

# Acquisory News Chronicle



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*Think About Future*

*Think About Final Objective / Goal*

*Think How Will It Be Achieved*

*Think Risks / Problems*

*Think Solutions*

*Think Process*

*Think About The Journey To Achievement*

*Think About Achievement*

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## **Insolvency and Bankruptcy Code 2016 – A dawn in the era of Credit Market Laws**

A transformation has taken in the Indian Economic reform with the passing of the Insolvency and Bankruptcy Code 2016 (hereinafter referred as 'Code') with regard to the functioning of the credit market in India. This shall provide a big boost to Ease of doing business in India. The law has been enacted with a vision to encourage entrepreneurship and innovation which will further boost the startups in India. This is an another government initiative to enhance the startups in India.

The code is a comprehensive and systematic reform which shall give a significant increase in the functioning of the credit market in India and would take the country from among relatively weak insolvency regimes to becoming one of the world's best insolvency regimes.

### ***Background***

The Insolvency and Bankruptcy Code 2015 was introduced by the Finance Minister in Lok Sabha in December 2015 and was subsequently referred to Joint Committee of Parliament. Thereafter the committee submitted its recommendations and the modified code was accordingly passed in the Lok Sabha on May 5, 2016 and the bill received the President assent on 28<sup>th</sup> May, 2016 and became an Act. The code creates a framework for resolving insolvency in India. Insolvency is a situation where an individual

or a company is unable to repay the outstanding debt.

The Code repeals the Presidency Towns Insolvency Act, 1909 and Provincial Insolvency Act, 1920. In addition, it amends 11 laws, including the Companies Act, 2013, and the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, among others.

***“The Insolvency and Bankruptcy Code, 2016 – a law enacted for insolvency resolution of various corporate entities, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India.”***



## ***Insolvency and Bankruptcy Code 2016 – A brief Overview***

The Insolvency and Bankruptcy Code 2016 has been enacted to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto.

***“The Code is applicable on the Companies, Partnership firms and any other entity incorporated under any Statute as may be in force. The law strives to consolidate the laws relating to insolvency of companies and limited liability entities unlimited liability partnerships and individuals, presently contained in a number of legislations, into a single legislation.”***

### ***Applicability:***

- Any company incorporated under the Companies Act, 2013 or under any previous company law.
- Any other company governed by any special Act for the time being in force.
- Limited Liability Partnership incorporated under the Limited Liability Partnership Act, 2008.
- Any other body incorporated under any law for the time being in force, as the

Central Government may, by notification, specify in this behalf.

- Partnership firms and individuals.

### ***Objective***

The law strives to consolidate the laws relating to insolvency of companies and limited liability entities (including limited liability partnerships and other entities with limited liability), unlimited liability partnerships and individuals, presently contained in a number of legislations, into a single legislation. Such consolidation will provide for a greater clarity in law and facilitate the application of consistent and coherent provisions to different stakeholders affected by business failure or inability to pay debt.

### ***Setting up of the Authority***

The code proposes the setting up of new entity, the Insolvency and Bankruptcy Board of India, which will regulate insolvency professionals and information companies – those which will store all the credit information of corporates.

Further, the code proposes two authorities to deal with insolvency – The National Company Law Tribunal will adjudicate cases for companies and Limited Liability Partnerships and the Debt Recovery Tribunal will do the same for individual and partnership firms.

### ***Salient features of the Code***

Insolvency Resolution Process – the code specifies similar insolvency resolution processes for companies and individuals, which will have to be completed within 180

days. This limit may extend to 270 days in certain circumstances. The resolution process will involve negotiations between the debtor and creditors to draft a resolution plan.

Fresh Start process – the code provides a fresh start process for individuals under which they will be eligible for a debt waiver of up to Rs. 35,000/-. The individual will be eligible for the waiver subject to certain limits prescribed under the code.

Insolvency professionals and agencies – the resolution process will be conducted by a licensed insolvency professional (IP). The IP will control the assets of the debtor during the process. Insolvency professional agencies will be created to regulate these IPs. The agencies will conduct examinations to enroll IPs and enforce a code of conduct for their functioning.

Information utilities – the code establishes multiple information utilities to collect, collate and disseminate financial information related to a debtor. This will include a record of debt and liabilities of the debtor.

Insolvency and Bankruptcy Fund – the code creates an Insolvency and Bankruptcy Fund. The Fund will receive voluntary contributions from any person. In case of insolvency proceedings being initiated against the contributor, he will be allowed to withdraw his contribution for making payments to workmen, protecting his assets, etc.

Cross border insolvency – cross border insolvency relates to an insolvent debtor who has assets abroad. The Central Government may enter into agreements with other countries to enforce provisions of the code.

Offences – the code specifies penalties for offences committed under corporate insolvency (such as concealing property). This penalty will be imprisonment of up to five years, or a fine of up to one crore rupees or both. For offences committed under individual insolvency (such as providing false information), the imprisonment will vary based on the offence. For most of the offences, the penalty will be imprisonment of up to six months, or a fine up to five lakh rupees or both.

***“the law provides for the setting up of Insolvency and Bankruptcy Board of India, which will regulate insolvency professionals and information companies also two authorities to deal with insolvency – The National Company Law Tribunal and the Debt Recovery Tribunal.”***

### ***Implication of the Code***



The essential idea of the new law is that when a firm defaults on its debt, control shifts from the shareholders/promoters to a Committee of Creditors, who have 180 days in which to evaluate proposals from various players about reviving the Company or taking into liquidation. When decisions are taken in a time – bound manner, there is a greater chance that the firm can be saved as a going

concern, and the productive resources of the economy (the labour and the capital) can be put to the best use. This is complete departure with the experience under SICA regime where there were delays leading to destruction of the value of the firm. Thus giving more power in the hands of Creditors.

Further, the law strives towards the entrepreneurship and innovation. It is seen that some business ventures will fail, but with the new law in force they will be handled

rapidly and swiftly. Entrepreneurs and lenders will be able to move on, instead of being carried down with decisions taken in the past. The Code empowers the operational creditors (workmen, suppliers etc.) also to initiate the insolvency resolution process upon non-payment of dues. The Code lays down the foundations for the development of the Corporate bond market, which would finance the infrastructure projects of the future.

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## NEWS UPDATES

### CORPORATE

#### **RBI**



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

Reserve Bank of India [RBI] vide Notification No. RBI/2015-16/390 A.P. (DIR Series) Circular No. 67/2015-16 [(1)/5(R)] dated 5<sup>th</sup> May, 2016, have repealed and superseded the Foreign Exchange Management (Deposit) Regulations, 2016 issued on 1<sup>st</sup> April, 2016 by these Deposit Regulations.

*These regulations seek to regulate deposits between a person resident in India and a person resident outside India.*

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10382&Mode=0>

#### **2. Transactions in derivatives by regulated institutional entities on electronic platforms**

*Reserve Bank of India [RBI] vide Notification No. RBI/2015-16/392 FMRD.DIRD.No.9/14.03.01/2015-16 dated 5<sup>th</sup> May, 2016 has specified the Clearing Corporation of India Ltd (CCIL) as an approved counterparty for Interest rate swaps [IRS] transactions undertaken on electronic trading platforms where CCIL will be the central counterparty.*

As per the para 37 of the First Bi-monthly Monetary Policy Statement announced on April 5, 2016, in terms of which, it was proposed to review the existing guidelines on OTC derivatives in order to make participation in OTC derivative markets through electronic platforms more broad-based. Accordingly, it was decided to enable any institutional entity regulated by the Reserve Bank of India (RBI), the Securities and Exchange Board of India (SEBI), the Insurance Regulatory and Development Authority of India (IRDAI), the Pension Fund Regulatory and Development Authority (PFRDA) and the National Housing Bank (NHB) to trade in interest rate swaps (IRS) on electronic trading platforms.

At present regulated entities, other than scheduled banks, are unable to conduct



transactions on electronic platforms for interest rate swaps (IRS) as one party to such transactions has to be either the Reserve Bank of India (RBI) or a scheduled bank or such other agency falling under the regulatory purview of the RBI which may be specified by the RBI in this regard. In this context, the Reserve Bank of India, in exercise of its powers conferred by Section 45V of the Reserve Bank of India Act, 1934 and of all the powers enabling it in this behalf, hereby specifies the Clearing Corporation of India Ltd (CCIL) as an approved counterparty for IRS transactions undertaken on electronic trading platforms where CCIL is the central counterparty.

In view of the above measures, the regulated institutional entities, subject to the approval of their respective sectoral regulators, may apply for membership of electronic trading platforms in IRS which have CCIL as the central counterparty for settlement.

The above guidelines would become effective from June 1st, 2016.

### **3. *Procedural Guidelines on Establishment of Branch Office (BO)/ Liaison Office (LO)/ Project Office (PO) in India by foreign entities***

*Reserve Bank of India (RBI) vide Notification No. RBI/2015-16/397 A.P. (DIR Series) Circular No.69 [(1)/22(R)] dated 12<sup>th</sup> May, 2016 has issued the procedural guidelines on Establishment of Branch Office (BO)/*

### ***Liaison Office (LO)/ Project Office (PO) in India by foreign entities.***

The guidelines are issued in furtherance to the Foreign Exchange Management (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016.

- Applications from persons resident outside India for establishing Branch Office (BO) / Liaison Office (LO)/ Project Office (PO) or any other place of business in India shall be considered by the AD Category-I bank as per the guidelines issued by the Reserve Bank of India. If the application to open a BO/LO/PO is received from an entity resident outside India whose principal business falls under sectors where 100 percent Foreign Direct Investment (FDI) is allowed in terms of FEMA Notification No. 20/2000-RB dated May 3, 2000, as amended from time to time, the AD Category-I bank may consider such applications under the delegated powers.
- An application from a person resident outside India for opening of a BO/LO/PO in India shall require prior approval of Reserve Bank of India in the following cases:
  - a. the applicant is a citizen of or is registered/incorporated in Pakistan;
  - b. the applicant is a citizen of or is registered/incorporated in Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong or Macau and the application is for opening a BO/LO/PO in Jammu and

Kashmir, North East region and Andaman and Nicobar Islands;

- c. The principal business of the applicant falls in the four sectors namely Defence, Telecom, Private Security and Information and Broadcasting. In the case of proposal for opening a PO relating to defence sector, no separate reference or approval of Government of India shall be required if the said non- resident applicant has been awarded a contract by/ entered into an agreement with Ministry of Defence or Service Headquarters or Defence Public Sector Undertakings. There shall be no requirement of any approval from RBI also only for such cases;
- d. The applicant is a Non-Government Organisation (NGO), a Non-Profit Organisation, or a Body/ Agency/ Department of a foreign government.

Such applications may be forwarded by the AD Category-I bank to the General Manager, Reserve Bank of India, Central Office Cell, Foreign Exchange Department, who shall process the applications in consultation with the Government of India.

- The non-resident entity desirous of establishing a BO/LO in India should have a financially sound track record as provided in Regulation 4 (a) of the Notification.
- An applicant that is not financially sound and is a subsidiary of another company may submit a Letter of Comfort (LOC)

[as provided in Regulation 4. a. of the Notification] from its parent/ group company, subject to the condition that the parent/ group company satisfies the prescribed criteria for net worth and profit. The LOC should be issued by the applicant's parent / group company which undertakes to fund the operations if required.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10398&Mode=0>

#### **4. Foreign Exchange Management (Exports of Goods and Services) Regulations, 2015**

*Reserve Bank of India (RBI) vide Notification No. RBI/2015-16/395 A.P. (DIR Series) Circular No.68 [(1)/23(R)] dated 12<sup>th</sup> May, 2015 has revise the regulations issued under the Foreign Exchange Management (Exports of Goods and Services) Regulations, 2000., thus the said regulations have been repealed and superseded by the Foreign Exchange Management (Exports of Goods and Services) Regulations, 2015.*

The detailed directions have been inserted relating to dealings of Authorized Dealer Banks with their exporter clients.

The new regulations have been notified vide Notification No. FEMA. 23(R)/2015-RB dated January 12, 2016 c.f. G.S.R. No. 19 (E) dated January 12, 2016 and have come into force with effect from January 12, 2016. The Master Direction No. 16 of 2015-16 (Export of Goods and Services) has been updated

accordingly to incorporate the above changes.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10393&Mode=0>

**5. Issuance of Master Direction - Reserve Bank of India (Co-operative Banks - Interest Rate on Deposits) Directions, 2016**

Reserve Bank of India (RBI) vide Notification No. RBI/DCBR/2015-16/23 Master Direction DCBR.Dir.No.1/13.01.000/2015-16 dated 12<sup>th</sup> May, 2016 has issued the Master Directions (MD) on Co-operative Banks – Interest Rates on Deposits and Advances. The Master Directions issued consolidates all relevant instructions issued by the Reserve Bank of India so far on the subject and will be applicable to all co-operative bank namely, state co-operative banks, central co-operative banks and primary (urban) co-operative banks, licensed or permitted to carry on banking business in India by the Reserve Bank.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10394&Mode=0>

**6. Guidelines for Voluntary surrender of Certificate of Authorisation (COA) by Payment System Operators (PSOs) authorised under PSS Act 2007**

*Reserve Bank of India (RBI) vide Notification No. RBI/2015-16/396 DPSS.CO.AD.No.2627/02.27.005/2015-16 dated 12<sup>th</sup> May, 2016 has issued the*

***Guidelines for Voluntary surrender of Certificate of Authorization (COA) by Payment System Operators (PSOs) authorized under PSS Act 2007.***

The guidelines for voluntary surrender of CoA are applicable to Payment System Operators, namely PPI issuers, MTSS-Overseas Principal, authorized under PSS Act 2007. This option of voluntary surrender of COA is available only to those entities which have either, not commenced Payment System operations, or intend to discontinue such operations. The guidelines are issued in terms of section 4 of the Payment and Settlement Systems Act, 2007 (PSS Act) it is mandatory to seek authorization from the Reserve Bank of India (the Bank) to commence or operate a payment system in the country. Section 8 of the PSS Act empowers the Bank to revoke such authorization under circumstances as provided therein.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10396&Mode=0>

**7. Master Direction – Ownership in Private Sector Banks, Directions, 2016**

Reserve Bank of India (RBI) vide Notification No. RBI/DBR/2015-16/24 Master Direction DBR.PSBD.No. 97/16.13.100/2015-16 dated 12<sup>th</sup> May, 2016 has issued the Master Direction – Ownership in Private Sector Banks, Directions, 2016. The provisions of these Directions shall apply to all private sector banks licensed by RBI to operate in India.

Reserve Bank of India (RBI) has issued new guidelines on ownership in private sector banks by bundling shareholding patterns into two broad categories of individuals (natural persons) and legal entities/institutions, but retained the cap on foreign ownership at 74 per cent.

The Reserve Bank of India has reviewed the extant guidelines on ownership in private sector banks which envisaged diversified shareholding in private sector banks by a single entity/corporate entity/group of related entities. The guidelines have been reviewed against the background of the guidelines on licensing of new banks in the private sector issued in February 2013, the need for additional capital for the banks consequent to the implementation of Basel III capital regulations and to rationalize the ownership limits. It has stipulated the following principles for shareholding by promoters, other entities and individuals in private sector banks after the review.

Ownership limits for all shareholders in the long run are now stipulated under two broad categories: (i) natural persons (individuals) and (ii) legal persons (entities/institutions). Further, separate limits are now stipulated for (i) non-financial and (ii) financial institutions; and among financial institutions, for diversified and non-diversified financial institutions.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10397&Mode=0>

#### **8. Money Transfer Service Scheme - Submission of statement/returns under XBRL**

*Reserve Bank of India [RBI] vide A.P. (DIR Series) Circular No.70 dated 19<sup>th</sup> May, 2016 have made mandatory to submit quarterly statement of the quantum of remittances received by Indian Agents under Money Transfer Service Scheme (MTSS) in eXtensible Business Reporting Language (XBRL) system from the quarter ending June 2016.*

The reporting platform may be accessed at <https://secweb.rbi.org.in/orfsxbrl> For User name and password, Authorized Persons, who are Indian Agents under Money Transfer Service Scheme (MTSS) are advised to submit the duly filled in form (Annex I) through email on or before May 30, 2016.

#### **9. Rupee Drawing Arrangement - Submission of statement/returns under XBRL**

*Reserve Bank of India [RBI] vide A.P. (DIR Series) Circular No.71 dated 19<sup>th</sup> May, 2016 have made mandatory to submit statement E on total remittances received every quarter by Authorised Dealer Category – I (AD Cat – I) banks in eXtensible Business Reporting Language (XBRL) system from the quarter ending June 2016.*

The reporting platform may be accessed at <https://secweb.rbi.org.in/orfsxbrl/>. For User name and password, Authorised

Dealer Category – I (AD Cat – I) banks are advised to submit the duly filled form (Annex I) through email on or before May 30, 2016.

### **10. Frauds in (Urban) Co-operative Banks (UCBs): Changes in Monitoring and Reporting mechanism**

*Reserve Bank of India [RBI] vide Notification RBI/2015-16/399 DCBS.CO.Cir.No.001/12.17.001/2015-16 dated 19<sup>th</sup> May, 2016 has made changes to the fraud monitoring and reporting mechanism at the Regional Offices and Central Fraud Monitoring Cell (CFMC) of the RBI. Accordingly, henceforth:*

- Frauds below ₹ 1.00 crore will be monitored by the respective Regional Office of the Department of Co-operative Bank Supervision (DCBS), RBI under whose jurisdiction the Head Office of the bank falls and
- Frauds of ₹ 1.00 crore and above will be monitored by CFMC, RBI, Bengaluru.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10408&Mode=0>

### **11. Investment in Credit Information Companies (CIC)**

*Reserve Bank of India [RBI] vide Notification RBI/2015-16/400 DBR.CID.BC.No.98/20.16.042/2015-16 dated 19<sup>th</sup> May, 2016 has allowed investments directly or indirectly by any person, whether resident or otherwise, in a CIC, shall not exceed ten percent of*

*the equity capital of the investee company.*

Notwithstanding the above, the Reserve Bank may consider allowing higher FDI limits as under to entities which have an established track record of running a Credit Information Bureau in a well regulated environment:

- a. up to 49% if their ownership is not well diversified (i.e., one or more shareholders each hold more than 10% of voting rights in the company)
- b. up to 100% if their ownership is well diversified  
or  
If their ownership is not well diversified, at least 50% of the directors of the investee CIC in India are Indian nationals/ Non-Resident Indians/ Persons of Indian Origin subject to the condition that one third of the directors are Indian national's resident in India.
- c. The investor company should preferably be a listed company on a recognised stock exchange.

FII/FPI investment would be permitted subject to the conditions that:

- a. A single entity should directly or indirectly hold below 10% equity;
- b. Any acquisition in excess of 1% will have to be reported to RBI as a mandatory requirement;
- c. FIIs/FPIs investing in CICs shall not seek a representation on the Board of Directors based upon their shareholding.

In case the investor in a Credit Information Company in India is a



wholly owned subsidiary (directly or indirectly) of an investment holding company, the conditions as at (2) and (3) above will be applied to the operating group company that is engaged in credit information business and has undertaken to provide technical know-how to the Credit Information Company in India.

**12. Master Direction – Reserve Bank of India (Financial services provided by Bank) Directions, 2016**

*Reserve Bank of India (RBI) vide Notification No. RBI/DBR/2015-16/25 MasterDirection/DBR.FSD.No.101/24. 01.041/2015-16 dated 26<sup>th</sup> May, 2016 has issued the Master Direction with regard to Financial Services provided by Banks.*

The provisions of the Directions shall apply to every Scheduled Commercial Bank (excluding an RRB), licensed to operate in India by Reserve Bank of India (hereinafter referred to as “Bank”). Unless otherwise specified, these directions shall not be applicable to overseas branches and subsidiaries of these banks.

The Direction lays down the procedure for banks to perform various financial services such as Sponsoring of an Infrastructure Debt Fund, Equipment leasing and Hire Purchase business, Factoring Services, Primary dealership business, Underwriting Activities, Mutual Fund Business, Insurance Business, Pension Fund Management,

Investment Advisory Services, Portfolio Management Services, Agency business and other referral services.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10425&Mode=0>

**13. Foreign Exchange Management Act, 1999 (FEMA) Foreign Exchange (Compounding Proceedings) Rules, 2000 (the Rules) - Compounding of Contraventions under FEMA, 1999**

*Reserve Bank of India (RBI) vide A.P. (DIR Series) Circular No.73 dated 26<sup>th</sup> May, 2016 has made amendment to the Foreign Exchange (Compounding Proceedings) Rules, 2000 (the Rules) - Compounding of Contraventions under FEMA, 1999.*

In order to ensure more transparency and greater disclosure, it has now been decided –

- a. Public disclosure of Compounding Orders - For disseminating the information pertaining to compounding orders, it has been decided to host the compounding orders passed on or after June 1, 2016 on the Bank’s website ([www.rbi.org.in](http://www.rbi.org.in)).
- b. Public disclosure of guidelines on the amount imposed during compounding - As per provisions of section 13 of FEMA the amount imposed can be up to three times the amount involved in the contravention. However, the amount imposed is calculated based on guidance note provided. Now it has been decided to put the guidance note on the Bank’s

website for information of general public. It may, however, be noted that the guidance note is meant only for the purpose of broadly indicating the basis on which the amount to be imposed is derived by the compounding authorities in Reserve Bank of India.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10424&Mode=0>

**14. Export Data Processing and Monitoring System (EDPMS) – Additional modules for caution listing of exporters, reporting of advance remittance for exports and migration of old XOS data**

*Reserve Bank of India (RBI) vide A.P. (DIR Series) Circular No.74 dated 26<sup>th</sup> May, 2016 have made modification to Export Data Processing and Monitoring System (EDPMS) in order to simplify the procedure for filing returns on a single platform and for better monitoring.*

Accordingly, it has been decided to integrate the returns related to (a) handling of shipping bills for caution listed exporters; (b) delayed utilisation of advances received for exports; and (c) exports outstanding with Export Data Processing and Monitoring System (EDPMS) which has been in operation since March 1, 2014.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10423&Mode=0>

**15. Review of Framework for Revitalising Distressed Assets in the Economy and Strategic Debt Restructuring Mechanism**

Reserve Bank of India (RBI) vide Notification RBI/2015-16/408 DNBR.CC.PD.No.081/03.10.01/2015-16 dated 26<sup>th</sup> May, 2016, the Department of Banking Regulation of the Bank has made certain modifications to the Framework for Revitalising Distressed Assets in the Economy and Strategic Debt Restructuring Mechanism vide circular DBR.BP.BC.No.82/21.04.132/2015-16 dated February 25, 2016. It has been decided that the modifications made in the Framework vide the above mentioned circular shall also be, mutatis mutandis, made applicable to NBFCs.

Accordingly, the below mentioned directions have been amended –

- a. Systemically Important Non-Banking Financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2015; - **Notification No.DNBR.041/CGM(CDS)-2016 dated May 26, 2016**
- b. Systemically Important Non-Banking Financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2015; - **Notification No.DNBR.042/CGM(CDS)-2016 dated May 26, 2016**
- c. Non-Banking Financial (Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank)



Directions, 2007 - Notification  
No.DNBR.043/CGM(CDS)-2016 dated  
May 26, 2016

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10422&Mode=0>

## SEBI



### **1. Revised Formats under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011**

Securities Exchange Board of India [SEBI] vide Circular No. SEBI/HO/CFD/DCR1/CIR/P/2016/52 dated 2<sup>nd</sup> May, 2016 has revised the formats under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

While filing the reports, the acquirers are required to report compliance under Chapter V of the regulations. However, there is no specific time period mentioned in the formats for reporting of such compliance. In order to bring it in line with the requirement under regulation 10(1)(a), it is necessary that the compliance should be reported for a period of 3 years. Accordingly, the aforesaid formats have been modified to this extent.

[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1462179239778.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1462179239778.pdf)

### **2. Amendment to Circular No. CIR/CFD/DIL3/18/2015 dated December 31, 2015 - Procedure to**

***deal with cases prior to April 01, 2014 involving offer / allotment of securities to more than 49 up to 200 investors in a financial year***

Securities Exchange Board of India [SEBI] vide Circular No. CFD/DIL3/CIR/P/2016/53 dated 3<sup>rd</sup> May, 2016 has made amendment to Circular No. CIR/CFD/DIL3/18/2015 dated December 31, 2015 regarding procedure to deal with cases prior to April 01, 2014 involving offer / allotment of securities to more than 49 up to 200 investors in a financial year.

Para 7 of the Circular provides for submission of a certificate from an independent peer reviewed practicing Chartered Accountant certifying compliance as prescribed in the circular.

It has now been decided that the certification as provided in Para 7 of the Circular dated December 31, 2015 may also be provided by an independent peer reviewed practicing Company Secretary.

### **3. Investment Policy, Liquid Assets for the purpose of Calculation of Net Worth of a Clearing Corporation and Transfer of Profits**

Securities Exchange Board of India [SEBI] vide Circular No. SEBI/HO/MRD/DRMNP/CIR/P/2016/54 dated 4<sup>th</sup> May, 2016 has made certain recommendations with regard to issues

pertaining to (a) Investment Policy of a Clearing Corporation, (b) Liquid assets for calculation of Net worth of a Clearing Corporation, and (c) Regulation 33 of Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012 (SECC Regulations) on 'Transfer of Profits'.

[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1462358916079.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1462358916079.pdf)

**4. SEBI Guidelines for public issue of Units of Infrastructure Investment Trusts (InvITs)**

Securities Exchange Board of India vide Circular CIR/IMD/DF/55/2016 dated 11<sup>th</sup> May, 2016 has issued the guidelines for public issue of Units of Infrastructure Investment Trusts (InvITs).

SEBI (Infrastructure Investment Trusts) Regulations, 2014 ("InvIT Regulations") provides as under:

a) Regulation 14(6) states that 'The Board may specify by issue of guidelines or circulars any other requirements, as it deems fit, pertaining to issue and allotment of units by an InvIT, whether by way of public issue or private placement.

b) Regulation 15(6)(iii) states that 'the advertisements shall be in accordance with any circulars or guidelines as may be specified by the Board in this regard.'

In line with the aforesaid Regulations, the detailed guidelines as placed at Schedule-

A shall be applicable to public issue of units of InvITs.

[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1462967438179.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1462967438179.pdf)

**5. Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2016**

Securities and Exchange Board of India (SEBI) vide Notification dated 25<sup>th</sup> May, 2016 has made amendment to the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015. The regulations may be called the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2016 and shall come into effect from 1<sup>st</sup> April, 2016.

[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1464244385630.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1464244385630.pdf)

**6. Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2016**

Securities and Exchange Board of India (SEBI) vide Notification dated 25<sup>th</sup> May, 2016 has made amendment to the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009. These regulations may be called the Securities and Exchange Board of India (Issue of

Capital and Disclosure Requirements)  
(Third Amendment) Regulations, 2016.

They shall be applicable to issuers filing offer documents with the Registrar of Companies on or after the date of commencement of these regulations.

[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1464245320010.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1464245320010.pdf)

**7. Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2016**

Securities and Exchange Board of India (SEBI) vide Notification dated 25<sup>th</sup> May, 2016 has made amendment to the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. These regulations may be called the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2016.

In the above mentioned regulations, the definition of willful defaulter has been inserted - *"wilful defaulter" means any person who is categorized as a willful defaulter by any bank or financial institution or consortium thereof, in accordance with the guidelines on wilful defaulters issued by the Reserve Bank of India and includes any person whose director, promoter or partner is categorized as such;*

[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1464245549280.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1464245549280.pdf)

**8. Securities and Exchange Board of India (Issue and Listing of Debt Securities) (Amendment) Regulations, 2016.**

Securities and Exchange Board of India (SEBI) vide Notification dated 25<sup>th</sup> May, 2016 has made amendment to the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008. These regulations may be called the Securities and Exchange Board of India (Issue and Listing of Debt Securities) (Amendment) Regulations, 2016.

[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1464245839323.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1464245839323.pdf)

**9. Securities and Exchange Board of India (Issue and Listing of Non-Convertible Redeemable Preference Shares) (Amendment) Regulations, 2016.**

Securities and Exchange Board of India (SEBI) vide Notification dated 25<sup>th</sup> May, 2016 has made amendment to the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013. These regulations may be called the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Redeemable Preference Shares) (Amendment) Regulations, 2016.

The regulations have been amended by insertion of definition of willful defaulter and the disclosures pertaining to willful default.

[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1464246276543.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1464246276543.pdf)

#### ***10. SEBI mandates disclosure of Audit Qualification Impact by listed entities***

Securities Exchange Board of India [SEBI] vide Circular CIR/CFD/CMD/56/2016 dated 27<sup>th</sup> May, 2016 has decided to make the listed entities disseminate the cumulative impact of all the audit qualifications in a separate format, simultaneously, while submitting the annual audited financial results to the stock exchanges. This will ensure that the information is available to the investors, without delay, enabling them to take well informed investment decisions;

To dispense with the existing requirement of filing Form A or Form B for audit report with unmodified or modified opinion respectively;

To dispense with the existing requirement of making adjustment in the books of accounts of the subsequent year.

This circular shall be applicable for all the annual audited standalone / consolidated financial results, as applicable, submitted by the listed entities for the period ending on or after March 31, 2016.

Brief gist of the Circular:

- a. The requirements of filing Form A/ Form B along with the annual financial results has been dispensed with.
- b. From now on, instead of these Forms, in case of Audit Reports with modified opinions (i.e. Qualified Audit Reports), a Statement on Impact of Audit Qualifications is needed to be submitted.
- c. The management of the listed entity shall have the option to explain its views on the audit qualifications.
- d. Where the impact of the audit qualification is not quantified by the auditor, the management shall make an estimate. In case the management is unable to make an estimate, it shall provide reasons for the same. In both the scenarios, the auditor shall review and give the comments.
- e. Further, the said Statement is also needed to be given in the Company's Annual Reports.
- f. The said Statement of Impact shall be reviewed by the concerned Stock Exchange(s).
- g. Further, in case of audit reports with unmodified opinion(s), the listed entity shall furnish a declaration to that effect to the Stock Exchange(s) while publishing the annual audited financial results.

[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1464333727033.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1464333727033.pdf)

## MCA



***1. Delegation of Power to Regional Director under Section 206(5) - Power to call for information, inspect books and conduct inquiries of the Companies Act, 2013***

Ministry of Corporate Affairs [MCA] vide Notification dated 29<sup>th</sup> April, 2016, the Central Government hereby delegates the power to appoint Inspectors for inspection of books and papers of a Company under sub-section (5) of Section 206 to Regional Directors.

***2. New versions of Forms AOC-4\_CFS, AOC-4\_XBRL, INC-22, INC-27, MR-2 have been updated on MCA21 portal w.e.f. 5<sup>th</sup> May, 2016.***

The Ministry of Corporate Affairs [MCA] has notified new versions of e-Forms AOC-4\_CFS (Form for filing consolidated financial statements and other documents with the Registrar), AOC-4\_XBRL (Form for filing XBRL document in respect of financial statement and other documents with the

Registrar), INC-22 (Notice of situation or change of situation of registered office), INC-27 (Conversion of public company into private company or private company into public company), MR-2 (Form of application to the Central Government for approval of appointment or reappointment and remuneration or increase in remuneration or waiver for excess or over payment to managing director or whole time director or manager and commission or remuneration to directors) w.e.f 5<sup>th</sup> May, 2016 and the same are available on MCA21 Portal.

***3. MCA releases revised Form No. GNL – 1 and GNL – 4***

The Ministry of Corporate Affairs [MCA] vide Notification dated 6<sup>th</sup> May, 2016 has made amendment to the Companies (Registration Offices and fees) Rules, 2014. The revised rules stand amended by substituting Form No. GNL -1 and GNL – 4 and the rules may be called as Companies (Registration Offices and Fees) Amendment Rules, 2016.

***4. New versions of Forms PAS-3, CHG-1, DIR-12, SH-11, FTE have been updated on MCA21 portal w.e.f. 8<sup>th</sup> May, 2016.***

The Ministry of Corporate Affairs [MCA] has notified new versions of e-Forms PAS-3 (Return of allotment), CHG-1 (Application for registration of



creation, modification of charge (other than those related to debentures), DIR-12 (Particulars of appointment of Directors and the key managerial personnel and the changes among them), SH-11 (Return in respect of buy-back of securities), FTE (Application for striking off the name of company under the Fast Track Exit(FTE) Mode) w.e.f 8<sup>th</sup> May, 2016 and the same are available on MCA21 Portal.

**5. Clarification with regard to provisions of Corporate Social Responsibility under Section 135 of the Companies Act, 2013**

Ministry of Corporate Affairs [MCA] vide Circular No. 5 dated 16<sup>th</sup> May, 2016 has clarified that companies, while undertaking Corporate Social Responsibility activities under provision of the Companies Act, 2013, shall not contravene any other prevailing laws of the land including Cigarettes and Other Tobacco Products Act (COTPA), 2003.

**6. Relaxation of Additional Fees and extension of last date of filing of various e-Forms under the Companies Act**

Ministry of Corporate Affairs [MCA] vide Circular No. 6 dated 16<sup>th</sup> May, 2016, has extended the period for which the one-time waiver of additional fees is applicable to all e-forms which are due for filing by companies between 25<sup>th</sup> March, 2016 upto 31<sup>st</sup> May, 2016 as well as the last date for filing such documents and availing the benefit of waiver has been extended to 10<sup>th</sup> June, 2016.

**7. Government designates Special Courts under Section 435 of the Companies Act, 2013**

The Central Government hereby, after obtaining the concurrence of the respective Chief Justices of the High Courts, designates the following Courts mentioned in the Table below as Special Courts for the purposes of trial of offences punishable under the Companies Act, 2013 with imprisonment of two years or more in terms of section 435 of the Companies Act, 2013, namely:-

S.No.	Existing Court	Jurisdiction as Special Court
1.	Courts of Additional Special Judge, Anti-Corruption at Jammu and Srinagar	State of Jammu and Kashmir
2.	Presiding Officers of Court No's. 37 and 58 of the City Civil and Sessions Court, Greater Mumbai	State of Maharashtra
3.	Court of Principal District and Sessions Judge, Union territory of Dadra and Nagar Haveli at Silvassa.	Union Territories of Dadra and Nagar Haveli and Daman and Diu



4.	Court of District Judge-1 and Additional Sessions Judge, Panaji. -	State of Goa
5.	Court of Principal District and Sessions Judge, Ahmedabad (Rural), situated at Mirzapur, Ahmedabad. -	State of Gujarat
6.	9th Additional Sessions Judge, Gwalior Madhya Pradesh.	State of Madhya Pradesh
7.	Court of Additional District and Session Judge, Port Blair, Andaman and Nicobar Islands.	Union territory of Andaman and Nicobar Islands
8.	2nd Special Court, Calcutta	State of West Bengal

**8. Commencement of Section 2(29), 435 to 438 and 440 of the Companies Act, 2013**

The Ministry of Corporate Affairs [MCA] notification dated 18<sup>th</sup> May, 2016, the provisions of Clause (iv) of sub-section (29) of section 2 [defines Court – the special courts established under section 435], Section 435 to 438 and section 440 of the Companies Act, 2013 shall come into force.

Section	Particulars
435	Establishment of Special Courts.
436	Offences triable by Special Courts.
437	Appeal and revision
438	Application of Code to proceedings before Special Court
440	Transitional provisions

**9. Relaxation of Additional Fees and extension of time for filing of e-Forms by the Companies under Companies Act, 2013 and for filing of Annual Return (Form 11) by the LLPs under the Limited Liability Partnership Act, 2008**

*The Ministry of Corporate Affairs (MCA) vide Circular No. 7 dated 31<sup>st</sup> May, 2016 has extended the period for which the one time waiver of additional fees is applicable to all eforms which are due for filing by companies between 25.03.2016 to 30.06.2016 as well as extended the last date for filing such documents and availing the benefit of waiver to 10.07.2016.*

Further, it is also decided to extend the time limit prescribed under the provisions of section 35 of LLP Act, for filing of Form 11 of LLP in respect of Financial Year ending on 31<sup>st</sup> March, 2016 upto 30<sup>th</sup> June, 2016, without additional fees.

## **DIPP**

### **1. Policy on foreign investment for Asset Reconstruction Companies**

*The Ministry of Commerce & Industry, Department of Industrial Policy & Promotion [DIPP] vide Press Note 4 of 2016 dated 6<sup>th</sup> May, 2016 has revised the policy on foreign investment for Asset Reconstruction Companies.*

The Government of India has liberalized the foreign investment limits for Asset Reconstruction Companies, 100% Foreign Direct Investment [FDI] permitted under Automatic route.

Asset Reconstruction Company' (ARC) means a company registered with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act).

Other Conditions:

- i. Persons resident outside India can invest in the capital of Asset Reconstruction Companies (ARCs) registered with Reserve Bank of India, up to 100% on the automatic route.
- ii. Investment limit of a sponsor in the shareholding of an ARC will be governed by the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of

Security Interest Act, 2002, as amended from time to time. Similarly, investment by institutional/non-institutional investors will also be governed by the said Act, as amended from time to time.

- iii. The total shareholding of an individual FII/FPI shall be below 10% of the total paid-up capital.
- iv. FIIs/FPIs can invest in the Security Receipts (SRs) issued by ARCs registered with Reserve Bank of India. FIIs/FPIs may be allowed up to 100 per cent of each tranche in SRs issued by ARCs, subject to directions/guidelines of Reserve Bank of India.
- v. All investments would be subject to provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, as amended from time to time.

### **2. Cabinet approves India's first policy on Intellectual Property Rights (IPR)**

The Ministry of Commerce & Industry Press Release dated 13<sup>th</sup> May, 2016 has approved the National Intellectual Property Rights (IPR) Policy that will lay the future roadmap for intellectual property in India. The Policy recognizes the abundance of creative and innovative energies that flow in India, and the need to tap into and channelize these energies

towards a better and brighter future for all.

The National IPR Policy is a vision document that aims to create and exploit synergies between all forms of intellectual property (IP), concerned statutes and agencies. It sets in place an institutional mechanism for implementation, monitoring and review. It aims to incorporate and adapt global best practices to the Indian scenario. This policy shall weave in the strengths of the Government, research and development organizations, educational institutions, corporate entities including MSMEs, start-ups and other stakeholders in the creation of an innovation-conducive environment, which stimulates creativity and innovation across sectors, as also facilitates a stable, transparent and service-oriented IPR administration in the country.

The Policy recognizes that India has a well-established TRIPS-compliant legislative, administrative and judicial framework to safeguard IPRs, which meets its international obligations while utilizing the flexibilities provided in the international regime to address its developmental concerns. It reiterates India's commitment to the Doha Development Agenda and the TRIPS agreement.

The broad contours of the National IPR Policy are as follows:

**Vision Statement:** An India where creativity and innovation are stimulated

by Intellectual Property for the benefit of all; an India where intellectual property promotes advancement in science and technology, arts and culture, traditional knowledge and biodiversity resources; an India where knowledge is the main driver of development, and knowledge owned is transformed into knowledge shared.

#### **Mission Statement:**

Stimulate a dynamic, vibrant and balanced intellectual property rights system in India to:

- foster creativity and innovation and thereby, promote entrepreneurship and enhance socio-economic and cultural development, and
- focus on enhancing access to healthcare, food security and environmental protection, among other sectors of vital social, economic and technological importance.

#### **Objectives:**

The Policy lays down the following seven objectives:

- IPR Awareness: Outreach and Promotion
  - To create public awareness about the economic, social and cultural benefits of IPRs among all sections of society.
- Generation of IPRs - To stimulate the generation of IPRs.
- Legal and Legislative Framework - To have strong and effective IPR laws, which balance the interests of rights owners with larger public interest.

- Administration and Management - To modernize and strengthen service-oriented IPR administration.
- Commercialization of IPRs - Get value for IPRs through commercialization.
- Enforcement and Adjudication - To strengthen the enforcement and adjudicatory mechanisms for combating IPR infringements.
- Human Capital Development - To strengthen and expand human resources, institutions and capacities for teaching, training, research and skill building in IPRs.

These objectives are sought to be achieved through detailed action points. The action by different Ministries/ Departments shall be monitored by DIPP which shall be the nodal department to coordinate, guide and oversee implementation and future development of IPRs in India.

The National Intellectual Property Rights (IPR) Policy will endeavour for a “Creative India; Innovative India.”.

[http://dipp.nic.in/English/Schemes/Intellectual\\_Property\\_Rights/National IPR Policy 12.05.2016.pdf](http://dipp.nic.in/English/Schemes/Intellectual_Property_Rights/National_IPR_Policy_12.05.2016.pdf)

## **TAXATION**



### **1. Extension of due date of Property TDS Payment to 30 days**

*Central Bureau of Direct Taxes [CBDT] Vide notification no. 30/2016 dated 29-04-2016 has extended the Due date for payment of TDS on transfer of immovable property u/s 194IA to 30 days from existing 7 days.*

Section 194IA requires buyer of the Property to deduct 1% TDS while making payment to seller if consideration of the Property exceeds 50 Lakh Rupees. Such TDS was required to be paid within 7 days from the end of the month in which payment been made but now CBDT has extended such 7 day period to 30 days for all payments to be made on or after 01st June 2016.

Due date for Payment is been specified in Sub -Rule 2A of 30 of Income Tax Rules. Revised Sub -Rule 2A of 30 of Income Tax Rules wef 01.06.2016 is as follows:-

(2A) Notwithstanding anything contained in sub-rule (1) or sub-rule (2), any sum deducted under section 194-IA

shall be paid to the credit of the Central Government within a period of seven thirty days from the end of the month in which the deduction is made and shall be accompanied by a challan-cum-statement in Form No. 26QB.

### **2. Changes in due date of Filing TDS statement w.e.f. 01.06.2016**

*Central Bureau of Direct Taxes [CBDT] vide notification No. 30/2016 dated 29-04-2016 has revised due date for filing above referred TDS statements for Government and non-government deductors w.e.f. 01.06.2016 in order to bring Uniformity and to give deductors sufficient time in filing of TDS Statement the due date for Government and Non-Government deductors is as follows:*

- Quarter ending 30th June – 31st July of the financial year
- Quarter ending 30th September – 31st October of the financial year
- Quarter ending 31st December – 31st January of the financial year
- Quarter ending 31st March - 31st May of the financial year immediately following the financial year in which the deduction is made.

### **3. CBDT Notifies Supporting Claim deduction forms from Salary.**

*CBDT vide notification No. 30/2016 has now prescribed the Form No.12BB for the purpose of estimating his income or*

*computing the tax deduction at source w.e.f 01.06.2016.* Although practice of taking such declaration is in existence from long time but there was no standard format for the same.

<http://www.incometaxindia.gov.in/communications/notification/notification302016.pdf>

- 4. CBDT gives directions to its field formations that the income arising from transfer of unlisted shares, irrespective of period of holding, would be taxable under the head 'Capital Gain' except in certain circumstances.*

*Ministry of Finance vide Press Release dated 5<sup>th</sup> May, 2016 in continuation with the order of Central Board of Direct Taxes (CBDT) dated 2nd May, 2016 has given direction to its field formations, with a view to avoid disputes/Litigation and to maintain uniform approach that the income arising from transfer of unlisted shares, irrespective of period of holding, would be taxable under the head 'Capital Gain' except in certain circumstances where the Assessing Officer would examine the issue and take appropriate view.*

This order is in continuation to the earlier circular of CBDT (circular No.6/2016 dated 29.2.2016), wherein position of Income Tax Department regarding transfer of listed shares and securities was spelt out.

With these initiatives, it is expected that there would be much needed certainty

and predictability regarding taxability of income arising from transfer of shares. Consequently, due to uniformity in approach, tax disputes and litigation on this issue would reduce substantially.

- 5. Procedure for online submission of statement of deduction of tax under sub-section (3) of Section 200 and statement of collection of tax under proviso to sub-section (3) of Section 206C of the Income Tax Act, 1961 read with rule 31A(5) and rule 31AA(5) of the Income Tax Rules, 1962.*

*The Government of India, Ministry of Finance, Central Board of Direct Taxes [CBDT] vide Notification No. 6/2016 dated 4<sup>th</sup> May, 2016 has laid down the procedure for online submission of statement of deduction of tax under sub-section (3) of Section 200 and statement of collection of tax under proviso to sub-section (3) of Section 206C of the Income Tax Act, 1961 read with rule 31A(5) and rule 31AA(5) of the Income Tax Rules, 1962.*

In exercise of power conferred by sub-rule (5) of rule 31A and sub-rule (5) of rule 31AA of the Rules, the following procedures of registration in the e-filing portal, the manner of the preparation of the statements and submission of the statements as follows:

The deductors/collectors will have the option of online filing of e-TDS/TCS returns through e-filing portal or submission at TIN Facilitation Centres.



Procedure for filing e-TDS/TCS statement online through e-filing portal is as under:

- a. **Registration:** The deductor /collector should hold valid TAN and is required to be registered in the e-filing website (<https://incometaxindiaefiling.gov.in/>) as “Tax Deductor & Collector” to file the “e-TDS/e-TCS Return”.
- b. **Preparation:** The Return Preparation Utility (RPU) to prepare the TDS/TCS Statement and File Validation Utility (FVU) to validate the Statements can be downloaded from the tin-nsdl website (<https://www.tin-nsdl.com/>). The statement is required to be uploaded as a zip file and submitted using a Digital Signature Certificate. The signature file for the zipped file will be generated using the DSC Management Utility (available under ‘Downloads’ in the e-Filing website <https://incometaxindiaefiling.gov.in/>).
- c. **Submission:** The deductor/collector is required to login to the e-filing website using TAN and go to TDS -> Upload TDS. The deductor/collector is required to upload the “Zip” file along with the signature file (generated as explained in para (b) above). Once uploaded, the status of the statement shall be shown as “Uploaded”. The uploaded file shall be processed and validated at the e-filing portal. Upon validation the status shall be either “Accepted” or “Rejected” which will reflect within 24 hours from the time of upload. The status of uploaded file will

be visible at TDS -> View Filed TDS. In case the submitted file is “Rejected”, the reason for rejection shall be displayed.

**6. Procedure for submission of declaration by person claiming receipt of certain incomes without deduction of tax in Form 15G/15H under sub-section (1) or under sub-section (1A) of Section 197A of the Income Tax Act, 1961 read with Rule 29C of Income Tax Rules, 1962.**

*The Government of India, Ministry of Finance, Central Board of Direct Taxes [CBDT] vide Notification No. 7/2016 dated 4<sup>th</sup> May, 2016 has laid down the procedure for submission of declaration by person claiming receipt of certain incomes without deduction of tax in Form 15G/15H under sub-section (1) or under sub-section (1A) of Section 197A of the Income Tax Act, 1961 read with Rule 29C of Income Tax Rules, 1962.*

As per sub-rule (1) of rule 29C (Declaration by person claiming receipt of certain incomes without deduction of tax) of the Income-tax Rules, 1962 (hereunder referred as the Rules) a declaration under sub-section (1) or under sub-section (1A) of section 197A shall be in Form No. 15G and declaration under sub-section (1C) of section 197A shall be in Form No. 15H.

As per sub-rule (3) of rule 29C, the person responsible for paying any income of the nature referred to in sub-section (1) or sub-section (1A) or sub-section (1C) of section 197A, shall allot a unique



identification number to each declaration received by him in Form No.15G and Form No.15H respectively during every quarter of the financial year in accordance with the procedures, formats and standards specified by the Principal Director General of Income-tax (Systems) under sub-rule (7) of rule 29C.

As per sub-rule (4) of rule 29C, the person referred to in sub-rule (3) herein shall furnish the particulars of declaration received by him during any quarter of the financial year along with the unique identification number allotted by him under sub-rule (3) in the statement of deduction of tax of the said quarter in accordance with the provisions of clause (vii) of sub-rule (4) of rule 31A. As per sub-rule (7) of rule 29C, the Principal Director General of Income-tax (Systems) shall specify the procedures, formats and standards for the purposes of furnishing and verification of the declaration, allotment of unique identification number and furnishing or making available the declaration to the income tax authority and shall be responsible for the day-to-day administration in relation to the furnishing of the particulars of declaration in accordance with the provisions of sub-rule (4) of rule 29C.

In exercise of the powers delegated by Central Board of Direct Taxes ('Board') under sub-rule (7) of rule 29C of the Income-tax Rules, 1962, the Principal Director General of Income-tax

(Systems) hereby lays down the following procedures:

- a. **Registration:** The deductor/collector is required to register by logging in to the e-filing website (<https://incometaxindiaefiling.gov.in>) of the Income Tax Department. To file the "Statement of Form 15G/15H", deductor should hold a valid TAN. Following path is to be used for the registration process:  
  
Register yourself → Tax Deductor & Collector
- b. **Preparation:** The prescribed schema for Form 15G/15H and utility to prepare XML file can be downloaded from the e-filing website home page under forms (other than ITR) tab. The Form 15G/15H utility can be used to prepare the xml zip file. The declaration is required to be submitted using a Digital Signature Certificate. The signature file for the zipped file can be generated using the DSC Management Utility (available under Downloads in the e-Filing website <https://incometaxindiaefiling.gov.in> )
- c. **Submission:** The designated person is required to login to the e-filing website using TAN and go to e-File → Upload Form 15G/15H. The designated person is required to upload the "Zip" file along with the signature file (generated as explained in para (b) above). Once uploaded, the status of the statement shall be shown as "Uploaded". The uploaded file shall be processed and validated at the e-filing portal (list of validations are

given in the user manual). Upon validation, the status shall be either “Accepted” or “Rejected” which will reflect within 24 hours from the time of upload. The status of uploaded file will be visible at My account → View Form 15G/15H. In case the submitted file is “Rejected”, the reason for rejection shall be displayed and the corrected statement can be uploaded again.

**7. Procedure for submission of Form 15CC by an authorized dealer in respect of remittances under sub-section (6) of Section 195 of the Income Tax Act, 1961 read with rule 37BB of the Income Tax Rules, 1962**

*The Government of India, Ministry of Finance, Central Board of Direct Taxes [CBDT] vide Notification No. 8/2016 dated 4<sup>th</sup> May, 2016 has laid down the procedure for submission of Form 15CC by an authorised dealer in respect of remittances under sub-section (6) of section 195 of the Income-tax Act, 1961 read with rule 37BB of the Income-tax Rules, 1962.*

Under sub-section (6) of section 195 of the Income-tax Act, person responsible for paying to a non-resident, not being a company, or to a foreign company, any sum, whether or not chargeable under the provisions of this Act, is required to furnish the information relating to payment of such sum, in such form and manner, as may be prescribed.

As per sub-rule (7) of rule 37BB of the Income-tax Rules, 1962, the authorized

dealers are required to furnish a quarterly statement for each quarter of the financial year in Form No.15CC to the Principal Director General of Income-tax (Systems) or the person authorized by the Principal Director General of Income-tax (Systems) electronically under digital signature within fifteen days from the end of the quarter of the financial year to which such statement relates in accordance with the procedures, formats and standards specified by the Principal Director General of Income-tax (Systems) under sub-rule (8).

In exercise of the powers delegated by Central Board of Direct Taxes (‘Board’) under sub-rule (8) of Rule 37BB of the Income-tax Rules 1962, the Principal Director General of Income-tax (Systems) hereby lays down the procedure for submission of Form 15CC as follows:

- a. **Generation of ITDREIN:** The reporting entity is required to get registered with the Income Tax Department by logging in to the e-filing website with the login ID used for the purpose of filing the Income-tax Return of the reporting entity. In case if the reporting entity is not registered for filing Income-tax Return, it may get ITDREIN by logging in with its TAN. A link to register reporting entity has been provided under “My Account>Manage ITDREIN”. The reporting entity is required to apply for different ITDREIN for different reporting entity categories. Once ITDREIN is generated, the reporting entity will receive a confirmation e-mail on the registered e-

mail ID and SMS at registered mobile number. There will be no option to deactivate ITDREIN, once ITDREIN is created.

- b. Submission of details of authorised person:** The reporting financial institution will then be required to submit the details of authorised person (who will file Form 15CC). Once the details of authorized person are entered by the reporting entity, the authorized person will need to confirm through activation link on e-mail by entering the OTP sent on the mobile of the authorized person and generate the password.
- c. Submission of Form 15CC:** Once the authorised person of the reporting entity gets registered successfully, it is required to submit Form 15CC. The authorised person is then required to login to the e-filing website with the ITDREIN, PAN and password. The prescribed schema for the report under Form 15CC and a utility to prepare XML file can be downloaded from the e-filing website home page under forms (other than ITR) tab. The authorised person will be required to submit the PAN of the reporting entity, period for which report is to be submitted and the reporting entity category for which the report is to be submitted. The authorised person will then be provided the option to upload the Form 15CC. The form is required to be submitted using a Digital Signature Certificate of the authorised person.

#### ***8. Steps to give relief to the small tax payers and to the small business and professionals***

*The Ministry of Finance, Revenue department vide Press Release dated 8<sup>th</sup> May, 2016 has prescribed various steps to give relief to the small tax payers and to the small business and professionals.*

The Revenue Department of the Ministry of Finance takes several steps for boosting-up growth and employment generation:

- (a) Lowering the Corporate tax rates to 25% for new manufacturing companies*
- (b) Extending tax benefits for housing sector so as to promote construction industry*
- (c) Rate of tax on royalty and fees for technical services reduced from 25% to 10%*
- (d) Tax incentives for Start-up India*

Similarly, it has taken various steps to give relief to the small tax payers and to the small business and professionals:

The limit of deduction that can be claimed under section 80C of Income tax Act 1961 has been enhanced from Rs. 1 lakh per annum to Rs. 2 lakh per annum, subject to the additional Rs. 50,000/- being contributed to NPS. Further, the scope of presumptive taxation regime for small businesses has been extended by increasing the turnover up to Rs. 2 crores. The presumptive taxation benefit is now

available for professionals having turnover upto Rs. 50,00,000/-.

**9. India and Mauritius sign the Protocol for amendment of the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains**

*The Ministry of Finance vide Press Release dated 10<sup>th</sup> My, 2016 has announce the amendment of the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains between India and Mauritius signed by both countries. The key features of the Protocol are as under:*

- a. **Source-based taxation of capital gains on shares:** With this Protocol, India gets taxation rights on capital gains arising from alienation of shares acquired on or after 1st April, 2017 in a company resident in India with effect from financial year 2017-18, while simultaneously protection to investments in shares acquired before 1st April, 2017 has also been provided. Further, in respect of such capital gains arising during the transition period from 1st April, 2017 to 31st March, 2019, the tax rate will be limited to 50% of the domestic tax rate of India, subject to the fulfillment of the conditions in the Limitation of Benefits Article. Taxation in India at full domestic tax rate will take place from financial year 2019-20 onwards.

- b. **Limitation of Benefits (LOB):** The benefit of 50% reduction in tax rate during the transition period from 1st April, 2017 to 31st March, 2019 shall be subject to LOB Article, whereby a resident of Mauritius (including a shell / conduit company) will not be entitled to benefits of 50% reduction in tax rate, if it fails the main purpose test and bonafide business test. A resident is deemed to be a shell/ conduit company, if its total expenditure on operations in Mauritius is less than Rs. 2,700,000 (Mauritian Rupees 1,500,000) in the immediately preceding 12 months.
- c. **Source-based taxation of interest income of banks:** Interest arising in India to Mauritian resident banks will be subject to withholding tax in India at the rate of 7.5% in respect of debt claims or loans made after 31st March, 2017. However, interest income of Mauritian resident banks in respect of debt-claims existing on or before 31st March, 2017 shall be exempt from tax in India.
- d. The Protocol also provides for updation of Exchange of Information Article as per international standard, provision for assistance in collection of taxes, source-based taxation of other income, amongst other changes.

**Major impact:** The Protocol will tackle the long pending issues of treaty abuse and round tripping of funds attributed to the India-Mauritius treaty, curb revenue loss, prevent double non-taxation,

streamline the flow of investment and stimulate the flow of exchange of information between India and Mauritius. It will improve transparency in tax matters and will help curb tax evasion and tax avoidance. At the same time, existing investments, i.e. investments made before 1.4.2017 have been grand-fathered and will not be subject to capital gains taxation in India.

#### ***10. Declaration of Assets & Liabilities in the new ITR forms***

*The Ministry of Finance, Central Board of Direct Taxes vide Press Release dated 10<sup>th</sup> May, 2016 have released new income-tax return forms with mandatory provisions of declaring Assets & Liabilities (A&L) such as cars, jewellery yacht, aircrafts, shares, properties, etc.*

Prior to Assessment Year (A.Y.) 2015-16, the Asset –Liability Schedule (AL schedule) was applicable to filers of ITR 3 and 4, whose total income for the previous year exceeded Rs.25 lakh. The Wealth-tax Act primarily captured the information regarding assets of specified taxpayers. With a view to reduce compliance burden, the Wealth-tax Act was made inapplicable from A.Y.2016-17 with the stipulation that the information regarding assets forming part of the wealth-tax return will be captured in the Income-tax returns.

Accordingly, the ITR forms for A.Y. 2016-17 have been rationalised by

making the Schedule AL applicable to individuals and Hindu undivided family (HUFs) whose total income for the previous year 2015-16 exceeds Rs.50 lakh. The objective of AL schedule is to capture details of assets and liabilities and not the net worth.

#### ***11. CBDT Announces August 31 as Last Date for Clearing Pending ITRs, Refunds***

Central Board of Direct Taxes (CBDT) has declared August 31 as deadline for taxpayers whose ITRs for six assessment years between 2009-10 and 2014-15 are pending for processing and issuance of refunds due to issues of non-filing of ITR-V acknowledgement form at its Bengaluru-based collection centre.

#### ***12. The Income Declaration Scheme 2016 to open from 1<sup>st</sup> June, 2016***

*The Ministry of Finance, Department of Revenue, Central Board of Direct Taxes vide Press Release dated 14<sup>th</sup> May, 2016 has announced the opening of Income Declaration Scheme 2016 from 1<sup>st</sup> June, 2016.*

The Income Declaration Scheme, 2016 incorporated as Chapter IX of the Finance Act 2016 provides an opportunity to all persons who have not declared income correctly in earlier years to come forward and declare such undisclosed income(s).

Under the Scheme, such income as declared by the eligible persons, would be



taxed at the rate of 30% plus a 'Krishi Kalyan Cess' of 25% on the taxes payable and a penalty at the rate of 25% of the taxes payable, thereby totalling to 45% of the income declared under the scheme.

The scheme shall remain in force for a period of 4 months from 1st June, 2016 to 30th September, 2016 for filing of declarations and payments towards taxes, surcharge & penalty must be made latest by 30th November, 2016. Declarations can be filed online or with the jurisdictional Pr. Commissioners of Income-tax across the country.

- The scheme shall apply to undisclosed income whether in the form of investment in assets or otherwise, pertaining to Financial Year 2015-16 or earlier.
- Where the declaration is in the form of investment in assets, the Fair Market Value of such asset as on 1st June 2016 shall be deemed to be the undisclosed income under the Scheme. However, foreign assets or income to which the Black Money Act 2015 applies are not eligible for declaration under this scheme.
- Assets specified in the declaration shall be exempt from Wealth tax.
- No Scrutiny and enquiry under the Income-tax Act or the Wealth tax Act shall be undertaken in respect of such declarations.

- Immunity from prosecution under the Income-tax Act and Wealth Tax Act is also provided along with immunity from the Benami Transactions (Prohibition) Act, 1988
- subject to transfer of asset to actual owner within the period specified in the Rules.
- Non-payment of total taxes, surcharge & penalty in time or declaration by misrepresentation or suppression of facts shall render the declaration void.
- The circumstances in which the Scheme shall not apply or where a person is held to be ineligible are specified in section 196 (Chapter IX) of the Finance Act, 2016.
- Non declaration of undisclosed income under the Scheme, will render such undisclosed income liable to tax in the previous year in which it is detected by the Income Tax Department. Other penal consequences will also follow accordingly.

### ***13. President Assents Finance Bill 2016***

Honorable President of India Shri. Pranab Mukherjee has on 14th May 2016 assented The Finance Bill, 2016.

The Finance Bill was presented in the Lok Sabha on February 29, 2016. On May 05, 2016 it was passed by the Lok Sabha and later on it was approved by the Rajya Sabha on 11th May 2016.

Finance Bill 2016 Now becomes The Finance Act, 2016 (No. 28 of 2016).

**14. India and Slovenia sign Protocol amending the India-Slovenia Double Taxation Avoidance Convention.**

Ministry of Finance, Press Release dated 19<sup>th</sup> May, 2016, it is informed that India and Slovenia have signed a Protocol amending the existing Convention and Protocol between the two countries for avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income on 17th May, 2016 in Ljubljana.

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

**15. Digital reporting of Form No.60.**

Ministry of Finance, Central Board of Direct Taxes (CBDT) vide Circular No. 14/2016 dated 18<sup>th</sup> May, 2016, it is decided that the filling of all the fields in Form 60 [*Form for declaration to be filed by an individual or a person (not being a company or firm) who does not have a permanent account number and who enters into any transaction specified in rule 114B*] to be considered mandatory in respect of transactions entered on or after 01.04.2016.

It is also decided that online reporting of declarations in Form 61 [*Form of declaration to be filed by a person who*

*has agricultural income and is not in receipt of any other income chargeable to income-tax in respect of transactions specified rule 114B*] for quarter ending March, 2016 may be done along with report for quarter ending September, 2016.

**16. Additional Depreciation u/s 32(1)(ia) of the Income Tax Act, 1961 on printing & publishing**

*Ministry of Finance, Central Board of Direct Taxes (CBDT) Circular No. 15/2016 dated 19<sup>th</sup> May, 2016.*

*An assessee, engaged in the business of manufacture or production of an article or thing, is eligible to claim additional depreciation under clause (ia) of sub-section (1) of section 32 of the Income-tax Act, 1961 (hereinafter referred to as the Act) in addition to the depreciation allowance under sub-section (1) of section 32 of the Act.*

Whether or not an assessee engaged in printing or printing and publishing is eligible for grant of additional depreciation under clause (ia) of sub-section (1) of section 32 of the Act, has been a contentious issue. In other words, whether printing or printing and publishing amounts to manufacture or production of article or thing has been contested in legal forums.

*The Hon'ble Kerala High Court in the case of Mathrubhoomi Printing & Publishing Co. vide its judgment (2015-LL-0216-3 NJRS) dated 16.2.2015 in ITA No 23 of 2015 relied upon the*



*Hon'ble Delhi High Court judgement dated 31.5.2013 in ITA No 49 of 1996 in the case of Delhi Press Patra Prakashan Ltd. (2013-LL-0531-176 NJRS) and held that printing and publishing activity is a manufacturing activity and therefore, assessee is eligible for grant of additional depreciation u/s 32(1)(iia).*

*The Board has accepted the position that printing or printing and publishing amounts to manufacture or production of article or thing.* The judgments of Hon'ble Delhi and Kerala High Courts on this issue have been accepted. Thus the issue relating to grant of deprecation u/s 32(1) (iia) has not been further contested, though the Delhi High Court judgment has been contested on other issues.

It is, therefore, a settled position that the *business of printing or printing and publishing amounts to manufacture or production of an article or thing and is accordingly eligible for additional depreciation u/s 32(1)(iia) of the Act.* Henceforth, appeals may not be filed on this ground by officers of the Department and those already filed, in Courts/Tribunals may be withdrawn / not pressed upon.

#### **17. Explanatory Notes on Provisions of the Income Declaration Scheme, 2016**

*Ministry of Finance, Central Board of Direct Taxes (CBDT) Circular No. 16/2016 dated 20<sup>th</sup> May, 2016 has issued the explanatory notes on the provisions of the Income Declaration Scheme, 2016.*

The Income Declaration Scheme, 2016 (referred to here as 'the Scheme') is contained in the Finance Act, 2016, which received the assent of the President on the 14th of May 2016.

The Scheme provides an opportunity to persons who have paid not full taxes in the past to come forward and declare the undisclosed income and pay tax, surcharge and penalty totalling in all to forty-five per cent of such undisclosed income declared.

A declaration under the aforesaid Scheme may be made in respect of any income or income in the form of investment in any asset located in India and acquired from income chargeable to tax under the Income-tax Act for any assessment year prior to the assessment year 2017-18 for which the declarant had, either failed to furnish a return under section 139 of the Income-tax Act, or failed to disclose such income in a return furnished before the date of commencement of the Scheme, or such income had escaped assessment by reason of the omission or failure on the part of such person to make a return under the Income-tax Act or to disclose fully and truly all material facts necessary for the assessment or otherwise.

Where the income chargeable to tax is declared in the form of investment in any asset, the fair market value of such asset as on 1st June, 2016 computed in accordance with Rule 3 of the Income Declaration Scheme Rules, 2016 shall be deemed to be the undisclosed income.

[http://www.incometaxindia.gov.in/com munications/circular/circular16\\_2016.pdf](http://www.incometaxindia.gov.in/com munications/circular/circular16_2016.pdf)

### **18. Clarifications on the Income Declaration Scheme, 2016**

*Ministry of Finance, Central Board of Direct Taxes (CBDT) Circular No. 17/2016 dated 20<sup>th</sup> May, 2016 has issued the clarifications/frequently asked questions with regard to the Income Declaration Scheme, 2016.*

The Income Declaration Scheme, 2016 (hereinafter referred to as 'the Scheme') incorporated as Chapter IX of the Finance Act, 2016 provides an opportunity to persons who have not paid full taxes in the past to come forward and declare the undisclosed income and pay tax, surcharge and penalty totaling in all the 45% of such undisclosed income declared. The Income Declaration Scheme Rules, 2016 (hereinafter referred to as 'the Rules') have been notified. In regard to the scheme queries have been received from the public about the scope of the scheme and the procedure to be followed. The Board has considered the same and decided to clarify the points raised by issue of a circular in the form of questions and answers.

[http://www.incometaxindia.gov.in/com munications/circular/circular17\\_2016.pdf](http://www.incometaxindia.gov.in/com munications/circular/circular17_2016.pdf)

### **19. The Income Declaration Scheme Rules, 2016**

Ministry of Finance, vide Notification dated 19<sup>th</sup> May, 2016 has issued the Income Declaration Scheme Rules, 2016. The above mentioned rules are prepared in order to carry out the provisions of the Income Declaration Scheme, 2016.

[http://www.incometaxindia.gov.in/com munications/notification/notification33\\_2016.pdf](http://www.incometaxindia.gov.in/com munications/notification/notification33_2016.pdf)

### **20. Relaxation for Furnishing of UID in Form 15G&15H for Quarter 3&4 of FY 2015-2016**

*Ministry of Finance, Central Board of Direct Taxes (CBDT) vide Circular No. 18/2016 dated 23<sup>rd</sup> May, 2016, Central Board of Direct Taxes (CBDT) relaxes condition of furnishing of Unique identification number (UID) allotted by the deductor for the quarter ending 31.12.2015 and 31.3.2016 in quarterly statement of deduction of tax in accordance with sub-rule (5) of Rule 29C of the Income-tax Rules, 1962 ('the Rules').*

The existing provisions of section 197A of the Income-tax Act, 1961 ('the Act') inter alia provide that tax shall not be deducted, if the recipient of certain payment on which tax is deductible furnishes to the payer a self-declaration in Form No. 15G / 15H in accordance with provisions of the said section. The manner of filing such declarations and the particulars have been laid down in Rule 29C of the Income-tax Rules, 1962.

The amended Rule 29C which came into effect from 1st October, 2015 in addition to paper filing, also provides for online filing of self-declaration for non-deduction of tax under section 197A of the Act. In this regard, Notification No. 76/2015 dated 29.09.2015 has been issued for E-enablement & simplification of procedure for filing self-declaration (Form No. 15G/15H) and furnishing of such declaration to the Income-tax Department. Further, as per sub-rule (7) and (8) of rule 29C of the Rules notified vide aforesaid notification, the Pr. DGIT (Systems) is required to specify the procedures, formats and standards for the purposes of furnishing and verification of the declaration and allotment of unique identification number. In pursuance of the same, Pr. DGIT (Systems) has issued Notification No. 4/2015 dated 1st December, 2015 to notify the procedure, formats and standards.

Sub-rule (3) of Rule 29C provides for allotment of Unique identification number to each declaration received in Form 15G/15H by the deductor. Further, sub-rule (5) of Rule 29C provides that the payer shall also furnish unique identification number along with the details of the transactions covered under Form 15G/15H in quarterly TDS statements in accordance with the provisions of clause (vii) of sub-rule (4) of Rule 31A irrespective of the fact that no tax has been deducted in the said quarter.

After the various representations received from the stakeholders, due to the operational constraints, the Form 15G&15H and the details thereof could not be included in the quarterly statement for the quarter ending 31<sup>st</sup> December, 2015 and 31<sup>st</sup> March, 2016 respectively.

Thus in this regard the CBDT has eased out the condition of furnishing Unique Identification Number allotted by the deductor for the quarter ending 31<sup>st</sup> December, 2015 and 31<sup>st</sup> March, 2016 in the quarterly statement of deduction of tax in accordance with Rule 29C (5).

***21. Manner of determination of Fair Market Value and reporting requirement for Indian concern – Indirect transfer of provisions – Section 9(1) of the Income Tax Act, 1961***

***Ministry of Finance, Central Board of Direct Taxes (CBDT) Press Release dated 23<sup>rd</sup> May, 2016 has sought Comments and suggestions from stakeholders and general public on draft rules and forms prepared for determination of fair market value of Indian and global assets and the manner for reporting requirement on the Indian concern in which the foreign company or entity holds the assets in India.***

Under section 9 of the Income-tax Act, 1961 (the Act), income arising from indirect transfer of assets situated in India is deemed to accrue or arise in India. The provisions of section 9(1)(i) of the Act provides that if any share of or interest in, a foreign company or entity derives its

value substantially from the assets located in India, then such share or interest is deemed to be situated in India. Thereby, any income arising from transfer of such share or interest is deemed to accrue or arise in India.

The share or interest is said to derive its value substantially from assets located in India, if fair market value (FMV) of assets located in India comprise at least 50% of the FMV of total assets of the company or entity. The computation of FMV of Indian and global assets is to be in the prescribed manner.

Further, section 285A of the Act mandates reporting requirement on the Indian concern through or in which the foreign company or entity holds the assets in India. The information to be furnished and its manner is also required to be prescribed.

In this regard, draft rules and forms to be incorporated in the Income-tax Rules, 1962 have been formulated and uploaded on the Finance Ministry's website ([www.finmin.nic.in](http://www.finmin.nic.in)) and website of the Income-tax Department ([www.incometaxindia.gov.in](http://www.incometaxindia.gov.in)) for comments from stakeholders and general public.

## ***22. Notification of Formation of Committee for Examining Applications made under Rule 10VA of Income Tax Rules, 1962***

*Ministry of Finance, Central Board of Direct Taxes (CBDT) Press Release dated 23<sup>rd</sup> May, 2016 - Rule 10VA provides for mechanism of fund being*

*approved by the Board for purpose of section 9A. The fund seeking approval is required to make an application to Member (Income-tax), CBDT. A committee as notified by the Board is to examine the application and submit its recommendations regarding grant of approval or otherwise and the conditions, if any, subject to which approval would be granted.*

Accordingly, the CBDT has notified the Committee as follows:

- (i) Chief Commissioner of Income Tax (International Taxation), West Zone, Mumbai (Chairman).
- (ii) Commissioner of Income Tax (International Taxation)-1, Mumbai.
- (iii) Commissioner of Income Tax (Transfer Pricing)-1 Mumbai.

## ***23. E-filing of CIT appeals – Extension of Due Date to 15.06.2016***

*The Ministry of Finance, Central Board of Direct Taxes, vide Circular No. 20 dated 26<sup>th</sup> May, 2016 has extended the due date for e-filing of appeals under Rule 45 of the Income Tax Rules, 1962 to 15.06.2016.*

As per Rule 45 of the Income Tax Rules, 1962, mandates the compulsory e-filing of appeals before Commissioners of Income Tax (Appeals) with effect from 01.03.2016 in respect of persons who are required to furnish return of income

electronically. in some cases, the taxpayers who were required to e-file Form 35, were unable to do so due to lack of knowledge about e-filing procedure and/or technical issues in e-filing. Also, the EVC functionality for verification of e-appeals was made operational from 12.05.2016 for individuals and from 19.05.2016 for other persons. Word limit for filing grounds of appeal and mapping of jurisdiction of Commissioners of Income Tax (Appeals) were also a cause of grievance in some cases.

While the underlying issues relating to e-filing of appeals have since been addressed and resolved, in order to mitigate any inconvenience caused to the taxpayers on account of the new requirement of mandatory e-filing appeals, it has been decided to extend the time limit for filing of such e-appeals. E-appeals which were due to be filed by 15.05.2016 can be filed up to 15.06.2016. All e-appeals filed within this extended period would be treated as appeals filed in time.

In view of the extended window for filing e-appeals, taxpayers who could not successfully e-file their appeal and had filed paper appeals are required to file an e-appeal in accordance with Rule 45 before the extended period i.e. 15.06.2016. Such e-appeals would also be treated as appeals filed within time.

***24. Clarification regarding cancellation of registration u/s 12AA of the Income Tax Act, 1961 in certain circumstances.***

***The Ministry of Finance, Central Board of Direct Taxes, vide Circular No. 21 dated 27<sup>th</sup> May, 2016 It is clarified that it shall not be mandatory to cancel the registration already granted u/s 12AA to a charitable institution merely on the ground that the cut-off specified in the proviso to section 2(15) of the Act is exceeded in a particular year without there being any change in the nature of activities of the institution.***

Sections 11 and 12 of the Income-tax Act, 1961 ('Act') exempt income of charitable trusts or institutions, if such income is applied for charitable purpose and such institution is registered under section 12AA of the Act.

Section 2(15) of the Act provides definition of "charitable purpose". It includes "advancement of any other object of general public utility" provided it does not involve carrying on of any activity in the nature of trade, commerce or business etc. for financial consideration. The 2nd proviso to said section, introduced w.e.f. 01-04-2009 vide Finance Act 2010, provides that in case where the activities of any trust or institution is of the nature of advancement of any other object of general public utility and it involves carrying on of any activity in the nature of trade, commerce or business; but the aggregate value of receipts from such commercial activities does not exceed Rs. 25,00,000/- in the previous year, the purpose of such trust/institution shall be deemed as "charitable" despite it deriving



consideration from such activities. However, if the aggregate value of these receipts exceeds the specified cut-off, the activity would no longer be considered as charitable and the income of the trust/institution would not be eligible for tax exemption in that year. Thus an entity, pursuing advancement of object of general public utility, could be treated as a charitable institution in one year and not a charitable institution in the other year depending on the aggregate value of receipts from commercial activities. The position remains similar when the first and second provisos of section 2(15) get substituted by the new proviso introduced w.e.f. 01-04-2016 vide Finance Act, 2015, changing the cut-off benchmark as 20% of the total receipts instead of the fixed limit of Rs.25,00,000/- as it existed earlier.

The temporary excess of receipts beyond the specified cut-off in one year may not necessarily be the outcome of alteration in the very nature of the activities of the trust or institution requiring cancellation of registration already granted to the trust or institution. Hence, section 13 of the Act has been amended vide Finance Act, 2012 by inserting a new sub-section (8) therein to provide that such organization would not get benefit of tax exemption in the particular year in which its receipts from commercial activities exceed the threshold whether or not the registration granted is cancelled. This amendment has taken effect retrospectively from 1st April, 2009 and

accordingly applies in relation to the assessment year 2009-10 onwards.

Thus, it is clarified that it shall not be mandatory to cancel the registration already granted u/s 12AA to a charitable institution merely on the ground that the cut-off specified in the proviso to section 2(15) of the Act is exceeded in a particular year without there being any change in the nature of activities of the institution. If in any particular year, the specified cut-off is exceeded, the tax exemption would be denied to the institution in that year and cancellation of registration would not be mandatory unless such cancellation becomes necessary on the ground(s) prescribed under the Act.

With the introduction of Chapter XII-EB in the Act vide Finance Act, 2016, prescribing special provisions relating to tax on accreted income of certain trusts and institutions, cancellation of registration granted u/s 12AA may lead to a charitable institution getting hit by sub-section (3) of section 115TD and becoming liable to tax on accreted income. The cancellation of registration without justifiable reasons may, therefore, cause additional hardship to an assessee institution due to attraction of tax-liability on accreted income. The field authorities are, therefore, advised not to cancel the registration of a charitable institution granted u/s 12AA just because the proviso to section 2(15) comes into play. The process for cancellation of registration is to be



initiated strictly in accordance with section 12AA(3) and 12AA(4) after carefully examining the applicability of these provisions.

**25. Delhi VAT: Government withdraws Delhi Sugam -I (DS-I)**

Department of Trade and Taxes -  
Notification No.  
F3(671)/Policy/VAT/2016/284-296 -  
(27/05/2016) -

Whereas, the Department of Trade and Taxes, Government of National Capital territory of Delhi vide notification No. F.3(671)/Policy/VAT/2016/251-63 dated 19.05.2016, had notified an online Form Delhi Sugam-1 (DS1), in exercise of the powers conferred under section 70 of the Delhi Value Added Tax Act, 2004, for furnishing the details in respect of any commodities/goods to be moved from Delhi to any place outside the territory of Delhi on account of sale, stock transfer or due to whatsoever reason, by all the registered dealers of Delhi before the actual movement of such goods occurs.

It has now been decided to withdraw the above mentioned notification.

**26. Last date of filing declaration of tax arrear or specified tax under Direct Tax Dispute Resolution Scheme, 2016**

*The Ministry of Finance, Department of Revenue vide Notification No. 34 dated 26<sup>th</sup> May, 2016, has notified 31<sup>st</sup>*

*December, 2016 as the last date to make declaration to the designated authority in respect of tax arrear or specified tax under the Direct Tax Dispute Resolution Scheme, 2016.*

**27. CBDT notifies the Direct Tax Dispute Resolution Scheme Rules, 2016.**

*The Ministry of Finance, Central Board of Direct Taxes (CBDT) vide Notification No. 35 dated 26<sup>th</sup> May, 2016 hereby notifies the Direct Tax Dispute Resolution Scheme Rules, 2016 (hereinafter referred to as 'Scheme'). The rules shall come into force on 1<sup>st</sup> June, 2016.*

The scheme is specified under Chapter X of the Finance Act, 2016. These rules provide for the various forms under the scheme to be filed.

- Form of declaration and undertaking under Section 203 of the Finance Act, 2016 – Form 1
- Form of certificate under sub-section (1) of section 204 – Form 3
- Intimation of payment – Form 4
- Order under sub-section (2) of section 204 – Form 6

<http://www.incometaxindia.gov.in/com munications/notification/notification35 2016.pdf>

**28. CBDT notifies date of Applicability of Equalisation Levy**

*The Ministry of Finance, Central Board of Direct Taxes (CBDT) vide Notification No. 37 dated 27<sup>th</sup> May, 2016 hereby appoints 1<sup>st</sup> June, 2016 as the date on which Chapter VIII – Equalisation levy of the Finance Act, 2016 shall come into force.*

<http://www.incometaxindia.gov.in/com munications/notification/notification37 2016.pdf>

**29. CBDT Notifies Equalisation levy Rules, 2016**

*The Ministry of Finance, Central Board of Direct Taxes (CBDT) vide Notification No. 38 dated 27<sup>th</sup> May, 2016, hereby notifies the Equalisation levy Rules, 2016. The rules shall come in to effect from 1<sup>st</sup> June, 2016.*

The rules lay down the various procedure for the purpose of calculation and payment of Equalisation levy. Every assessee, who is required to deduct and pay equalisation levy, shall pay the amount of such levy to the credit of the Central Government by remitting it into the Reserve Bank of India or in any branch of the State Bank of India or of any authorised Bank accompanied by an equalisation levy challan.

<http://www.incometaxindia.gov.in/com munications/notification/notification38 2016.pdf>

**30. Admissibility of claim of deduction of Bad Debt under Section 36(1)(vii) read with Section 36 (2) of the Income Tax Act, 1961.**

*The Ministry of Finance, Central Board of Direct Taxes (CBDT) vide Circular No. 12 dated 30<sup>th</sup> May, 2016 has specified that Claim for any debt or part thereof in any previous year, shall be admissible under section 36(1)(vii) of the Act, if it is written off as irrecoverable in the books of accounts of the assessee for that previous year and it fulfills the conditions stipulated in sub section (2) of sub-section 36(2) of the Act.*

<http://www.incometaxindia.gov.in/com munications/circular/circular122016.pdf>

**31. CBEC notifies Indirect Tax Dispute Resolution Scheme Rules, 2016**

*The Ministry of Finance, Central Board of Excise & Customs (CBEC) vide Notification No. 29 dated 31<sup>st</sup> May, 2016 hereby notifies the Indirect Tax Dispute Resolution Scheme Rules, 2016. The rules shall come into force on 1<sup>st</sup> June, 2016.*

The rules have been framed in accordance with the Indirect Tax Dispute Resolution Scheme, 2016 as provided under Chapter IX of the Finance Act, 2016. These rules provide for the various forms under the scheme to be filed.

- Form of declaration under sub section (1) of section 214 and manner of verification of such declaration in respect the amount payable – Form 1
- Form of Acknowledgement under Sub Section (2) Of Section 214 of The Finance Act, 2016 In Respect of Indirect Tax Dispute Resolution Scheme, 2016 – Form 2
- Form of reporting deposits made by declarant under sub-section (3) of section 214 – Form 3
- Form of Order of Discharge of Dues Under Subsection (4) Section 214 of The Finance Act, 2016 (28 Of 2016). – Form 4

<http://www.cbec.gov.in/resources//htdoc s-cbec/excise/cx-ct/notifications/notfns-2016/cx-nt2016/cent29-2016.pdf>

## **SERVICE TAX**

### **1. Provisions of Notification No. 30/2012-Service Tax applicable for Krishi Kalyan cess**

The Ministry of Finance, Department of Revenue, Notification No. 27/2016 dated 26<sup>th</sup> May, 2016 – it is provided that notification No. 30/20 12 – Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 472 (E), dated the 20th June, 2012 shall be applicable mutatis mutandis for the purposes of Krishi Kalyan Cess.

### **2. Krishi Kalyan Cess-Determination of taxable services value**

The Ministry of Finance, Department of Revenue, Notification No. 28/2016 dated 26<sup>th</sup> May, 2016 – it is provided that Krishi Kalyan Cess shall be leviable only on that percentage of taxable value which is specified in column (3) for the specified taxable services in column (2) of the Table in the notification No. 26/2012-Service Tax, dated 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (i) vide number G.S.R. 468 (E), dated the 20th June, 2012.

Explanation- It is hereby clarified that value of taxable services for the purposes of the Krishi Kalyan Cess shall be the value as determined in accordance with the Service Tax (Determination of Value) Rules, 2006.

This notification shall come into force from the 1st day of June, 2016.

### **3. Rebate of Krishi Kalyan Cess on input services used in export service**

The Ministry of Finance, Department of Revenue, Notification No. 29/2016 dated 26<sup>th</sup> May, 2016 - in exercise of the powers conferred by rule 6A of the Service Tax Rules, 1994, the Central Government, hereby makes following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 39/2012-Service Tax, dated the 20th June, 2012,

published in the Gazette of India, Extraordinary, vide number G.S.R. 481(E), dated the 20th June, 2012, namely:-

In the said notification, in Explanation 1, after clause (d), the following clause shall be inserted, namely:-

“(e) Krishi Kalyan Cess as levied under sub-section (2) of section 161 of the Finance Act, 2016 (28 of 2016).”.

This notification shall come into force from the 1st day of June, 2016.

#### ***4. Refund of Krishi Kalyan Cess on specified services used in SEZ***

The Ministry of Finance, Department of Revenue, Notification No. 30/2016 dated 26<sup>th</sup> May, 2016 – SEZ Unit or the Developer shall be entitled to refund of-

(i) the service tax paid on the specified services on which ab-initio exemption is admissible but not claimed, and (ii) the amount distributed to it in terms of clause (a).

The amendments has been made in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2013-Service Tax, dated the 1st July, 2013, published in the Gazette of India, Extraordinary, vide number G.S.R. 448(E), dated the 1st July, 2013, namely:-

In the said notification, in paragraph 3, in sub-paragraph (III),-

(i) for clause (b), the following clause shall be substituted, namely:-

“(b) the SEZ Unit or the Developer shall be entitled to refund of-

(i) the service tax paid on the specified services on which ab-initio exemption is admissible but not claimed, and

(ii) the amount distributed to it in terms of clause (a).”;

(ii) in clause (ba),

(a) in item (i), after the words “Swachh Bharat Cess”, the words “and Krishi Kalyan Cess” shall be inserted;

(b) in item (ii) for the words “by effective rate of Swachh Bharat Cess”, the words “by sum of effective rates of Swachh Bharat Cess and Krishi Kalyan Cess” shall be substituted.

This notification shall come into force from the 1st day of June, 2016.

#### ***5. Krishi Kalyan Cess Payment Option under New Rule 7E***

The Ministry of Finance, Department of Revenue, Notification No. 31/2016 dated 26<sup>th</sup> May, 2016 – has made amendment to the Service Tax Rules, 1994. These rules may be called Service Tax (Third Amendment) Rules, 2016 and shall come into force from the 1st day of June, 2016.

In the Service Tax Rules, 1994, in rule 6,

(i) in sub-rule (7D), for the figures “0.5” the words “effective rate of Swachh Bharat Cess” and for the words, figures and brackets “14 (fourteen)”, the words and figures “rate of service tax specified in section 66B of the Finance Act, 1994” shall be substituted;”;

(ii) after sub-rule (7D), the following sub-rule shall be inserted, namely:-

(7E) The person liable for paying the service tax under sub-rule (7), (7A), (7B) or (7C) of rule 6, shall have the option to pay such amount as determined by multiplying total service tax liability calculated under sub-rule (7), (7A), (7B) or (7C) of rule 6 by effective rate of Krishi Kalyan Cess and dividing the product by rate of service tax specified in section 66B of the Finance Act, 1994, during any calendar month or quarter, as the case may be, towards the discharge of his liability for Krishi Kalyan Cess instead of paying Krishi Kalyan Cess at the rate specified in sub-section (2) of section 161 of the Finance Act, 2016 (28 of 2016) and the option under this sub-rule once exercised, shall apply uniformly in respect of such services and shall not be changed during a financial year under any circumstances.”

## **OTHERS**



### ***1. Restriction on EPF withdrawal***

As per extant rules governing the withdrawal of Employer's contribution from the Employees Provident Fund Scheme, a member can withdraw both the employer's share of contribution and his own share under the following circumstances: -

- (i) On retirement from service after attaining the age of 55 years.
- (ii) On retirement on account of permanent and total incapacity for work due to bodily or mental infirmity.
- (iii) On migration from India for permanent settlement abroad.
- (iv) On termination of service in the case of mass or individual retrenchment.

(v) On termination of service under a voluntary scheme of retirement.

(vi) On ceasing to be an employee in any establishment.

However, notification No. G.S.R.158(E) dated 10.02.2016 restricting the withdrawal of 3.67 per cent of employer's share of contribution till the age of 58 years has since been withdrawn by the Government on 19.04.2016.

### ***2. Increase of Bonus Ceiling***

The Ministry of Labour & Employment vide Press Release dated 9<sup>th</sup> May, 2016 has increased the ceiling of calculating Bonus for factory workers and establishment with 20 or more workers under section 12 of the Payment of Bonus Act from Rs.3500/- per month to Rs.7000/- per month or the minimum wage for the scheduled employment, as fixed by the appropriate Government, whichever is higher with effect from 1st day of April 2014 through the Payment of Bonus (Amendment) Act, 2015, notified on 1st January, 2016.



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