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*The only strategy that is
Guaranteed to fail, is not taking risks.*

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(Knowledge Manager with Acquisory)



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AT A GLANCE

ACQUISORY NEWS CHRONICLE MAY 2017

ARTICLE

Draft ICDS on Real Estate Transactions – An Analysis

Post introduction of RERA, the government has published the draft Income Computation and Disclosure Standards (ICDS) on Real Estate Transactions to streamline accounting standards in Real Estate. ICDS are a set of accounting policies and standards used for computing taxable income and not for maintaining books of accounts. The main highlights of the draft ICDS –

- Defining how revenue and costs are to be recognized;
- Defining components of project costs for computation of taxes;
- Defining valuations of inventories;
- Treatment of Transferable Development Rights; and
- Other items critical for the purpose of streamlining real estate transaction for taxation purposes

are now in the public domain for the stakeholders to register their comments and suggestions.

The roll – out is expected to be soon once the rules of ICDS are notified by the CBDT.

Socially Responsible Investing – An Overview

Socially Responsible Investing (SRI) is a concept where investors invest in companies working in socially and environmental responsible ways. The focus is on sustainable, socially conscious, green and ethical investing. SRI seeks to balance financial return and social good at the same time. SRI investors apply various environmental, social and governance (ESG) criteria in their investment analysis and selection. It is observed that, while globally SRI has emerged as one of most powerful trends among the investment community of the developed world, the concept is still in a nascent stage in India. The government is laying the groundwork to enhance SRI in India to bridge the gap between investments purely based on financial viability and SRI which seeks to bind both financial sustainability and social impact at the same time.

LEGAL UPDATES

MCA withdraws Circular w.r.t. transfer of Shares to IEPF

MCA has issued a Circular, by which the earlier circular of April 27, 2017 w.r.t transfer of shares to IEPF Authority stands withdrawn. As per the earlier issued circular, all companies were required to transfer shares to IEPF Authority under the applicable Rules. Such shares, whether held in dematerialised form or physical form, were transferred to the demat account of IEPF Authority by way of corporate action. Post this new circular, fresh instructions will be issued in due course of time.

Central Government notifies Exemption from Quoting Aadhaar / Enrolment ID to certain individuals

Ministry of Finance vide notification and Press Release dated 11th and 12th May, 2017 respectively, has notified that the requirement of quoting of Aadhaar / Enrolment ID shall not apply to the following individuals if they do not possess the Aadhaar / Enrolment ID:

- I. An individual who is residing in the state of Assam, Jammu and Kashmir and Meghalaya.
- II. An individual who is a non-resident as per the Income-tax Act, 1961.
- III. An individual of the age of eighty years or more at any time during the previous year.
- IV. An individual who is not a citizen of India.

section 139AA of the Income-tax Act, 1961, as inserted by the Finance Act, 2017 provides for mandatory quoting of Aadhaar / Enrolment ID of Aadhaar application form for filing of return of income and for making an application for allotment of Permanent Account Number with effect from 1st July, 2017. Section 139AA (3) of the Act empowers the Central Government to notify the person(s) or State(s) to which the requirement of quoting of Aadhaar / Enrolment ID shall not apply.

GST: Council Finalizes GST Rates For 1,211 Items, Items of Daily Use to Attract Lower Tax Rate

GST Council vide Press Release dated 19th May, 2017 has finalized tax rates for over 1,200 items, wherein a consensus was drawn to exempt or lower taxes on several items of daily and necessary use.



Draft ICDS on Real Estate Transactions – An Analysis

The RERA has become law w.e.f. 1st May., 2017. In order to make RERA implementation easier, the government has come up with the draft Income Computation and Disclosure Standards (ICDS) for Real Estate Transactions. The government has sought stakeholders' opinion to suggest the areas of improvement in the ICDS for the real estate sector. The draft is based on the standards issued by ICAI for the purpose of providing uniformity, certainty and harmonizing the same with the provisions of the Act. ICDS are a set of accounting policies and standard used for computing taxable income and not for maintaining books of accounts. The Central Board of Direct Taxes, on behalf of the government, will receive comments from stakeholders on the draft ICDS on real estate transactions till May 26, 2017.

“With the implementation of RERA from 1st May, 2017, the government has introduced the draft ICDS to monitor the accounting of Real estate transactions taking place. The ICDS on real estate transactions is all set to keep a check on the Real Estate Players in the market.”



Real Estate
Transactions

ICDS contains provisions relating to valuation of inventory; construction contracts; effects in changes of foreign exchange rates, borrowing costs etc. These are applicable from assessment year 2017-18 for specified assesses to compute income under the head 'profits and gains of business or profession' or 'income from other sources'.

Key Features of the Draft

The draft ICDS doesn't mandate obtaining all critical approvals for revenue recognition after the Real Estate (Regulation and Development) Act, 2016, (RERA), came into effect. It also proposes recognition of transferable development rights (TDR) at the fair value against fair market value or net book value as per the guidance note prepared by the Institute of Chartered Accountants of India (ICAI).

- The Real Estate Project revenue and project cost shall be recognised as revenue and cost respectively by reference to the stage of completion of the project on the last date of the previous year for projects where the economic substance is similar to construction contracts;
- In case of Real Estate Projects, Percentage of completion method would be applicable;
- Direct Purchase, Development and Construction of built up area and Giving up rights over existing structures or open land are treated as Transferable Development Rights;



Draft ICDS on Real Estate Transactions – An Analysis

- When development rights are acquired by way of direct purchase or on development or construction of built-up area, cost of acquisition would be the cost of purchases or amount spent on development or construction of built-up area, respectively. Where development rights are acquired by way of giving up of rights over existing structures or open land, the development rights shall be recorded at fair value of the development rights so acquired; and
- When development rights are utilised in a real estate project by a person, the cost of acquisition shall be added to the project costs.

On Sale or Transfer of rights, the revenue shall be recognized when both fulfills the following conditions, i.e.

- a) title to the development rights is transferred to the buyer; and
- b) it is reasonable to expect that the revenue will be ultimately collected.

The scope of this ICDS shall be to determine income from all type of real estate transactions, i.e. relating to land as well as buildings and rights in relation thereto, including:

- a) Sale of plots of land (including long term sale type leases) without any developments.
- b) Sale of plots of land (including long term sale type leases) with development in the form of common facilities.
- c) Development and sale of residential and commercial units, row houses, independent houses, with or without an undivided share in land
- d) Acquisition, utilization and transfer of development rights.
- e) Redevelopment of existing buildings and structures.
- f) Joint development agreements for any of the above activities.

Significant changes/ differences in draft ICDS vis-à-vis Guidance Note on Real Estate Transactions issued by the ICAI

The draft ICDS on Real Estate Transactions is based on Guidance Note on Accounting for Real Estate Transactions issued by the ICAI. While recommending the ICDS, the Committee suggested the following significant changes in the Guidance Note:





Draft ICDS on Real Estate Transactions – An Analysis

Guidance Note vis-à-vis ICDS

Sr. No.	Particulars	Guidance Note of ICAI	ICDS
1	Conditions to be met before recognizing revenue as per POCM	<p>Revenue should be recognized on Percentage of completion method (POCM) only when the following conditions are complied:</p> <p>a) All critical approvals have been obtained which includes environmental and other clearances, Approval of plans, designs, title to land or other rights, change of land use</p> <p>b) 25% construction cost has been incurred</p> <p>c) 25% area has been sold and agreements were registered</p> <p>d) 10% revenue of total project has been recognized</p>	<p>Revenue should be recognized on Percentage completion method only when the following conditions are complied:</p> <p>a) 25% construction cost has been incurred</p> <p>b) 25% area has been sold and agreements were registered</p> <p>c) 10% revenue of total project has been recognized,</p> <p>Unlike guidance note, condition of obtaining critical approvals has not been considered in ICDS.</p>
2	Cap on revenue to be recognized as per POCM	<p>Stage of completion can be determined by any method like cost incurred, survey of work done, technical estimation, etc. However recognition of revenue is capped at percentage of cost incurred</p>	<p>There is no cap on recognition of revenue based on stage of completion</p>
3	Definition of Project	<p>Project is the smallest group of units/plots/saleable spaces which are linked with common amenities</p>	<p>Project is the smallest group of units/plots/saleable spaces which are linked with basic facilities.</p> <p><i>The draft has recommended use of term Basic facilities in place of common amenities without linking the same to peripheral common amenities like club-house, entertainment, sports, gymnasiums, health club, restaurants etc.</i></p>
4	Definition of Project Cost	<p>Exhaustive List of specific cost heads has been provided in guidance note which may be attributable to project activity and shall be considered or not considered as part of construction costs and development costs.</p>	<p>No list of specific cost heads has been provided. However, the main principle has been retained that costs that cannot be attributed to any project activity or allocated to project shall be excluded from project cost.</p>
5	Cost of TDR acquired by way of giving up existing rights	<p>In case, TDR are acquired by way of giving up rights on existing structure / land, cost of acquisition should be recorded at fair market value or at the net book value of the asset (rights) given up.</p>	<p>However, in ICDS TDR shall be recorded at the fair value of the TDR only.</p>



Draft ICDS on Real Estate Transactions – An Analysis

The specific ICDS on real estate transactions intend to be a longed-for move as it will bring transparency and certainty in application of provisions of ICDS and computation of taxable income to the sector. The draft ICDS has made changes in five areas compared to the guidance note. These areas are definition of project and project cost, revenue recognition, application of percentage of completion method (POCM) for real estate projects and transferable development rights (TDRs). Most of the deviations from the guidance note issued by the ICAI will have the effect of accelerating revenue recognition for tax purposes. Specifically, the change requiring recording TDRs at fair value will create tax incidence on unrealised revenues.

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Socially Responsible Investing – An Overview

Socially responsible investing (SRI) or social investment, also known as sustainable, socially conscious, “green” or ethical investing is an investing strategy which seeks to consider both financial return and social good to bring about a social change. The concept of SRI suggests that investors would invest in companies that are acting socially and environmentally responsible ways, and that such investors would exit from investments in businesses that do not behave in the manner comfortable with the environmental, social and governance (ESG). Such investors maintain a balance between financial sustainability and social impact without necessarily preferring either over the other, i.e. the classic “win-win” situation.

“Socially Responsible Investing (SRI) a concept where investors would invest in companies that work and act socially and environmental responsible ways. SRI seeks to balance financial return and social good at the same time. The focus remains on sustainable, socially conscious, green and ethical investing.”



History of Socially Responsible Investing

Socially responsible investments tend to mimic the political and social climate of the time. In the 1960s, investors were mainly concerned with contributing to causes such as women's rights, civil rights and the anti-war movement. For example, Martin Luther King, Jr. played a large role in raising awareness for the civil rights movement by targeting companies that opposed the cause as socially irresponsible.

As awareness has grown in recent years over global warming and climate change, socially responsible investing has trended toward companies that positively impact the environment by reducing emissions or investing in sustainable or clean energy sources. Consequently, these investments avoid industries such as coal mining due to the negative environmental impact of their business practices.

Definition

An investment that is considered socially responsible because of the nature of the business the company conducts. Common themes for socially responsible investments include avoiding investment in companies that produce or sell addictive substances (like alcohol, gambling and tobacco) and seeking out companies engaged in social justice, environmental sustainability and alternative energy / clean technology efforts. Socially responsible investments can be made in individual companies or through a socially conscious mutual fund or exchange-traded fund (ETF).



Socially Responsible Investing – An Overview

While the speculators and investors alike have made money from stock market, investors have started to ask themselves whether these investment avenues are aligned to their beliefs and values and can their capital be deployed in a manner that makes a positive difference to humanity as well as meet personal financial goals.

Thus was born the Socially Responsible Investments (SRI) movement. This movement has steadily graduated from following a merely passive investment approach to one that attempts to leverage the shareholder's views on issues of interest and put pressure on firms to behave in a socially responsible manner.

Socially responsible investment seeks integration of the financial objectives of the investor with his social values and ethical beliefs. As regards the returns on the investments, the considerations that help decide in favour or against an investment unit in the SRI portfolio include screening, shareholder advocacy and community investing.

Indian Scenario

While the concept of corporate social responsibility (CSR) in broader terms has now become well-entrenched in India, the focus on SRI has been far less. However, new calls for SRI in India are being heard through the route of public interest litigation (PIL) filed before the courts. The Hindu carries a report indicating that certain Tata trustees have initiated a PIL seeking divestment on shares held by the government-owned insurance companies in ITC Limited, due to the latter's involvement in the tobacco industry. The plea specifically thrusts light on the inherent contradiction between the harmful effects of tobacco and their impact on lifespan (a matter of concern for the insurance industry). This is in addition to the need for the insurance industry to invest with the primary objective of public welfare. A report in the Business Standard highlights other moves towards SRI.

While the route of undertaking litigation to seek insurance companies' divestiture from the tobacco industry appears somewhat unconventional, it brings into focus the issue of SRI in the Indian context. Ultimately, the concept of stewardship must imbibe within it not only matters relating to voting on shares, but also the types of investments that institutional investors may undertake. In addition to the stewardship responsibilities that have been imposed (as discussed here),



Socially
Responsible
Investing

“Socially responsible investing (SRI) integrates personal values and social and environmental concerns with investment decisions.”

insurance companies (and other institutional investors as well) are likely to face pressure to invest in a socially responsible manner.

In India, there is a compelling need to direct investments towards projects and organisations that work with communities, empower people, create jobs for low-skilled workers, provide primary education, build up rural infrastructure, and fund products and innovations that raise the living standards of the people. The Government has done its bit in the past and is continuing to do so by seeking social returns from its investment. A good way to start the same in the private sector is through voluntary proactive compliance. To begin with, the newly reformed pension sector, insurance companies, mutual funds and other investment advisers should start by disclosing information on how they vote on a host of proxy issues by issuing voting guidelines, etc. Companies raising money from the public should disclose their performance on pre-identified environmental factors and on the returns to society. This process leads to a higher level of granularity and helps the investors recognise and benefit from the unlocked SRI return value of the firm. Producing annual accounts through the EVA (Economic Value Added) approach



Socially Responsible Investing – An Overview

will prove to be one more step in this direction by India Inc. It is good that leading corporate houses are contributing and raising the corporate social responsibility culture.

A case of how socially responsible investments can make a difference is the e-chaupal initiative. The initiative brings to the farmer better access to markets and information on agriculture practices and, thereby, better realisation for their produce. This breaks the shackles of fragmented land holdings, poor infrastructure, and numerous intermediaries required to bring the produce to the markets.

The company that was once perceived to be largely engaged in tobacco business, an activity defined as negative by some SRI practitioners, has done positive SRI work.

However, for the SRI movement to strike deep roots, there is an urgent need to create a greater level of awareness among the growing class of educated investors who may be willing to see their investments make a sustained difference to society while meeting their long-term financial objectives. With the economy on a roll and increasing awareness among investors, it would be interesting to see how the SRI movement progresses in India.

Main Pillars of SRI

A broad assessment of leading companies indicates that environmentally and socially responsible companies are usually also the better-managed ones.

There are, of course, plenty of exceptions to this rule, but large corporations are often run by professional managers who have a reputation to protect, and hence they are hesitant to take decisions that may be seen as unethical or socially exploitative.

Investment companies should perceive the social expenses of these companies as capital expenditure which will yield benefits in the future. This will result in a proper valuation of these companies. Should the companies realise better-than-expected profits, those who invested by understanding this aspect of social benefit will gain.

Conclusion

SRI seeks to balance financial return and social good at the same time. The focus remains on sustainable, socially conscious, green and ethical investing. Through investment vehicle of SRI, effort is made to promote and support companies who practice environmental stewardship, social justice, social development, human rights, gender equality, good corporate governance and diversity among others. In brief, SRI includes investors who apply various environmental, social and governance (ESG) criteria in their investment analysis and selection.

While globally SRI has emerged as one of most powerful trends among the investment community of the developed world, concept is still in a nascent stage in India. Forget full fledged SRI, even good corporate governance and transparent financial reporting are not yet very prevalent among Indian corporate. Enter “socially responsible investment” in Google search engine, you will get more than 4.5 million results. Now enter “socially responsible investment in India” in Google search engine, you will not even get one million results and even then most of the results are not indicating at Indian origin. One noticeable result was though socially responsible equity investment programme at Yes Bank known as “Tatva”. Well, leave Google results here itself and move on to socially responsible investment in India.



RBI UPDATES

1. RBI can direct banks to initiate insolvency resolution process

Ministry of Finance has issued an order, in exercise of the powers conferred by Section 35AA of the Banking Regulation Act, 1949 (10 of 1949). Through this order, the Central Government authorises the Reserve Bank of India to further issue such directions / instructions to any banking company or banking companies which may be considered necessary to initiate insolvency resolution process in respect of a default, under the provisions of the Insolvency and Bankruptcy Code, 2016. This will surely lead to recovery of loan through initiation of the Corporate Insolvency Resolution Process by the Banks against the Corporate Debtors.

<http://www.gazette.nic.in/WriteReadData/2017/175797.pdf>

2. NEFT system – Settlement at half-hourly intervals

Reserve Bank of India (RBI) vide Notification No. RBI/2016-17/300 DPSS (CO) EPPD No.2612/04.03.01/2016-17 dated 8th May, 2017 it has now been decided to introduce additional settlements in the NEFT system at half-hour intervals to enhance the efficiency of the system and add to customer convenience. The half hourly settlements would speed up the funds transfer process and provide faster credit to the destination accounts. Accordingly, it is decided to introduce 11 additional settlement batches during the day (at 8.30 am, 9.30 am, 10.30 am 5.30 pm and 6.30 pm), taking the total number of half hourly settlement batches during the day to 23.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10958&Mode=0>

3. RBI Circular on Timelines for Stressed Assets Resolution

Reserve Bank of India (RBI) vide Notification No. RBI/2016-17/299 DBR.BP.BC.No.67/21.04.048/2016-17 dated 5th May, 2017 has issued a framework with regard to timelines for Stressed Assets Resolution. The Framework aims at early identification of stressed assets and timely implementation of a corrective action plan (CAP) to preserve the economic value of stressed assets. In order to ensure that the CAP is finalised and formulated in an expeditious manner, the Framework specifies various timelines within which lenders have to decide and implement the CAP. The Framework also contains disincentives, in the form of asset classification and accelerated provisioning where lenders fail to adhere to the provisions of

the Framework. Despite this, delays have been observed in finalising and implementation of the CAP, leading to delays in resolution of stressed assets in the banking system.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10957&Mode=0>

4. Submission of Statutory returns (SLR-Form VIII) in XBRL platform

Reserve Bank of India (RBI) vide Notification No. RBI/2016-17/302 Ref: DBR.CO.No.Ret.BC/66/12.07.144/2016-17 dated 11th May, 2017 has decided to move the reporting of SLR from PCRPCD to XBRL (Extensible Business Reporting Language) platform. You are therefore advised to submit the returns (Form VIII) in XBRL from the month of April 2017.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10964&Mode=0>

5. Partial Credit Enhancement to Corporate Bonds

Reserve Bank of India (RBI) vide Notification No. RBI/2016-17/305 DBR.No.BP.BC.70/21.04.142/2016-17 dated 18th May, 2017 has reviewed the capital requirement for Partial Credit Enhancement to Corporate Bonds, it has been decided that: a) To be eligible for PCE from banks, corporate bonds shall be rated by a minimum of two external credit rating agencies at all times;

b) The rating reports, both initial and subsequent, shall disclose both standalone credit rating (i.e., rating without taking into account the effect of PCE) as well as the enhanced credit rating (taking into account the effect of PCE).

c) For the purpose of capital computation in the books of PCE provider, lower of the two standalone credit ratings and the corresponding enhanced credit rating of the same rating agency shall be reckoned.

d) Where the reassessed standalone credit rating at any time during the life of the bond shows improvement over the corresponding rating at the time of bond issuance, the capital requirement may be recalculated on the basis of the reassessed standalone credit rating and the reassessed enhanced credit rating, without reference to the constraints of capital floor and difference in notches.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10971&Mode=0>



RBI UPDATES

5. Reserve Bank of India Outlines the action plan to implement the Banking Regulation (Amendment) Ordinance, 2017

Reserve Bank of India vide Press Release dated 22nd May, 2017 has outlined the steps taken and those on the anvil post the promulgation of the Banking Regulation (Amendment) Ordinance, 2017. The amendments to the Banking Regulation Act 1949, introduced through the Ordinance, and the notification issued thereafter by the Central Government empower RBI to issue directions to any banking company or banking companies to initiate insolvency resolution process in respect of a default, under the provisions of the Insolvency and Bankruptcy Code, 2016 (IBC). It also enables the Reserve Bank to issue directions with respect to stressed assets and specify one or more authorities or committees with such members as the Bank may appoint or approve for appointment to advise banking companies on resolution of stressed assets. Immediately upon the promulgation of the Ordinance, the Reserve Bank issued a directive bringing the changes to the existing regulations on dealing with stressed assets. The Reserve Bank is working on a framework to facilitate an objective and consistent decision making process with regard to cases that may be determined for reference for resolution under the IBC. Reserve Bank has already sought information on the current status of the large stressed assets from the banks. The RBI would also be constituting a Committee comprised majorly of its independent Board Members to advise it in this matter.

https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=40518

6. Submission of Annual Information Return relating to issue of Bonds for ₹ 5 lakh or more under Section 285 BA of Income Tax Act, 1961 - Change thereof

Reserve Bank of India vide Notification No. RBI/2016-17/309 IDMD.CDD.No.3031/13.01.299/2016-17 dated 25th May, 2017 has made changes with regard to Submission of Annual Information Return (AIR) relating to issue of Bonds for INR 5 lakhs or more under Section 285 BA of Income Tax Act, 1961 read with Rule 114E of the Income Tax Rules, 1962. Income Tax Department has brought about the undermentioned changes in the AIR Name of the AIR has been changed as Statement of Financial Transaction -

Limit of amount has been changed from ₹ 5 lakh or more to ₹ 10 lakh or more in a Financial Year

Date of Filing has been changed from August 31 of the immediately following Financial Year to May 31st.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10979&Mode=0>

7. Submission of Annual Information Return relating to issue of Bonds for ₹ 5 lakh or more under Section 285 BA of Income Tax Act, 1961 - Change thereof

Reserve Bank of India (RBI) vide Notification No. RBI/2016-17/313 IDMD.CDD.No.3058/13.01.299/2016-17 dated 30th May, 2017 has made changes to the procedure with regard to submission of Annual Information Return relating to issue of Bonds for INR 5 Lakhs or more under Section 285 BA of the Income Tax Act, 1961. It has now been decided that in order to avoid the duplication of data relating to Savings Bonds, Agency banks/SHCIL may henceforth ensure that the required information is furnished only to Public Debt Offices of the respective jurisdiction. They need not submit this information to Income Tax Authorities separately.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10987&Mode=0>



MCA UPDATES

1. ROC clarifies on acceptance of deposits without deposit insurance contract

Ministry of Corporate Affairs (MCA) vide Notification dated 11th May, 2017 has clarified that the Companies may accept deposit without deposit insurance contract till 31st March, 2018 or till the availability of deposit insurance product, whichever is earlier.

http://www.mca.gov.in/Ministry/pdf/CompaniesAcceptanceofDeposits_12052017.pdf

2. Revision of E-forms

MCA has revised the versions of eForms – Form DIR-3C (Intimation of Director Identification Number by the company to the Registrar DIN services) and Form RD - 1 (Applications made to Regional Director) are being revised w.e.f. 11th May, 2017 (Today). All the stakeholders are advised to check the latest version of the form before filing.

3. MCA withdraws Circular w.r.t. transfer of Shares to IEPF

MCA has issued a Circular, wherein it has withdrawn the previously issued Circular dated April 27, 2017 w.r.t. transfer of shares to IEPF Authority. The subject matter of the previous circular is being reviewed by the Ministry and hence the said circular stands withdrawn with immediate effect. Fresh instructions will be issued in due course of time. As per the earlier issued circular, all companies required to transfer shares to IEPF Authority under the applicable Rules shall transfer such shares, whether held in dematerialised form or physical form, to the demat account of IEPF Authority by way of corporate action.

http://www.mca.gov.in/Ministry/pdf/Circular_16052017.pdf

4. Clarification regarding applicability of Section 16(1)(a) of the Companies Act, 2013 with reference to cases under corresponding provisions of Companies Act, 1956

Ministry of Corporate Affairs (MCA) vide Circular No. 04/2017 dated 16th May, 2017 has clarified the provisions with regard to Section 16(1)(a) of the Companies Act, 2013 which provides for the rectification of name. It has now been clarified that applications that were rejected by Regional Directors under Section 22(1)(ii)(b) of the Companies Act, 1956, on the ground that such applications were made after the requisite period of twelve months specified therein, cannot apply afresh

under Section 16(1)(a) of the Companies Act, 2013, as the extinguished limitation cannot be considered to be revived even if no limitation period has been prescribed/laid down in the said section.

http://www.mca.gov.in/Ministry/pdf/Circular04_2017_17052017.pdf

5. MCA notifies April 1, 2017 as the date on which provisions of clause (a) to (d) of Sec. 2 of the Insolvency and Bankruptcy Code, 2016, relating to voluntary liquidation / bankruptcy

MCA notifies April 1, 2017 as the date on which provisions of clause (a) to (d) of Sec. 2 of the Insolvency and Bankruptcy Code, 2016, relating to voluntary liquidation / bankruptcy shall come into force. Section 2 provides that the Code shall be applicable to (a) any company incorporated under the Companies Act, 2013/ under any previous company law, (b) any other company governed by any special Act, (c) any Limited Liability Partnership ('LLP') incorporated under the LLP Act, 2008, (d) such other body incorporated under any law as notified by the Govt., and (e) partnership firms and individuals, in relation to their insolvency, liquidation, voluntary liquidation / bankruptcy. MCA further, clarifies by way of explanatory memorandum that by giving retrospective effect to the notification, "no one is being adversely affected and giving retrospective effect to this notification is purely procedural in nature".

<http://www.egazette.nic.in/WriteReadData/2017/176016.pdf>

6. Limited Liability Partnership (Amendment) Rules, 2017.

Ministry of Corporate Affairs (MCA) vide Notification dated 16th May, 2017 has issued Limited Liability Partnership (Amendment) Rules, 2017. The rules shall come into force w.e.f. 20th May, 2017. In rule 37, after sub-rule (1) a new sub-rule has been inserted with regard to filing of Form 24 – Application to the Registrar for Striking Off name. It has been now made mandatory to file overdue returns in Form 8 and Form 11 up to the end of the financial year in which the limited liability partnership ceased to carry on its business or commercial operations before filing Form 24 along with certain documents. Further a copy of the acknowledgement of the latest Income-tax return filed along with the copy of the



MCA UPDATES

initial limited liability partnership agreement, if entered into and not filed, along with changes thereof in cases where the Limited Liability Partnership has not commenced business or commercial operations since its incorporation is also required to be filed.

<http://egazette.nic.in/WriteReadData/2017/176058.pdf>

7. MCA – NCLT

The Government of India has notified the Companies (Transfer of Proceedings) Rules, 2016. Through these rules all matters relating to winding up and amalgamation has been transferred from High Courts to NCLT. All petitioners were required to submit all information forming part of the records relating to matter filed under Section 433(e) and such documents including details of the proposed Insolvency Professional to the National Company Law Tribunal having jurisdiction over the Company within 60 days. The time was further extended upto 6 months i.e 14-06-2017 vide notification dated 28-02-2017. All stakeholders are requested to comply with the said notification. Further, the office of NCLT & Registry shall remain open to accept the filing during the vacations i.e. month of June, 2017.

<http://nclt.gov.in/Orders/Compliance%20Of%20Notification%20Date%2007.12.2016.pdf>

8. MCA – NCLT

In exercise of the powers conferred by Section 419, the President, NCLT hereby re-constitutes the Benches at New Delhi. There will be now 4 Benches at New Delhi comprising of Principal Bench, Division Bench and two Single Benches. Further, the Single Benches headed by Shri R. Varadharajan, shall attend matters presently pending before it and all the matters related to Amalgamation (section 230-232 of Companies Act, 2013 and section 391-394 of Companies Act, 1956 below 50 Lakh paid up capital. Further, this Bench shall also attend the matters of amalgamation above 50 Lakhs paid up capital whenever assigned by Hon'ble President through Special Order. This order shall come into force with effect from 22nd May, 2017.

<http://nclt.c2k.in/OtherNCLT/Orders/19.05.2017ReconstitutesatNCLT,NewDelhiBench.pdf>

9. Securities and Exchange Board of India (International Financial Services Centres) Guidelines, 2015 - Permissible investments by Portfolio Managers, Alternate Investment Funds and Mutual Funds operating in IFSC

Securities Exchange Board of India (SEBI) vide Circular No. SEBI/HOMRD/DSA/CIR/O/2017/45 dated 23rd May, 2017 amendment to Securities Exchange Board of India (International Financial Services Centres) Guidelines, 2015-Permissible investments by Portfolio Managers, Alternate Investment Funds and Mutual Funds operating in IFSC.

A portfolio manager / alternative investment fund / mutual fund operating in IFSC shall be permitted to invest in the following: a) Securities which are listed in IFSC; b) Securities issued by companies incorporated in IFSC; c) Securities issued by companies incorporated in India or companies belonging to foreign jurisdiction. Subject to such conditions or guidelines that may be stipulated or issued by the Reserve Bank of India and Government of India from time to time.

<http://www.sebi.gov.in/legal/circulars/may-2017/securities-and-exchange-board-of-india-international-financial-services-centres-guidelines-2015-permissible-investments-by-portfolio-managers-alternate-investment-funds-and-mutual-funds-operatin-34951.html>

10. MCA releases draft Companies (Registered Valuers and Valuation) Rules, 2017

MCA has released the draft of Companies (Registered Valuers And Valuation) Rules, 2017 for public comments. The Insolvency and Bankruptcy Board of India established under the Insolvency and Bankruptcy Code, 2016 shall be the “Registration Authority” for the Registered Valuers. Members of a professional institute with at least five years’ experience after such membership are eligible to register after passing the examination being conducted by IBBI. A registered valuer shall make valuations as per the Valuation Standards notified from time to time by the Central Government. Suggestions/ comments on the draft rules along with justifications in brief may be sent latest by 27/06/2017 through email at comments_rv@mca.gov.in. These Rules shall come into force with effect from 15th July, 2017.

http://mca.gov.in/Ministry/pdf/Companies_Registered_Value rs_Rules_2017.pdf



MCA UPDATES

11. MCA issues Circular on Clarification regarding due date of Transfer of Shares to IEPF Authority

The Ministry of Corporate Affairs vide Circular No. 6/2017 dated 29th May, 2017 has issued circular clarifying the position in respect of due date of transfer of shares to Education and Protection Fund (IEPF) Authority and extended the due date. The modalities for transfer/ transmittal of shares from companies accounts to the demat account of the IEPF Authority are being finalized with the depositories. IEPF Authority is considering to open special Demat account and till opening of demat accounts, the due date for transfer of shares stands extended. In view of this, a revised due date for transfer/ transmittal of shares shall be notified soon. Companies, are advised to complete all formalities, as laid down in the aforesaid Rules without waiting for the fresh dates. Companies which have already published notice in newspaper and send notices to the shareholders, need not give the fresh notices again due to this extension.

http://www.mca.gov.in/Ministry/pdf/GeneralCircular6_29052017.pdf

12. MCA – IBBI

Insolvency Professionals to act as Interim Resolution Professionals (Recommendation) Guidelines, 2017

The provisions of Section 16(3)(a) of the Insolvency and Bankruptcy Code, 2016 (Code), provide that the Adjudicating Authority (AA) shall make a reference to the Insolvency and Bankruptcy Board of India (Board) for recommendation of an Insolvency Professional (IP) who may act as an Interim Resolution Professional (IRP) in case an operational creditor has made an application for Corporate Insolvency Resolution Process (CIRP) and has not proposed an IRP. The Board is under an obligation, as per the provisions of Section 16(4) of the Code, to recommend the name of an IP to AA within 10 days of receipt of the reference from AA. In this regard, the Board has issued guidelines, namely “Insolvency Professionals to act as Interim Resolution Professionals (Recommendation) Guidelines, 2017”. For the purpose of Identification of IP, two new criteria have been introduced, that the IP is located in the vicinity of registered office of the corporate debtor and has expresses his interest to act as IRP of the CIRP in response to invitation of interest by the Board. The expression of interest

must be received by the Board in Form A within 24 hours of invitation of expression of interest.

http://ibbi.gov.in/Interim_Resolution_Profesional.pdf



SEBI UPDATES

1. Online Registration Mechanism for Securities Market Intermediaries

Securities Exchange Board of India (SEBI) vide Circular No. SEBI/HO/MIRSD1/CIR/P/2017/38 dated 2nd May, 2017 it has been decided to operationalize SEBI Intermediary Portal for the intermediaries to submit all the registration applications online. The SEBI intermediary Portal shall include online application registration, processing of application, grant of final registration, application for surrender/cancellation etc. the portal shall be available for intermediaries such as – stock brokers, sub-brokers, Merchant Bankers, underwriters, RTA, Debenture trustee, Bankers to an Issue and Credit Rating Agency.

http://www.sebi.gov.in/legal/circulars/may-2017/online-registration-mechanism-for-securities-market-intermediaries_34793.html

2. Instant Access Facility and Use of e-wallet for investment in Mutual Funds

Securities Exchange Board of India (SEBI) vide Circular No. SEBI/HO/IMD/DF2/CIR/P/2017/39 dated 8th May, 2017 has issued guidelines for Instant Access Facility and use of e-wallet for investment in Mutual Funds.

http://www.sebi.gov.in/legal/circulars/may-2017/instant-access-facility-and-use-of-e-wallet-for-investment-in-mutual-funds_34830.html

3. Listing of Non-Convertible Redeemable Preference Shares (NCRPS)/ Non-Convertible Debentures (NCDs) through a Scheme of Arrangement

Securities Exchange Board of India (SEBI) vide Circular No. CIR/IMD/DF/50/2017 dated 26th May, 2017 has allowed Listing of Non – Convertible Redeemable Preference Shares (NCRPS) / Non-Convertible Debentures (NCDs) through scheme of arrangement. In cases where NCRPS/NCDs are issued, in lieu of specified securities, vide a scheme of arrangement; and where such NCRPS/NCDs are proposed to be listed on recognized stock exchanges, the listed entity shall additionally comply with the requirements as specified in the Circular in addition to compliance with SEBI Circular No. CFD/DIL3/CIR/2017/21 dated March 10, 2017 as amended from time to time.

http://www.sebi.gov.in/legal/circulars/may-2017/listing-of-non-convertible-redeemable-preference-shares-ncrps-non-convertible-debentures-ncds-through-a-scheme-of-arrangement_34965.html

4. Disclosure Requirements for Issuance and Listing of Green Debt Securities

Securities Exchange Board of India (SEBI) vide Circular No. CIR/IMD/DF/51/2017 dated 30th May, 2017 has provided the Disclosure Requirements for Issuance and Listing of Green Debt Securities. Accordingly, a debt security shall be considered as a Green Debt Securities if the funds raised through issuance of the debt securities are to be utilised for project(s) and/or asset(s) of Renewable and sustainable energy, Clean transportation, Sustainable water management, Sustainable waste management and Biodiversity conservation etc. The Circular also provides for the disclosures to be made by the issuer Company in the Offer Document and list of Continuous Disclosures to be made in the half yearly and annual financial results and in the annual report.

http://www.sebi.gov.in/legal/circulars/may-2017/disclosure-requirements-for-issuance-and-listing-of-green-debt-securities_34988.html



TAXATION UPDATES

1. CBDT notifies Rule 21AD & Forms No. 10B for exercising Option u/s 115BA(4)

Ministry of Finance, Central Board of Direct Taxes (CBDT) vide Notification No. 36/2017 dated 2nd May, 2017 has issued Income Tax (9th Amendment) Rules, 2017 a new rule 21AD has been inserted - Exercise of option under sub-section (4) of section 115BA - The option to be exercised in accordance with the provisions of sub-section (4) of section 115BA by a person, being a domestic company, for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2017, shall be in Form No. 10-IB.

http://www.incometaxindia.gov.in/communications/notification/notification36_2017.pdf

2. Eight States' Assemblies pass the State GST Act within a short span of less than one month

Ministry of Finance vide Press Release dated 4th May, 2017, has announced that Eight States have passed the State Goods and Services Tax (SGST) Act in their respective State Assembly in less than a month's time. The Legislative Assembly of Telangana State passed the State GST Act on 9th April, 2017, that of Bihar State passed it on 24th April, 2017, Rajasthan Assembly on 26th April, 2017, that of Jharkhand on 27th April, 2017, Chhattisgarh Assembly on 28th April, 2017, that of Uttarakhand on 2nd May, 2017, Madhya Pradesh Assembly on 3rd May, 2017 while the Assembly of State of Haryana passed the State GST Bill today i.e. 4th May, 2017.

The remaining States/UTs (having Legislative Assembly) are likely to pass the State GST Bill in their respective Assemblies before the end of this month, except one or two States which may pass the same in early next month.

3. Draft rules on valuation of 'unquoted shares' for Sec. 56(2)(x)/50CA of the Income Tax Act, 1961

Ministry of Finance vide Press Release dated 5th May, 2017 have issued Draft Rules relating to valuation of unquoted equity share for the purposes of Section 56 and Section 50CA of the Income-tax Act, 1961.

The Finance Act, 2017 inserted clause (x) in sub-section (2) of Section 56 of the Income-tax Act 1961('the Act') so as to widen the scope of taxability of receipt of sum of money or property without/inadequate consideration. Under the said clause read with Rule 11UA of the Income-tax Rules, 1962('

the Rules') if a person receives jewellery or artistic work or shares and securities for no / inadequate consideration, the fair market value(FMV) of the same is taken into account for computing taxable income under the said clause. Similarly, for immovable property, the stamp duty value is taken into consideration for determining taxability under the same section. However when these assets are received as underlying assets of unquoted equity shares of company, the book value (and not the FMV / stamp duty value) is taken into consideration for determining the value of such shares.

Further, the Finance Act, 2017 inserted new Section 50CA in the Act with effect from 1st April, 2018 to provide that where consideration for transfer of unquoted equity share of a company is less than the FMV of such share determined in accordance with the prescribed manner, the FMV shall be deemed to be the full value of consideration for the purposes of computing income under the head "Capital gains"

In view of this, it is proposed to amend the Rules to prescribe the method of valuation of unquoted equity share for the purpose of clause(x) of sub-section (2) of section 56 and section 50CA of the Act by taking into account the FMV of jewellery, artistic work, shares & securities and stamp duty value in case of immovable property and book value for the rest of the assets.

4. Central Government notifies Exemption from Quoting Aadhaar / Enrolment ID to certain individuals

Ministry of Finance vide Press Release dated 12th May, 2017 through notification dated 11th May, 2017 has notified that the requirement of quoting of Aadhaar / Enrolment ID shall not apply to the following individuals if they do not possess the Aadhaar / Enrolment ID:

- I. An individual who is residing in the state of Assam, Jammu and Kashmir and Meghalaya.
- II. An individual who is a non-resident as per the Income-tax Act, 1961.
- III. An individual of the age of eighty years or more at any time during the previous year.
- IV. An individual who is not a citizen of India.

section 139AA of the Income-tax Act, 1961, as inserted by the Finance Act, 2017 provides for mandatory quoting of Aadhaar / Enrolment ID of Aadhaar application form for filing of return of income and for making an application for allotment of



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Permanent Account Number with effect from 1st July, 2017. Section 139AA (3) of the Act empowers the Central Government to notify the person(s) or State(s) to which the requirement of quoting of Aadhaar / Enrolment ID shall not apply.

5. Central Board of Direct Taxes (CBDT) invites comments from stakeholders on Draft Income Computation and Disclosure Standards on Real Estate Transactions by 26th May, 2017

Ministry of Finance vide Press Release dated 11th May, 2017 have issued Draft Income Computation and Disclosure Standards on Real Estate Transactions.

The draft ICDS submitted by the committee is based on the Guidance Note issued on Real Estate Transactions issued by Institute of Chartered Accountants of India (ICAI). For the purposes of providing uniformity and certainty and harmonising the same with provisions of the Act, the committee suggested certain changes in draft ICDS.

The draft ICDS on Real Estate Transactions along with the significant changes suggested in ICDS vis-à-vis the Guidance Note issued by ICAI are uploaded on the Income-tax website at <http://www.incometaxindia.gov.in>. The Central Board of Direct Taxes (CBDT) invites comments from stakeholders on the draft ICDS on Real Estate Transactions, which may be submitted to Director TPL-III by e-mail at dirtpl3@nic.in by 26th May, 2017.

Section 145(2) of the Income-tax Act, 1961 ('the Act') provides that the Central Government may notify Income Computation and Disclosure Standards (ICDS) for any class of assessee or for any class of income. Accordingly, Central Government notified 10 ICDS vide Notification No. S.O. 3079 (E) dated 29th September, 2016. These ICDS inter-alia contain provisions relating to valuation of inventory; construction contracts; effects in changes of foreign exchange rates, borrowing costs etc. These ICDS are applicable from assessment year 2017-18 (previous year 2016-17) in respect of specified assessee for computation of income under the head "Profits and gains of business or profession" or "Income from other sources".

6. Income Tax (IT) Department simplifies linking PAN with Aadhaar for taxpayers using Income Tax India website - No need to login or be registered on the E-filing website for linking

Ministry of Finance vide Press Release dated 11th May, 2017 have simplified the procedure for linking PAN with Aadhaar for taxpayers using Income Tax India website.

There is no need to login or be registered on E-filing website. This facility can be used by anyone to link their Aadhaar with PAN.

This facility is also available after login on the e-filing website under Profile settings and choose Aadhaar linking. The details as per PAN will be pre-populated. Enter Aadhaar number and ENTER NAME EXACTLY AS GIVEN IN AADHAAR CARD (avoid spelling mistakes) and Submit.

Taxpayers are requested to use the simplified process to complete the linking of Aadhaar with PAN immediately. This will be useful for E-Verification of Income Tax returns using OTP sent to their mobile registered with Aadhaar.

7. GST: Council Finalizes GST Rates For 1,211 Items, Items of Daily Use to Attract Lower Tax Rate

Ministry of Finance vide Press Release dated 19th May, 2017 through GST Council has finalized tax rates for over 1,200 items, wherein a consensus was drawn to exempt or lower taxes on several items of daily use.

<http://pibphoto.nic.in/documents/rlink/2017/may/p201751905.pdf>

<http://pibphoto.nic.in/documents/rlink/2017/may/p201751903.pdf>

8. Lower Tax Incidence on Entertainment Services under Goods and Services (GST) Tax - Service providers shall be eligible for full Input Tax Credits (ITC) of GST paid in respect of inputs and input services

Ministry of Finance vide Press Release dated 23rd May, 2017 through GST Council has announced that the Taxes on entertainments and amusements (covered by the erstwhile entry 62 of State List of the Constitution) have been subsumed under Goods and Services Tax (GST) except to the extent of taxes on entertainments and amusements levied by a Panchayat or a Municipality.



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The rate of GST approved by GST Council on services by way of admission to entertainment events or cinematography films in cinema theatres is 28%. However, the entertainment tax rates in respect of exhibition of cinematography films in theaters/cinema halls, currently levied by States are as high as 100% in some of the States.

The rate of entertainment tax on cable TV and Direct-To-Home (DTH) levied by States is in the range of 10%-30% in many States. Apart from this, Service tax is also leviable at the rate of 15%. As against this, the rate of GST approved by GST Council on these services is 18%.

The rate of GST approved by GST Council on access to circus, theatre, Indian classical dance including folk dance and drama is 18% ad valorem. Further, the GST Council has approved an exemption upto a consideration for admission of Rs 250 per person. These services currently attract entertainment tax levied by the States.

Thus, entertainment services shall suffer a lower tax incidence under GST. In addition to the benefit of lower headline rates of GST, the service providers shall be eligible for full input tax credits (ITC) of GST paid in respect of inputs and input services. Presently, such service providers are not eligible to avail of input credits in respect of VAT paid on domestically procured capital goods & inputs or of Special Additional Duty (SAD) paid on imported capital goods and inputs. Thus, while GST is a value added tax, entertainment tax, presently levied by the States is like a turnover tax.

9. Goods and Services Tax (GST) will lead to lower tax burden in several commodities including packaged cement, Medicaments, Smart phones, and medical devices, including surgical instruments

Ministry of Finance vide Press Release dated 23rd May, 2017 has announced that the rollout of Goods and Services (GST) Tax will bring benefits to the consumers due to reduced tax rates on various commodities such as packaged cement, medicaments, smart phones, and medical devices, etc.

Packaged cement attracts central excise duty of 12.5% + Rs.125 PMT and standard VAT rate of 14.5%. At these rates, the present total tax incidence works out to more than 29%. If we include tax incidence on account of CST, octroi, entry tax, etc., the present total tax incidence would work out to more than 31%. As against this, the proposed GST rate for cement is

28%.

There will be lesser tax burden in case of Medicaments, including Ayurvedic, Unani, Siddha, Homeopathic or Bio-chemic systems also. Medicaments, in general, attract 6% central excise duty and 5% VAT. Further, CST, octroi, entry tax, etc. are also applicable in general. At these rates, the present total tax incidence works out to more than 13%. As against this, the proposed GST rate on medicines, including ayurvedic medicines, is 12%.

Smart phone attracts 2% central excise duty [1% excise duty + 1% NCCD]. VAT rates vary from State to State from 5% to 15%. Weighted average VAT rate on smart phones works out to about 12%. Thus, the present total tax incidence on smart phones works out to more than 13.5%. As against this, the proposed GST rate for smart phones is 12%.

Similarly, medical devices, including surgical instruments, in general attract 6% central excise duty and 5% VAT. Along with CST, octroi, entry tax, etc., the present total tax incidence on them works out to more than 13%. As against this, the proposed rate under GST is 12%.

Puja samagri including havan samagri will be under the Nil category. However, exact formulation for the same is yet to be finalized.

10. Proposed GST Tax rates would be lesser than the prevailing taxes in case of Sugar, Tea and Coffee (other than instant coffee) and Milk Powder; Present incidence of taxes on sugar is 8% while proposed GST rate on Sugar is only 5% i.e. 3% less;

Similarly, present incidence of taxes on Milk Powder, Tea and Coffee (other than instant coffee) is 7% while proposed GST rate on these items is only 5%.

Proposed GST Tax rates would be much lesser than the prevailing incidence of taxes in case of Sugar, Tea and Coffee (other than instant coffee) and Milk Powder. Details in this regard are as follows:

Sugar: Sugar attracts specific central excise duty of Rs.71 per quintal plus Sugar Cess of Rs.124 per quintal, which translates to ad valorem rate of more than 6%. Including incidence on account of account of CST, octroi, and entry tax etc., the present total tax incidence would work out to more than 8%. As against this, the proposed GST rate on sugar is only 5% i.e. 3% less than present incidence of taxes.



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Tea and coffee (other than instant coffee): Tea and coffee attract Nil central excise duty and VAT rate of 5%. Considering embedded taxes in production of tea and coffee and the incidence on account of CST, octroi and entry tax etc., the present total tax incidence works out to more than 7%. As against this, the proposed GST rate for tea and coffee (other than instant coffee) is only 5%.

Milk powder: Milk powder attracts Nil central excise duty and 5% VAT. Considering embedded taxes in production of milk powder and the incidence on account of CST, octroi, and entry tax etc., the present total tax incidence works out to more than 7%. As against this, the proposed GST rate on milk powder is only 5%.

11. 'Authority' under the Prohibition of Benami Property Transactions Act, 1988

The Central Government hereby directs, in super-session of earlier issued notifications, that the Income-tax authorities under section 116 of the Income-tax Act, 1961, having headquarters at the places specified, to exercise the powers and perform the functions of the 'Authority' under the Prohibition of Benami Property Transactions Act, 1988 in respect of the territorial areas as specified in the notification and having jurisdiction vested in them. Through this notification, Income Tax Commissioners and Income Tax Officers are being appointed as Approving Authority, Initiating Officer and Administrator under the Benami Property Transactions Act, 1988.

<http://www.egazette.nic.in/WriteReadData/2017/176134.pdf>

12. Income Tax Department Steps-up actions under Benami Transactions (Prohibition) Amendment Act, 2016

Ministry of Finance vide Press Release dated 24th May, 2017 has initiated actions under the new Benami Transactions (Prohibition) Amendment Act, 2016 (the Act) w.e.f. 1st November, 2016. The Prohibition of Benami Property Transactions Rules, 2016 have been framed in this regard. As per the Act, Benami property includes movable or immovable property, tangible or intangible property, corporeal or incorporeal property. It empowers provisional attachment and subsequent confiscation of benami properties. It also allows for prosecution of the beneficial owner, the benamidar, the abettor

and the inducer to benami transactions, which may result in rigorous imprisonment up to 7 years and fine up to 25% of fair market value of the property.

13. Central Board of Direct Taxes (CBDT) Issues Clarification on furnishing Statement of Financial Transaction (SFT) & SFT Preliminary Response

CBDT vide its Press Release has clarified that filing of SFT in Form 61A is mandatory only if there is atleast one of the Transaction Type is reportable, by 31st May, 2017. Further CBDT clarifies that filing of "SFT Preliminary Response" provided on e-filing portal under Compliance tab of reporting persons is mandatory to indicate that a specified transaction type is not reportable for the year i.e. "SFT Preliminary Response" is mandatory to file even if there is no reportable transaction during the year. In case there are reportable transactions for the year, the reporting person/entity is required to register with the Income Tax Department and generate Income Tax Department Reporting Entity Identification Number (ITDREIN). Online filing of form 61A requires a valid class 2 or 3 digital signature certificate of person responsible for filing the same. Please refer "DSC Management Utility" manual under help section on how to generate the signature file, attaching the XML with signature and uploading of XML with signature file in e-Filing portal.

<http://www.incometaxindia.gov.in/Lists/Press%20Releases/Attachments/627/CBDT-Clarification-furnishing-SFT-Preliminary-Response-26-5-2017.pdf>

14. TDS and filing of ITR in case both the parents are dead of minor

Ministry of Finance, Central Board of Direct Taxes (CBDT) vide Notification No. 5/2017 dated 29th May, 2017 It has been brought to the notice of CBDT that in cases of minors whose both the parents have deceased, IOS deductors/Banks are clubbing the interest income accrued to the minor in the hand of grandparents and issuing IOS certificates to the grandparents, which is not in accordance with the law as the Income-tax Act envisages clubbing of minor's income with that of the parents only and not any other relative. Ideally in such type of situations, the income should be assessed in the hands of the minor and the income-tax returns be filed by the



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minor through his/ her guardian.

http://www.incometaxindia.gov.in/communications/notification/notification_5_2017_tds.pdf

15. Requirement of tax deduction at source in case of entities whose income is exempted under Section 10 of the Income-tax Act, 1961

Ministry of Finance, Central Board of Direct Taxes (CBDT) vide Circular No. 18/2017 dated 29th May, 2017 has specified the requirements of tax deduction at source in case of entities whose income is exempted under Section 10 of the Income Tax Act, 1961. It has been decided that in case of some of the funds mentioned in the circular or authorities or Boards or bodies, by whatever name called, referred to in section 10 of the Income-tax Act, whose income is unconditionally exempt under that section and who are also statutorily not required to file return of income as per section 139 of the Income-tax Act, there would be no requirement for tax deduction at source, since their income is anyway exempt under the Income-tax Act.

http://www.incometaxindia.gov.in/communications/circular/circular_18_2017.pdf

16. Central Board of Direct Taxes (CBDT) extends the due date for furnishing Statement of Financial Transaction (SFT) to 30th June 2017

Ministry of Finance vide Press Release dated 31st May, 2017 has extended the due date for furnishing Statement of Financial Transaction (SFT) to 30th June, 2017.

Section 285BA of the Income-tax Act, 1961 requires furnishing of a statement of financial transaction (SFT) for transactions prescribed under Rule 114E of the Income-tax Rules, 1962. The due date for filing such SFT in Form 61A in respect of specified financial transactions registered or recorded during Financial Year 2016-17 is 31st May 2017.

Representations were received in the Central Board of Direct Taxes (CBDT) requesting for extension of the date of filing of the said SFT on account of the teething problems and the volume of data to be compiled. In view of these representations and in order to remove inconvenience and to facilitate ease of compliance, the CBDT, in exercise of powers conferred under section 119 of the Act, have extended the due

date of furnishing of the SFT under Rule 114E (5) of the IT Rules, read with sub-section (1) of section 285BA of the Income Tax Act, 1961 in respect of specified financial transactions registered or recorded during Financial Year 2016-17, from 31st May 2017 to 30th June 2017.

17. Clarification regarding Declaration in Form 15G/15H to be furnished to the Deductor / Payer for each Financial Year

Ministry of Finance, Central Board of Direct Taxes (CBDT) vide Notification No. 6/2017 dated 30th May, 2017 has issued clarification regarding Declaration in Form 15G/15H to be furnished to the Deductor / Payer for each Financial Year. It is clarified that the amended new forms 15G & 15H vide CBDT Notification No. 76 dated 29th September, 2015 require the depositor to furnish the details of all investments up to that date including the current Fixed Deposit for which Form 15G/15H to enable the deductor/payer to ascertain, whether the Form 15G/15H can be accepted.

http://www.incometaxindia.gov.in/communications/notification/notification6_2017_tds.pdf

18. Procedure for acceptance of Statement of Financial Transactions from Sub-registrar office and Post Offices (SFT) as per Section 285BA of the Income Tax Act, 1961 read with Rule 114E of the Income Tax Rules, 1962

Ministry of Finance, Central Board of Direct Taxes (CBDT) vide Notification No. 7/2017 dated 30th May, 2017 has prescribed the additional procedure for acceptance of Statement of Financial Transactions from Sub-Registrar Office and Post Office – a) the filer will bring Form 61A (XML file) in Computer media along with duly signed physical copy of control sheet of Form 61A at TIN – FC for acceptance of the statement. The control sheet should be generated from the utility of Form 61 A. b) TINFCs will accept the computer media as well as the physical copy of control sheet and issue a temporary receipt. c) Subsequent to the validation of the XML file at NSDL e-Gov, provisional receipt / Non Acceptance Memo will be sent to email address mentioned in the temporary receipt.



OTHER LEGAL UPDATES

1. Real Estate (Regulation and Development) Act, 2016 - Governor to Exercise Powers for Union Territories

In pursuance of powers conferred under clause (1) of article 239 of the Constitution, the President hereby directs that the powers and the functions of the appropriate Government under the Real Estate (Regulation and Development) Act, 2016, other than the powers under section 82 and section 84, shall, subject to the control of the President and until further orders, be exercised and discharged, in relation to the Union territories of Andaman and Nicobar Islands, Chandigarh, Dadra and Nagar Haveli, Daman and Diu and Lakshadweep, by the Administrator or the Lieutenant Governor, by whatever name called, of the respective Union territory. Further, all powers & functions in relation to the National Capital Territory of Delhi shall, subject to the control of the President and until further orders, be exercised, by the Lieutenant Governor of Delhi.

<http://www.egazette.nic.in/WriteReadData/2017/175728.pdf>

2. Rajasthan Real Estate (Regulation and Development) Rules, 2017

Government of Rajasthan Urban Development vide Notification dated 1st May, 2017, in exercise of the powers conferred by section 84 of the Real Estate (Regulation and Development) Act, 2016 (Central Act No.16 of 2016), the State Government, hereby makes the Rajasthan Real Estate (Regulation and Development) Rules, 2017.

3. Labour Laws – EPF - Amendment to Paragraph 68 – J and 68-N of Employees’ Provident Fund Scheme, 1952

Ministry of Labour & Employment has amended Paragraph 68-J and Paragraph 68-N of Employees’ Provident Fund Scheme, 1952 which shall come into force from the date of its publication in the official Gazette i.e 25th April 2017. According to it, a member would only be required to submit a self-declaration, which has already been included in the composite claim form, to avail advance under the EPF Scheme. A member would no longer be required to submit any medical certificate or any other certificate or document or any proforma whatsoever to avail advances under paragraph 68-J or under paragraph 68-N of EPF Scheme 1952. This is in continuance of initiative taken by EPFO as part of its next phase of its e-governance reforms with a view to make its services available to its stakeholder in an efficient and

transparent manner.

http://www.epfindia.com/site_docs/PDFs/EPFO_PRESS_RELEASESES/Pressrelease_27042017.pdf

4. IRDA notifies IRDAI (Outsourcing of Activities by Indian Insurers) Regulations, 2017

IRDA has notified the IRDAI (Outsourcing of Activities by Indian Insurers) Regulations, 2017 which shall come into force from the date of their publication in the Official Gazette and supersede the Guidelines issued in this regard. These Regulations are applicable to all Insurers registered with the Insurance Regulatory and Development Authority of India excluding those engaged in reinsurance business. If an Insurer is engaged in both direct Insurance as well as Reinsurance business, these regulations are applicable only in respect of direct Insurance business of such Insurers. Further, these Regulations are applicable to outsourcing arrangements entered into by an Insurer with an outsourcing service provider located in India or outside India. The Board of the Insurer shall be responsible for the functions under these Regulations and Board of Directors shall approve and put in place an Outsourcing Policy. The Board of Directors, may delegate, the mandate of approving the outsourcing policy, to the Outsourcing Committee constituted under Regulation 8 of these Regulations.

<http://www.egazette.nic.in/WriteReadData/2017/175808.pdf>

5. Clarification on Recently Notified Maternity Benefit (Amendment) Act,2017

The Government has notified the Maternity Benefit (Amendment) Act,2017 on 28th March,2017 and the provisions of the Amendment Act have come into force with effect from 1st April,2017, except those relating to crèche facility {Section 4(1)} which would come into force from 01.07.2017. Keeping in view queries received from various quarters, the Ministry of Labour & Employment, on 12.04.2017, had issued certain clarifications on various provisions of Maternity Benefit (Amendment) Act, 2017. One of the clarifications issued by the Ministry stated that the enhanced maternity benefit, as modified by the Maternity Benefit (Amendment) bill, 2016 can be extended to women who are already under maternity leave at the time of



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enforcement of this Amendment Act. Having received further queries and to remove doubts, it is further clarified that it is mandatory on the part of employers to extend the benefit of enhanced maternity leave to those women workers who were already on maternity leave on the date of enforcement of the Maternity Benefit (Amendment) Act, 2017 i.e. as on 01.04.2017.

6. FCRA: Online uploading of Annual Returns from 2010-11 to 2014-15

Ministry of Home Affairs vide Public Notice dated 12th May, 2017 has allowed the online uploading of Annual Returns from 2010-11 to 2014-15 under the Foreign Contribution (Regulation) Act, 2010 without payment of penalty. It has been decided to give one final opportunity to all such associations/organizations to upload missing Annual Returns along with the requisite documents within a period of 30 days starting from 15th May, 2017 to 14th June, 2017.

https://fcraonline.nic.in/home/PDF_Doc/fc_Notice_12052017.pdf

7. FCRA: No Renewal of Registration of NGOs who not uploaded their Annual Returns

Ministry of Home Affairs vide Public Notice dated 12th May, 2017 it has been decided that no renewal of registration shall be granted unless the Annual returns are uploaded by the organizations.

https://fcraonline.nic.in/home/PDF_Doc/fc_Notice_12052017_01.pdf

8. Cabinet approves Pan-India implementation of Maternity Benefit Program

The Union Cabinet vide Press Release dated 17th May, 2017 has given ex-post facto approval to Pan-India implementation of Maternity Benefit Program which now has been extended to all districts of the country w.e.f. 01.01.2017.

The Maternity Benefit Program will provide compensation for the wage loss in terms of cash incentives so that the women can take adequate rest before and after delivery and not be deprived of proper nutrition.

Objective of the Scheme

i) To provide partial compensation for the wage loss in terms of cash incentives so that the woman can take adequate

rest before and after delivery of the first living child.

ii) The cash incentives provided would lead to improved health seeking behaviour amongst the Pregnant Women and Lactating Mother (PW&LM) to reduce the effects of under-nutrition namely stunting, wasting and other related problems.
Target Group

All eligible Pregnant Women and Lactating Mothers (PW&LM), excluding the Pregnant Women and Lactating Mothers who are in regular employment with the Central Government or State Government or Public Sector Undertakings or those who are in receipt of similar benefits under any law for the time being. It has been decided to give the benefit of Rs.5000/- to PW&LM in three installment for the birth of the first live child by MWCD and the remaining cash incentive as per approved norms towards Maternity Benefit under existing programmes after institutional delivery so that on an average, a woman will get ₹ 6000/-.

9. Start Up -Definition changes

Ministry of Commerce & Industry vide Press Release dated 25th May, 2017 has announced the changes in the definition of Startups. In order to promote entrepreneurship in the country, the Government of India has amended the definition of a Startup. The following significant changes have been made to the definition of Startups –

a) Age of Startup increased: Taking into account the long gestation period by Startups to establish, an entity shall be considered as a Startup up to seven years from the date of its incorporation/ registration (from earlier 5 years). However, in the case of Startups in the Biotechnology sector, the period shall be up to ten years from the date of incorporation/ registration.

b) No Letter of Recommendation required: No letter of recommendation from an incubator/industry association shall be required for either recognition or tax benefits

c) Potential of Job and Wealth Creation: The scope of definition has been broadened to include scalability of business model with potential of employment generation or wealth creation.



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10. Cabinet approves phasing out Foreign Investment Promotion Board (FIPB)

The Union Cabinet has given its approval to the phasing out of Foreign Investment Promotion Board (FIPB). The proposal entails abolishing the FIPB and allowing administrative Ministries/Departments to process applications for FDI requiring government approval. Henceforth, the work relating to processing of applications for FDI and approval of the Government thereon under the extant FDI Policy and FEMA, shall now be handled by the concerned Ministries/Departments in consultation with the Department of Industrial Policy & Promotion(DIPP), Ministry of Commerce, which will also issue the Standard Operating Procedure (SOP) for processing of applications and decision of the Government under the extant FDI policy. In addition, Foreign Investors will find India more attractive destination and this will result in more inflow of FDI. The move will provide ease of doing business and will help in promoting the principle of Maximum Governance and Minimum Government.

<http://pib.nic.in/newsite/PrintRelease.aspx>

11. Cabinet approves policy for providing preference to 'Make in India' in Government procurements

The Union Cabinet vide Press Release dated 24th May, 2017 has approved a policy for providing preference to 'Make in India' in government procurements. The new policy will give a substantial boost to domestic manufacturing and service provision, thereby creating employment. It will also stimulate the flow of capital and technology into domestic manufacturing and services. It will also provide a further thrust towards manufacture of parts, components, sub-components etc. of these items, in line with the vision of 'Make in India'.

The new policy is the reflection of the Government of India to encourage 'Make in India' and promote manufacturing and production of goods and services in India with a view to enhancing income and employment. Procurement by the Government is substantial in amount and can contribute towards this policy objective. Local content can be increased through partnerships, cooperation with local companies, establishing production units in India or Joint Ventures (JV) with Indian suppliers, increasing the participation of local

employees in services and by training them.

Details:

The policy will be implemented through an Order pursuant to Rule 153(iii) of the General Financial Rules, 2017 to provide purchase preference (linked with local content) in Government procurements. Under the policy, preference in Government procurement will be given to local suppliers. Local suppliers are those whose goods or services meet prescribed minimum thresholds (ordinarily 50%) for local content. Local content is essentially domestic value addition.

In procurement of goods for Rs. 50 lakhs and less, and where the Nodal Ministry determines that there is sufficient local capacity and local competition, only local suppliers will be eligible.

For procurements valued at more than Rs. 50 lakhs (or where there is insufficient local capacity/ competition) if the lowest bid is not from a non-local supplier, the lowest-cost local supplier who is within a margin of 20% of the lowest bid, will be given the opportunity to match the lowest bid. If the procurement is of a type that the order can be divided and given to more than one supplier, the non-local supplier who is the lowest bidder will get half of the order and the local supplier will get the other half if it agrees to match the price of the lowest bid. If the procurement cannot be divided, then the lowest cost local supplier will be given the order if it agrees to match the lowest bid.

Small purchases of less than Rs.5 lakhs are exempted. The order also covers autonomous bodies, government companies/entities under the government's control.

The policy also requires that specifications in tenders must not be restrictive e.g. should not require proof of supply in other countries or proof of exports in respect of previous experience. They must not result in unreasonable exclusion of local suppliers who would otherwise be eligible, beyond what is essential for ensuring quality or creditworthiness of the supplier.

The policy lays down a procedure for verification of local content relying primarily on self-certification. There will be penal consequences for false declarations. In some cases, verification by statutory / cost auditors etc. will be required.



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A Standing Committee in Department of Industrial Policy and Promotion will oversee the implementation of this order and issues arising therefrom, and make recommendations to Nodal Ministries and procuring entities.

The policy has been developed keeping in view the core principles of procurement including competitiveness and adhering to sound procurement practices and execution of orders. The policy would continue to maintain the balance between promoting 'Make in India' and ensuring timely, value-for-money products for the procuring entities.



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