery in line with the global standards for dealing with the issue of debt default.

The World Bank's 'Doing Business 2018 — Reforming to Create Jobs' report ranks 190 countries based on a combined score on 10 parameters. According to the report, India features among the top 10 countries that have shown a marked improvement this year in 6 out of 10 'Doing Business' indicators. This comes as a positive news after 2016, when India moved up only by a single position from 131 to 130.5. Additionally, India's combined or Distance-to- Frontier (DTF) score also witnessed a spike - from 56.05 in the previous year to 60.76 now, which reflects the country has improved in absolute terms as well.



image source - <https://www.mankutagalagher.com/organization-research-powerful-tool-company-using/>

“Among the 190 countries surveyed in World Bank's Doing Business 2018 report, India saw the biggest rise in its ranking. While the rise in India's ease of doing business rank from 130th in 2017 to 100th in 2018 is welcome move. This jump can be attributed to major improvement in significant parameters such as starting a business, dealing with construction permits, resolving insolvency, getting electricity and getting credit, among other parameters”

Brief Overview on the India's ranking in World Bank's Doing Business Report 2018

With the enactment of the IBC, there has been renewed interest in entrepreneurship and a positive shift in the access to credit. All the laws related to reorganisation and insolvency Resolution of various entities, such as, companies and limited liability entities, unlimited liability partnerships and individuals have been consolidated to ensure a clear, coherent and speedy process.

Getting credit:

This is one of the three indicators in which India figures among the top 50 economies, registering a rank of 29. This is primarily due to strengthening of legal rights of borrowers and lenders with respect to secured transactions.

India has strengthened access to credit by amending the rules on priority of secured creditors outside reorganization proceedings and adoption of a new insolvency and bankruptcy code that introduced a reorganization procedure for corporate debtors. Secured creditors, such as banks and financial institutions, are given powers to enforce securities without the intervention of courts. This is a productive move to create wealth, generate employment as well as promote entrepreneurship.



image source- <https://www.indianfolk.com/fallacies-case-business/>

Protecting Minority Investors:

Now the 4th best country in the world in terms of protecting minority investors, India registered a jump of 9 places from 13th in 2016. The initiatives taken by SEBI include rationalization of knowing your customer (KYC) norms, increasing the number of arbitration centers and simplifying foreign portfolio investor (FPI) norms for investing in the debt market.

The government's thrust on pro-investor reforms including the enactment of Insolvency and Bankruptcy Code (IBC) has helped India reach the 4th position. This also comes in the wake of several steps taken by Securities Exchange Board of India (SEBI) to increase investor protection and market integrity.

With regard to investor protection, SEBI has launched reforms especially in the area of governance and has also mandated companies to formulate and disclose a dividend distribution policy. The Securities market regulator has also extended the concept of Business Responsibility Reporting (BRR) to the top 500 listed companies, under which companies have to disclose their performance in areas such as social, environmental and economic responsibilities. Further to safeguard minority investors, SEBI has also imposed restrictions on fundraising by defaulters.



Brief Overview on the India's ranking in World Bank's Doing Business Report 2018

Getting Electricity:

The time required for obtaining an electricity connection has been reduced from 106 days to 46 days. The improved ranking can also be attributed to a reduction in number and duration of power outages.

Paying Taxes:

Most tax-related processes have been simplified as well as digitized. India registered the highest improvement across all World Bank Doing Business parameters in Paying Taxes, registering a 53 spot jump from rank 172 to 119.

In the year 2016, India introduced the Income Computation and Disclosure Standards (ICDS) to standardize the procedure of computing taxable income and other tax accounting standards. In a positive move, this has helped India move over 50 notches in this particular parameter.

Earlier, tax accounting was done through a traditional method, so that one could recognize income as and when it arose. However, this method led to many companies having discrepancies and their books to show a lower income. To address this issue, the Central Board of Direct Taxes (CBDT) came out with its own accounting standard – ICDS, which came into effect from 1 April 2016. Under this method, profits have to be mandatorily recognized once 25% of the completion stage has been achieved in construction contracts.

Also, as opposed to the earlier method where interest payment by companies was allowed full deduction from income tax, ICDS does not permit this. A certain part of the borrowing taken for acquisition, construction or production of an asset is considered as the capital amount, which is not applicable for deduction.

Secondly, India has also relaxed rules on tax compliance for businesses through the introduction of an online platform for the electronic payment of the Employees' Provident Fund.

Other Parameters:

Apart from the above mentioned parameters, India has also improved in the sphere of starting a business, the scenario has drastically improved by merging the applications for the Permanent Account Number (PAN) and Tax Account Number (TAN) through an online system.

Lastly, the government has reduced the number of procedures as well as the time required to obtain a construction permit through an online system.

Going forward, it is likely that the implementation of the biggest economic reform, Goods and Services Tax (GST) in India will further aid India to move up the ladder in the future. Apart from this, there have been consistent efforts by the government to simplify licensing and tax structures, thereby helping India to become the preferred destination for investors and also a global manufacturing hub envisioned by the 'Make in India' campaign. With these ongoing structural reforms, it is not long enough before the Modi's vision for India to reach the top 50 in Ease of Doing Business is realised.



RBI UPDATES

1. Introduction of Legal Entity Identifier for large corporate borrowers

RBI has Introduce Legal Entity Identifier Code for large corporate borrowers. The Legal Entity Identifier (LEI) code is conceived as a key measure to improve the quality and accuracy of financial data systems for better risk management post the Global Financial Crisis. LEI is a 20-digit unique code to identify parties to financial transactions worldwide. It has been decided that the banks shall advise their existing large corporate borrowers having total exposures of ₹ 50 crore and above to obtain LEI and borrowers who do not obtain LEI as per the schedule are not to be granted renewal / enhancement of credit facilities. A separate roadmap for borrowers having exposure between ₹ 5 crore and upto ₹ 50 crore would be issued in due course. Entities can obtain LEI from any of the Local Operating Units (LOUs) accredited by the Global Legal Entity Identifier Foundation (GLEIF). After obtaining LEI code, banks shall also ensure that borrowers renew the codes as per GLEIF guidelines. These directions are issued under Section 21 and Section 35(A) of the Banking Regulation Act, 1949.

<https://rbi.org.in/Scripts/NotificationUser.aspx?Id=11154&Mode=0>

2. Risk Management and Inter-Bank Dealings – Simplified Hedging Facility

RBI vide Circular No. 11 dated 9th November, 2017 has simplified Hedging Facility. The guidelines have been issued with the purpose to hedge exchange rate risk on transactions, contracted or anticipated, permissible under Foreign Exchange Management Act (FEMA), 1999.

<https://rbi.org.in/Scripts/NotificationUser.aspx?Id=11162&Mode=0>

3. Directions on Managing Risks and Code of Conduct in Outsourcing of Financial Services by NBFCs

RBI vide Notification No. RBI/2017-18/87 DNBR.PD.CC.No.090/03.10.001/2017-18 dated 9th November, 2017 has issued Directions on Managing Risks and Code of Conduct in Outsourcing of Financial Services by NBFCs. NBFCs are advised to conduct a self-assessment of their existing outsourcing arrangements and bring these in line with the aforesaid Directions within two months from the date of this circular.

<https://rbi.org.in/Scripts/NotificationUser.aspx?Id=11160&Mode=0>

4. RBI notifies Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017

RBI has notified the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017 which shall come into effect from the date of their publication in the Official Gazette. Wherein various provisions related to restrictions on investment, permission for making investment, acquisition shares, issue of shares and convertible notes, pricing guidelines, taxes and remittance of sale proceeds, reporting requirements, forms, downstream investment, prohibited activities for investment by a person resident outside India. Any investment made by a person resident outside India shall be subject to the entry routes, sectoral caps or the investment limits, as the case may be, and the attendant conditionalities for such investment as laid down in these Regulations.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11161&Mode=0>

5. Over-the-Counter Government Securities Transaction by Foreign Portfolio Investors (FPIs) – Settlement Period

RBI vide Notification No. RBI/2017-18/97 FMRD.DIRD.05/14.03.007/2017-18 dated 16th November, 2017 it has now been decided to permit FPIs to settle OTC secondary market transactions in Government Securities either on T+1 or on T+2 basis. It may be ensured that all trades are reported on the trade date itself.

<https://rbi.org.in/Scripts/NotificationUser.aspx?Id=11172&Mode=0>

6. Reporting of Transactions by agency banks to RBI

RBI has now decided that, for Central Government transactions (electronic as well as in physical mode), if the transactions or any adjustments thereof are reported after a gap of 90 days from the date of transaction, agency banks have to obtain prior approval from concerned ministry/department and submit the same to RBI separately at the time of reporting such transactions for settlement.

<https://rbi.org.in/Scripts/NotificationUser.aspx?Id=11180&Mode=0>



MCA UPDATES

1. MCA to dispense the requirement of separately uploading of Forms 49 A & 49 B (Application for PAN & TAN)

In order to provide ease for doing business to stakeholders, MCA is making continuous efforts to simplify incorporation related process. MCA will soon be dispensing with the requirement of separately uploading Forms 49 A & 49B after filing Spice e-forms. Accordingly, With effect from 6P.M. of 4th November 2017, stakeholders will NOT be required to upload signed 49A/49B using “Submit application for PAN/TAN” service, in respect of any fresh SPICe submission or Resubmission cases. PAN and TAN will continue to be issued as before based on the details submitted in the SPICe form itself.

2. AoC-4 Non-XBRL and AoC-4 XBRL (Non-Ind AS) forms to be revised and likely to be notified on 7th November 2017

AoC-4 Non-XBRL and AoC-4 XBRL(Non-Ind AS) forms are being revised and are likely to be notified on 7th November 2017 including therein demonetization related changes. Stakeholders may plan accordingly and file using only the revised forms w.e.f. 8th November 2017.

3. Insolvency and Bankruptcy Board of India (IBBI) strengthens its Due Diligence Framework under the Insolvency and Bankruptcy Code, 2016

Now prior to approval of a Resolution Plan, the Resolution Applicants, including promoters, will be put to a stringent test with respect to their credit worthiness and credibility; Amendments to the IBBI (Insolvency Resolution Process for Corporate Persons) Resolution Process, 2016 impose a greater responsibility on the Resolution Professionals and the Committee of Creditors in discharging their duties.

Insolvency and Bankruptcy Board of India (IBBI) has amended its Corporate Insolvency Resolution Process Regulations to ensure that as part of due diligence, prior to approval of a Resolution Plan, the antecedents, credit worthiness and credibility of a Resolution Applicant, including promoters, are taken into account by the Committee of Creditors.

The Revised Regulations make it incumbent upon the Resolution Professional to ensure that the Resolution Plan presented to the Committee of Creditors contains relevant details to assess the credibility of the Resolution Applicants.

The details to be provided would include details with respect to the Resolution Applicant in terms of convictions, disqualifications, criminal proceedings, categorization as willful defaulter as per RBI guidelines, debarment imposed by SEBI, if any, and transaction, if any, with the Corporate Debtor in the last two years.

Apart from the above, the Resolution Professional has to also submit details in respect of transactions observed or determined, if any, covered under Section 43 (Preferential Transactions); Section 45(Undervalued Transactions); Section 50 (Extortionate Credit Transactions); Section 66 (Fraudulent Transactions) under Insolvency and Bankruptcy Code, 2016.

By virtue of the above mentioned changes in the Regulations, the Resolution Applicants, including promoters, are put to a stringent test with respect to their credit worthiness and credibility. Further, it also imposes greater responsibility on the Resolution Professionals and the Committee of Creditors in discharging their duties.

4. Ordinance to amend the Insolvency and Bankruptcy Code, 2016 promulgated;

Ordinance aims at putting in place safeguards to prevent unscrupulous, undesirable persons from misusing or vitiating the provisions of the Code.

The President of India has given his assent to the Ordinance to amend the Insolvency and Bankruptcy Code, 2016 (Code). The Ordinance amends sections 2, 5, 25, 30, 35 and 240 of the Code, and inserts new sections 29A and 235A in the Code. The Ordinance aims at putting in place safeguards to prevent unscrupulous, undesirable persons from misusing or vitiating the provisions of the Code. The amendments aim to keep-out such persons who have willfully defaulted, are associated with non-performing assets, or are habitually non-compliant and, therefore, are likely to be a risk to successful resolution of insolvency of a company. In addition to putting in place restrictions for such persons to participate in the resolution or liquidation process, the Amendment also provides such check by specifying that the Committee of Creditors ensure the viability and feasibility of the resolution plan before approving it. The Insolvency and Bankruptcy Board of India (IBBI) has also been given additional powers. Along with other steps towards improving compliance's, actions against defaulting companies to prevent misuse



MCA UPDATES

of corporate structures for diversion of funds, reforms in the banking sector, weeding-out of unscrupulous elements from the resolution process is part of ongoing reforms initiated by the Government. These would help strengthen the formal economy and encourage honest businesses and budding entrepreneurs to work in a trustworthy, predictable regulatory environment.



SEBI UPDATES

1. SEBI amends the SEBI (International Financial Services Centres) Guidelines, 2015

SEBI has amended the Securities and Exchange Board of India (International Financial Services Centres) Guidelines, 2015 to amend the definition of “issuer” as given in Clause 2 (1) (i). As per the new definition, it shall now include, any entity incorporated in India seeking to raise capital in foreign currency other than Indian rupee which has obtained requisite approval under Foreign Exchange Management Act, 1999 (FEMA) or exchange control regulations as may be applicable or an entity incorporated in a foreign jurisdiction, provided such entity is permitted to issue securities outside the country of its incorporation or establishment or place of business as per the laws and regulations of its country of incorporation, jurisdiction or its constitution or any supranational, multilateral or statutory organization / institution / agency provided such organization / institution/agency is permitted to issue securities as per its constitution.

http://www.sebi.gov.in/legal/circulars/nov-2017/securities-and-exchange-board-of-india-international-financial-services-centres-guidelines-2015-amendments_36586.html

2. SEBI issues circular allowing Investments by FPIs in Hybrid Securities

SEBI has issued circular allowing Investments by FPIs in Hybrid Securities. Presently, FPI investments are classified as either debt or equity depending on the type of the security in which the FPIs transact. FPIs are permitted to invest in REITs and InvITs, which are classified as hybrid securities and presently, the said investments are not reflected in the daily FPI net investment data or the monthly/fortnightly FPI AUC data. Further, in order to capture FPI investment data in hybrid securities, a third category termed as “Hybrid Security” shall be created for the purpose of capturing and disseminating FPI investment data in hybrid securities. The depositories (NSDL and CDSL) shall put in place the necessary systems for the daily reporting by the custodians of the FPIs and shall also disseminate on their websites, the AUC of the FPIs in debt, equity and hybrid securities.

http://www.sebi.gov.in/legal/circulars/nov-2017/investments-by-fpis-in-hybrid-securities_36597.html

3. Enhancing fund governance for Mutual Funds

SEBI vide Circular dated 30th November, 2017 the fund governance for mutual funds have been enhanced. It has now been decided to specify the tenure of independent trustees and independent directors. An independent trustee and independent director shall hold office for a maximum of 2 terms with each term not exceeding a period of 5 consecutive years. Also the regulations w.r.t. Auditors of Mutual funds it has been decided The auditor of a MF, appointed in terms of Regulation 55 (1) of SEBI (MFs) Regulations shall be a firm, including a limited liability firm, constituted under the LLP Act, 2008. With respect to appointment of auditors in terms of Regulation 55 (1) of SEBI (MFs) Regulation, 1996, it has been decided that: No MF shall appoint an auditor for more than 2 terms of maximum five consecutive years. Such auditor may be re-appointed after cooling off period of 5 years.

http://www.sebi.gov.in/legal/circulars/nov-2017/enhancing-fund-governance-for-mutual-funds_36778.html

4. Clarification to Circular on Prevention of Unauthorised Trading by Stock Brokers

SEBI vide Circular dated 30th November, 2017 has issued Clarification to Circular on Prevention of Unauthorised Trading by Stock Brokers. The same has been issued in order to overcome the operational difficulties faced by stock brokers, it has been decided that Brokers are required to maintain the records specified in circular no. CIR/HO/MIRSD/MIRSD2/CIR/P/2017/108 dated September 26, 2017 for a minimum period for which the arbitration accepts investor complaints as notified from time to time, currently three years. However, in cases where dispute has been raised, such records shall be kept till final resolution of the dispute.

http://www.sebi.gov.in/legal/circulars/nov-2017/clarification-to-circular-on-prevention-of-unauthorised-trading-by-stock-brokers_36775.html



TAXATION UPDATES

1. CBDT notifies amendments to Income Tax Rules 1962, issues Income Tax (Twenty-fourth Amendment) Rules, 2017

CBDT has notified the amendments to the Income-tax Rules, 1962. These rules may be called the Income-tax (Twenty-fourth Amendment) Rules, 2017. Information and documents to be kept and maintained under proviso to sub-section (1) of section 92D and to be furnished in terms of sub-section (4) of section 92D. Further, every person, being a constituent entity of an international group having the prescribed value of international transactions, keep and maintain the information and documents of the international group, namely:- A list of all entities of the international group along with their addresses and a chart depicting the legal status of the constituent entity and ownership structure of the entire international group.

http://www.incometaxindia.gov.in/communications/notifications/notification92_2017.pdf

2. CBDT issues clarification on Cash Sale of agricultural produce by cultivators /agriculturist

CBDT has issued clarification on Cash sale of agricultural produce by cultivators /agriculturist on the basis of representations received from the stakeholders regarding applicability of income-tax provision to cash sale of agricultural produce by cultivators / agriculturists to traders. It is clarified that cash sale of the agricultural produce by its cultivator to the trader for an amount less than Rs 2 Lakh will neither result in any disallowance of expenditure under section 40A (3) of the Act in the case of trader nor attract prohibition under section 269ST of the Act in the case of the cultivator and shall not require the cultivator to quote his PAN/ or furnish Form No.60.

http://www.incometaxindia.gov.in/news/circular27_2017.pdf

3. Third Protocol to the Convention between Government of India and New Zealand notified.

The Third Protocol for amendment of the Convention between the Government of the Republic of India and the Government of New Zealand for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income was signed by both countries on 26th October 2016. The Protocol entered into force in India on 7th September 2017 and has been notified in the Official Gazette on 2nd November 2017.

The Protocol updates the existing framework of exchange of tax related information to latest international standard which will help curb tax evasion and tax avoidance between the two countries and will also enable mutual assistance in collection of taxes.

4. Indirect Transfer provisions in case of redemption of share or interest outside India

Central Board of Direct Taxes (CBDT) vide Circular No. 28/2017 dated 7th November, 2017 has issued clarification on applicability of indirect transfer tax provisions under Sec 9 of the IT Act said that ” “This is a welcome clarification that would mitigate multiple taxation of income that is upstreamed to non-residents who are holding indirect interest in an Indian Investment Fund / VCC/VCF. It has been clarified that once such fund/VCC/VCF has been subject to tax in India on disposal of shares/securities held in India, the receipt by non-resident investors by way of upstreaming of the same income (could be by way of redemption or buyback effected outside India) would not be subject to tax in India under the indirect transfer provisions.”

5. CBEC - GST

In its 23rd meeting, the GST Council has taken various decisions to rationalize the GST rate structure. It has also been proposed to continue the monthly filing of GSTR-3B till March 2018. The due date for composition registered dealer and due date for TRAN-1 for claiming transitional credit is proposed to be extended. Small businesses can enroll under the GST Composition Scheme to pay GST at a flat rate and file simplified quarterly GST returns. The annual aggregate turnover threshold for registering under the GST Composition Scheme has been increased now to Rs.2 crores. There after eligibility for composition will be increased to R. 1.5 Crore per annum. Further, Taxpayers registered under the GST Composition Scheme can now supply services with a taxable value of upto Rs.5 lakhs per annum. This provision will immensely help small computer shop operators and dealers involved in providing services along with sales of product. Now, GSTR 4 for the July to September 2017 quarter will be due only on the 24th of December 2017.



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The due date for subsequent quarters will be announced by the GST Council at a future date. The Government has waived the late filing penalty for GSTR 3B return for the months of July, August and September 2017. In case any taxpayer paid a penalty, the penalty paid would be credited to the electronic cash ledger.

<http://pib.nic.in/newsite/PrintRelease.aspx?relid=173403>

6. Recommendations made On GST Rate changes by the GST Council as per discussions in its 23rd Meeting on 10th November, 2017

The Council has recommended major relief in GST rates on certain goods and services. These recommendations spread across many sectors and across commodities.

As per these recommendations, the list of 28% GST rated goods is recommended to be pruned substantially, from 224 tariff headings [about 18.5% of total tariff headings at 4-digit] to only 50 tariff headings including 4 headings which have been partially reduced to 18% [about 4% of total tariff headings at 4-digit].

Further, the Council has recommended changes in GST rates on a number of goods, so as to rationalise the rate structure with a view to minimise classification disputes.

The Council has also recommended issuance of certain clarifications to address the grievance of trade on issues relating to GST rates and taxability of certain goods and services.

On the services side also, the Council recommended changes in GST rates to provide relief to aviation & handicraft sectors and restaurants.

<http://pib.nic.in/newsite/PrintRelease.aspx?relid=173406>

7. Changes recommended in Composition Scheme

The following changes were recommended in the Composition Scheme on the basis of discussions held in the 23rd meeting of the GST Council

- i. Uniform rate of tax @ 1% under composition scheme for manufacturers and traders (for traders, turnover will be counted only for supply of taxable goods). No change for composition scheme for restaurant.
- ii. Supply of services by Composition taxpayer upto Rs 5 lakh per annum will be allowed by exempting the same
- iii. Annual turnover eligibility for composition scheme will be

increased to Rs 2 crore from the present limit of Rupees 1 crore under the law. Thereafter, eligibility for composition will be increased to Rs. 1.5 Crore per annum.

iv. The changes recommended by GST Council at (ii) and (iii) above will be implemented only after the necessary amendment of the CGST Act and SGST Acts.

8. Cabinet approves Agreement between India and the Hong Kong Special Administrative Region of China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income

The Union Cabinet has given its approval forentering into an Agreement between India and the Hong Kong Special Administrative Region (HKSAR) of China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income.

The Agreement will stimulate flow of investment, technology and personnel from India to HKSAR & vice versa, prevent double taxation and provide for exchange of information between the two Contracting Parties. It will improve transparency in tax matters and will help curb tax evasion and tax avoidance.

9. Form GST TRAN-1 and Revised Form GST TRAN-1 filing due date extended to 27th December, 2017

CBEC has extended the time limit for submitting the declaration in Form GST TRAN – 1 and Revised Form GST TRAN-1 till 27th December, 2017.

10. CBEC mandates Monthly Tax Payment & filing of Form GSTR-3B till March, 2018

CBEC mandates monthly tax payment and filing of Form GSTR-3B till March, 2018.

Payment of taxes for discharge of tax liability as per FORM GSTR-3B: Every registered person furnishing the return in FORM GSTR-3B shall, subject to the provisions of section 49 of the said Act, discharge his liability towards tax, interest, penalty, fees or any other amount payable under the said Act by debiting the electronic cash ledger or electronic credit ledger, as the case may be, not later than the last date as mentioned for the monthly return.



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11. Quarterly FORM GSTR-1 for taxpayers with aggregate turnover of up to Rs. 1.5 crore

CBEC Seeks to prescribe quarterly furnishing of FORM GSTR-1 for those taxpayers with aggregate turnover of up to Rs. 1.5 crore vide Notification No. 57/2017 – Central Tax.

The Central Government, on the recommendations of the Council, notifies the registered persons having aggregate turnover of up to 1.5 crore rupees in the preceding financial year or the current financial year, as the class of registered persons who shall follow the special procedure as detailed below for furnishing the details of outward supply of goods or services or both.

The said persons shall furnish the details of outward supply of goods or services or both in FORM GSTR-1 effected during the quarter as specified in column (2) of the Table below till the time period as specified in the corresponding entry in column (3) of the said Table, namely:-

S.No.	Quarter for which the details in FORM GSTR-1 are furnished	Time period for furnishing the details in FORM GSTR-1
1	July – September, 2017	31st December, 2017
2	October – December, 2017	15th February, 2018
3	January – March, 2018	30th April, 2018

12. Form GSTR-4 for quarter July to Sep, 2017 can be submitted till 24.12.2017

CBEC vide Notification No. 59/2017 – Central Tax notifies that Form GSTR-4 for quarter July to Sep, 2017 can be submitted till 24.12.2017. Earlier the extended due date was 15th day of November, 2017.

13. CBEC extends time limit for furnishing FORM GSTR-5 for July to October, 2017

CBEC extends the time limit for furnishing the return in FORM GSTR-5, for the months of July to October, 2017 vide Notification No. 60/2017 till the 11th day of December, 2017.

14. CBEC notifies Time to furnish Form GSTR-5A for the months of July to October, 2017

CBEC extend the time limit for furnishing the return in FORM GSTR-5A for the months of July to October, 2017 vide Notification No. 61/2017 by a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 and rule 64 of the Central Goods and Services Tax Rules, 2017, till the 15th day of December, 2017.

15. CBEC extends time limit to file Form GSTR-6 for July, 2017 to 31.12.2017

CBEC Seeks to extend the time limit for furnishing the return in FORM GSTR-6 for the month of July, 2017 to 31st day of December, 2017 vide Notification No. 62/2017.

16. CBEC extends due date to file FORM GST-ITC-04 to 31.12.2017

CBEC Seeks to extend the due date for submission of details in FORM GST-ITC-04 vide Notification No. 63/2017 – Central Tax form 30th November to 31st December.

17. CBEC decides that applications/documents/forms pertaining to refund claims on account of zero-rated supplies shall be filed and processed manually

Due to the non-availability of the refund module on the common portal and to ensure uniformity, CBEC has decided that the applications / documents / forms pertaining to refund claims on account of zero-rated supplies shall be filed and processed manually till further orders. The shipping bill filed by an exporter shall be deemed to be an application for refund in such cases. The application shall be deemed to have been filed only when export manifest or export report is filed and the applicant has furnished a valid return in FORM GSTR-3 or FORM GSTR-3B, as the case may be.



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Upon receipt of the information regarding furnishing of a valid return in FORM GSTR-3 or FORM GSTR-3B, as the case may be, from the common portal, the system designated by the Customs shall process the claim for refund and an amount equal to the integrated tax paid in respect of such export shall be electronically credited to the bank account of the applicant. Any order regarding withholding of such refund or its further sanction respectively in PART-B of FORM GST RFD-07 or FORM GST RFD-06 shall be done manually till the refund module is operational on the common portal.

18. CBDT issues draft notification in respect of conversion of Indian branch of foreign bank into Indian Subsidiary Company

CBDT has issued a draft notification in respect of conversion of Indian branch of foreign bank into Indian Subsidiary Company. Finance Act, 2012 inserted a new Chapter XII-BB consisting of section 115JG in the Income-tax Act, 1961 (the Act) which contains “Special provisions relating to conversion of Indian Branch of a foreign bank into a subsidiary company”. Section 115JG of the Act inter-alia provides that in case the conversion of Indian Branch of foreign bank fulfills the conditions notified by the Central Government, the capital gains arising from such conversion shall not be chargeable to tax and the provision relating to unabsorbed depreciation, set off or carry forward and set off of losses, tax credit in respect of tax paid on deemed income relating to certain companies and the computation of income in case of Foreign Company and Indian Subsidiary shall apply with such modification, exception etc. as may be specified in the notification.

<https://www.incometaxindia.gov.in/Lists/Latest%20News/Attachments/198/Draft-notification-115JG-1-IT-Act-1961-17-11-2017.pdf>

19. Government Nod to Display Revised MRP Due to Reduction of Rates of GST up to 31st Dec, 2017

Government has allowed manufacturers, packers or importers of pre-packaged commodities to declare the revised retail sale price (MRP) in addition to the existing retail sale price (MRP) till i.e. 31st December, 2017.

20. Cabinet approves agreement between India and Philippines on co-operation and mutual assistance in customs

matters

Ministry of Finance vide Press Release dated 22nd November, 2017 has approved the signing and ratifying of an Agreement between India and Philippines on co-operation and mutual assistance in customs matters.

The Agreement will help in the availability of relevant information for the prevention and investigation of Customs offences. The Agreement is also expected to facilitate trade and ensure efficient clearance of goods traded between the countries.

This Agreement shall enter into force after the necessary national legal requirements for entry into force of this Agreement have been fulfilled by both the countries.

19. CBEC issues circular to clarify the Applicability of IGST/GST on goods transferred/sold while being deposited in a warehouse

CBEC has issued a circular to clarify the Applicability of IGST / GST on goods transferred / sold while being deposited in a warehouse. The goods stored in a customs bonded warehouse, but there is a possibility that certain cases may involve an additional taxable event, if a transfer of ownership of warehoused goods takes place between the importer and another person, before clearance of the goods, whether for home consumption or for export. Accordingly, when goods remain deposited in a customs bonded warehouse and are transferred by the importer to another person, the transaction will be subject to payment of IGST at the value determined as per section 20 of the IGST Act. However, it may be noted that so long as such goods remain deposited in the warehouse the customs duty to be collected shall remain deferred.

<http://www.cbec.gov.in/resources/htdocs-cbec/customs/cs-circulars/cs-circulars-2017/circ46-2017cs.pdf>

21. CBDT issues directions related to some important issues to be considered while framing scrutiny assessments pertaining to filing of revised/belated returns by assessee, post-demonetisation

The Central Board of Direct Taxes (CBDT) has issued directions related to some important issues which are to be considered by AO while framing scrutiny assessments



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pertaining to filing of revised/belated returns by assessee's post-demonetisation. Revision of Income-tax return (ITR) is allowed only if any omission or wrong statement is noticed therein by the assessed. Such omission or wrong statement may have occurred due to a bonafide and inadvertent error or a mistake on part of assessed. However, post demonetization period, it was found that some of the assesses tried to build an explanation for cash deposits in their bank accounts by manipulating their books of accounts and filing revised or belated ITRs. Accordingly, few issues have been identified by the Department which may be kept in view by AO during verification and framing of scrutiny assessments, it includes, the claim of enhanced sales may be compared with Central Excise/VAT returns. Further, omission or wrong statement in the original return must be pointed out by the auditor in case the accounts had been subjected to tax audit. Source of cash in hands of the person who made payments to the assessed has to be verified carefully. Any manipulated receipts or sale is liable to be taxed as cash credit under section 68 and not merely on net profit basis.

22. Procedure for transfer of unclaimed suspense shares to demat A/c of IEPF

National Securities Depository Limited (NSDL) has issued operational guidelines regarding transfer of shares to Investor Education and Protection Fund (IEPF) Authority and Schedule Version release. The corporate action information form notified vide aforesaid NSDL circular has been revised as per Annexure-I, Issuers/RTAs are requested note and submit the same for transfer of shares to IEPF Authority.

23. Clarification of India's position on the acceptance of MAP and bilateral APA in cases of countries where Article 9(2) of OECD Model Tax Commentary is absent

Ministry of Finance, vide Press Release dated 27th November, 2017 has provided clarification regarding the acceptance of applications pertaining to Transfer Pricing MAP cases and Bilateral Advance Pricing Agreements (APAs) where the Associated Enterprise (AE) of the Indian entity is resident of a country with which India has entered into a Double Taxation Avoidance Agreement (DTAA) but the Agreement does not contain Paragraph 2 of Article 9 (or its relevant equivalent Article) relating to 'Corresponding Adjustment'. The matter

has been examined by the Central Board of Direct Taxes (CBDT) and it has been decided to accept Transfer Pricing MAP and bilateral APA applications regardless of the presence or otherwise of Paragraph 2 of Article 9 (or its relevant equivalent Article) in the DTAA's.

24. Cabinet approves investment cooperation and facilitation treaty between India and Brazil

Ministry of Finance vide Press Release dated 30th November, 2017 has announced that Cabinet has given its approval for signing and ratification of the Investment Cooperation and Facilitation Treaty (ICFT) between India and Brazil.

The Treaty will result in increase of investment flows between the two countries. The ICFT between India and Brazil will provide appropriate facilitation to Brazilian investors in India and Indian investors in the Brazil. It is likely to increase the comfort level and boost the confidence of investors by assuring a level playing field and non-discrimination in all investment facilitation matters, thus providing conducive investment climate to investors. It would help project India as a preferred Foreign Direct Investment (FDI) destination to all Brazilian investors.



OTHER UPDATES

1. Linkage of Aadhaar number to Insurance Policies is mandatory under the Prevention of Money-laundering (Maintenance of Records) Second Amendment Rules, 2017.

Central Government vide gazette notification dated 1st June 2017 notified the Prevention of Money-laundering (Maintenance of Records) Second Amendment Rules, 2017 making Aadhaar and PAN/Form 60 mandatory for availing financial services including Insurance and also for linking the existing policies with the same.

The Authority clarifies that, linkage of Aadhaar number to Insurance Policies is mandatory under the Prevention of Money-laundering (Maintenance of Records) Second Amendment Rules, 2017.

2. PAN-Aadhaar Linking Not applicable to NRIs, PIOs, OCIs

Unique Identification Authority of India (UIDAI) has clarified that PAN - Aadhaar linking is not applicable to Non-Resident Indians (NRIs), Person of Indian Origin (PIOs) and Overseas Citizen of India (OCIs).

Glossary

AIFs	Alternative Investment Funds	MCA	Ministry of Corporate Affairs
CBDT	Central Board of Direct Taxes	MoU	Memorandum of Understanding
CBEC	Central Board of Excise & Customs	MPS	Minimum Public Shareholding
CGST	Central Goods and Service Tax	NCLAT	National Company Law Appellate Tribunal
CAGR	Compound Annual Growth Rate	NCLT	National Company Law Tribunal
DoT	Department of Telecommunication	NBFC	Non Banking Financial Company
DIPP	Department of Industrial Policy and Promotion	OTP	One Time Password
GST	Goods and Services Tax	PAN	Permanent Account Number
GIC	GST Implementation Committee	PPI	Prepaid Payment Instrument
IGST	Integrated Goods and Services Tax	PoEM	Place of Effective Management
ITC	Input tax Credit	RBI	Reserve Bank Of India
ITR	Income Tax Return	ROC	Registrar of Companies
IBC	Insolvency and Bankruptcy Code	SEBI	Securities and Exchange Board of India
IPs	Insolvency Professionals	SGBs	Sovereign Gold Bond Scheme
Ind AS	Indian Accounting Standards	SCRA	Securities Contract (Regulation) Act 1956
IBBI	Insolvency and Bankruptcy Board of India	SFT	statements of financial transactions
IUs	Information Utilities	TRAI	Telecom Regulatory Authority of India
ISD	Input Service Distributer	UTGST	Union Territory Goods and Service Tax
IEPF	Investor Education and Protection Fund	VAT	Value Added Tax



Contact Us

Delhi-NCR

Unit 1116, 11th Floor
World Trade Tower
C 1, Sector 16
Noida
Uttar Pradesh 201301
Tel: +91 120 614 3000
Fax: +91 120 614 3033

Mumbai

Peninsula Business Park,
19th Floor, Tower B,
Lower Parel
Mumbai-
Maharashtra 400013
Tel: +91 22 6124 6124
Fax: +91 2261246101

Jaipur

J-16, Lalkothi J-scheme,
Sahakar Marg
Behind IOC petrol Pump
Jaipur- 302015
Tel: +91 141 2741674
Fax: +91 141 4050 92

Bangalore

1st Floor, 726,
6th B
Cross 3rd Block Koramangala
Bangalore- 560034
Tel: +91 8043703862

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Krishan Goyal

Rajarshi Datta

Divya Vij

Aftab Shaikh

krishan.goyal@acquisory.com

rajarshi.datta@acquisory.com

divya.vij@acquisory.com

aftab.shaikh@acquisory.com

Website- www.acquisory.com

Stay Connected with Acquisory

