



# ACQUISORY NEWS CHRONICLE

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*Don't let the fear of the losing be  
Greater than the excitement of winning .*

**Editor: Sunaina Jhingan**

**(Knowledge Manager with Acquisory)**

# CONTENT

J U L Y 2 0 1 7

<b><u>AT A GLANCE</u></b>	4
<b><u>ARTICLES</u></b>	5
• <b><u>GREEN BONDS – A NEW CONCEPT FOR INDIAN SECURITIES MARKET</u></b>	5
• <b><u>FINAL RULES ON VALUATION OF UNQUOTED SHARES NOTIFIED – AN ANALYSIS</u></b>	8
<b><u>LEGAL UPDATES</u></b>	11
• <b><u>RESERVE BANK OF INDIA (RBI)</u></b>	11
• <b><u>MINISTRY OF CORPORATE AFFAIRS (MCA)</u></b>	13
• <b><u>SECURITIES EXCHANGE BOARD OF INDIA (SEBI)</u></b>	15
• <b><u>TAXATION</u></b>	18
• <b><u>OTHERS</u></b>	27

## AT A GLANCE

ACQUISORY NEWS CHRONICLE JULY 2017

### ARTICLE

#### *Green Bonds – A New Concept for Indian Securities Market*

SEBI has allowed issuance and listing of green bonds to help companies raise funds through such bonds for investment in renewable energy space, solar, bioenergy, other sources of energy which use clean technology. A green bond is like any other bond where a debt instrument is issued by an entity for raising funds from investors. What differentiates a green bond from other bonds is that the fund raised through such offering are 'ear-marked' for use towards financing green projects. The move is aimed at helping meet the huge financing requirements worth USD 2.5 trillion for climate change actions in India by 2030.

#### *Final Rules on Valuation of Unquoted Shares Notified – An Analysis*

The Central Board of Direct Taxes (CBDT) notified the final rules prescribing 'fair market value' method for valuation of unquoted shares. The final rules state that the fair market value of unquoted equity shares will include the book value of all assets (other than jewellery, artistic works, shares, securities and immovable property) and the open market value of jewellery or artistic trust and shares/securities, value adopted for payment of stamp duty for immovable properties, excluding any amount paid as income tax and the book value of liabilities.

### LEGAL UPDATES

#### *MCA allows Director to notify at the start of the calendar year for e-mode participation in meeting.*

MCA notifies the amendment Rules for Companies Meetings of Board and its Powers. It has now been directed where in any director who intends to participate in the meeting through electronic mode may intimate about such participation at the beginning of the calendar year and such declaration shall be valid for one year.

#### *Companies Amendment Bill passed in Lok Sabha*

Lok Sabha has passed the Companies Amendment Bill, 2016. The Bill amends more than 40 provisions of the Companies Act, 2013. The major amendments proposed include simplification of the private placement process, rationalization of provisions related to loan to directors, omission of provisions relating to forward dealing and insider trading, doing away with the requirement of approval of the Central Government for managerial remuneration above prescribed limits, aligning disclosure requirements in the prospectus with the regulations to be made by SEBI, providing for maintenance of register of significant beneficial owners and filing of returns in this regard to the ROC and removal of requirement for annual ratification of appointment or continuance of auditor.

#### *Government decides to extend the time limit for filing intimation for Composition Levy (filing of intimation FORM GST CMP-01) up to 16th August, 2017; The period of applying for Cancellation of Registration is being extended up to 30th September, 2017.*

#### *DVAT: Due date extended to 17/08/2017 for Filing Q1 returns of 2017-18*

#### *Optional reporting of details of one Foreign Bank Account by the non-residents in refund cases.*

# Green Bonds – A new concept for Indian Securities Market

## Introduction

*“Green Bonds are the one of the kinds of debt instruments, wherein the issuer gets capital from the investors only if the investment (capital) is being raised to fund green projects relating to renewable energy or emission reductions etc. In order to regulate the Green Bonds market in India the Securities Exchange Board of India (SEBI) in May, 2017 came out with a circular stating the disclosure requirements for issuance and listing of Green Debt Securities in India. Such guidelines demonstrates SEBI’s recognition of the increasing need of dedicated funds for clean energy projects”*

Recent transactions have demonstrated the demand for and growth of green bonds in India.

Issuer	Amount
Yes Bank Limited 2015 First Green Bond issued	INR 1000 cr
CLP India for wind portfolio	INR 600 cr
Hero Future Energies First certified climate bond	INR 300 cr
Axis Bank Limited First international certified green bond listed on Landon Stock Exchange	INR 3000 cr approx.



## Green Debt Securities as Defined under the Circular

A debt security shall be considered as ‘Green’ or ‘Green Debt Securities’, if the funds raised through issuance of the debt securities are to be utilized for project(s) and/or asset(s) falling under any of the following broad categories-

- Renewable and sustainable energy including wind, solar, bioenergy, other sources of energy which use clean technology etc.
- Clean transportation including mass/public transportation etc.
- Sustainable water management including clean and/or drinking water, water recycling etc.
- Climate change adaptation
- Energy efficiency including efficient and green buildings etc.
- Sustainable waste management including recycling, waste to energy, efficient disposal of wastage etc.
- Sustainable land use including sustainable forestry and agriculture, afforestation etc.
- Biodiversity conservation
- Any other category as may be specified by SEBI, from time to time.

## Green Bonds – A new concept for Indian Securities Market

The scope of the definition has been kept wide to include most types of green projects and SEBI has been empowered to include any other category of projects from time to time.

### Disclosures in Offer Documents / Disclosure Documents for Green Debt Securities

The Green Bond Guidelines stipulate the following disclosures and other obligations for the issuing entity which are in addition to the typical disclosure norms applicable to any other type of bond issuance under Issue and Listing of Debt Securities (ILDS) Regulations:

- Statement on environmental objectives of the issue of the Green Debt securities;
- Brief details of the decision making process the issuer has followed or intends to follow in determining the eligibility of project(s) and/or asset(s) for which green bonds are being issued;
- Details of the system/procedures to be employed for tracking the deployment of the issue proceeds;
- Details of end utilization of the proceeds; and
- Appointment of an independent third – party reviewer / certifier, for reviewing / certifying the processes including project evaluation and selection criteria, project categories eligible for financing by Green Debt Securities.

*“The issuer of a green bond to make disclosure about environmental objectives of the issue of such securities in the offer documents. Besides, issuer also has to provide details of the systems and procedures to be employed for tracking the proceeds of the issue, including investments made and earmarked for eligible projects in the offer documents.”*

It is important to note that refinancing of existing green projects / assets has been recognized as an acceptable end-use. Further, the guidelines do not mandate an escrow mechanism to be installed but require the tracking procedure for deployment of funds to be detailed in the disclosures. Whilst the appointment of a third party reviewer/certifier is optional and the prerogative of the issuer, any such appointment should be disclosed in the offer documents.

### Continuous Disclosure Requirements

Apart from the disclosures to be made by the issuer as a part of the offer document/disclosure document, the issuer is required to follow a set of continuous obligations and periodically submit certain documents to the SEBI. The following disclosures are to be made:

- End-use Monitoring: Detailed reporting on utilisation of proceeds on the basis of any internal tracking done by the issuer where such internal tracking is verified by an external auditor and details of unutilised portions are required to be submitted on a half yearly basis and along with annual financial statements.
- Annual reporting: On an annual basis, along with the

submission of the annual report, the issuer is required to disclose the quantum of amount raised and a list of projects with brief descriptions, for which such amounts are raised. Specific details would not be required where such information is confidential. For such projects general sectoral information would suffice.

- Performance evaluation: The issuer is required to set out certain qualitative and quantitative performance indicators and the underlying assumptions used in preparation of such performance indicators and metrics. In the event the issuer is unable to ascertain the quantitative benefits/impact, reasons for non-ascertainment are to be provided.

# Green Bonds – A new concept for Indian Securities Market

## Responsibilities of Issuer

An issuer of Green Debt Securities is required to undertake additional responsibilities in determining whether a particular project/asset warrants such funding, maintain a decision-making process by disclosing a statement on environmental objectives, ensure that once the project(s)/asset(s) are funded they meet the desired objective and that the funds have only been used for the stated purpose.

*“A Green Bond is a regular fixed-income financial instrument for raising capital through the debt capital market with the key differentiator being the framework for utilization of the proceeds of such bonds. The Green Bond market is developing into a class of alternate investment spurred by the growing realization that urgent steps have to be taken to address a range of rising environmental issues. Creating solutions to these challenges will require new ideas and investment capital.*

*With the issuance of Green Bonds by Indian Corporates, there shall be significant positive multiplier effect due to investor diversification, increased capital inflow, and access to finance at various stages of the project lifecycle”*

## Conclusion

The Green Bond Guidelines formalize the regulatory framework for green bonds with the aim of addressing the critical financing needs of India’s rapidly expanding clean energy market. These guidelines with a benchmark for disclosure standards together with regular and continuous monitoring mechanisms to ensure that the funds are solely utilized for green projects. It is expected that this will widen access of the renewables sector to domestic and foreign capital and ease the strain on banks to lend and re-finance long term green projects.

The Green Bond Guidelines address the need for detailed disclosure norms in respect of the borrowing entity and the project for which the fund is required and ensures close monitoring of the utilisation of the bond proceeds. The Green Bond Guidelines will give an impetus and add immense credibility to an innovative financial product which has already established its success in both international and

domestic markets. This step will aid the corporate bond market as well as strengthen India’s global commitments at international climate change forums.

India is one of popular markets when it comes to issuance of Green Bonds. It featured in the 7th position in terms of issuances in 2016 with issuance of USD 2.7 billion, behind United States, France, China, Germany, Netherlands and Sweden. The future prospects of Green Bonds in India also seems bright, considering the ambitious target set by India’s Intended Nationally Determined Contribution (INDC) for achieving climate change object and funding requirement of USD 2.5 trillion that is envisaged by INDC for meeting the desired objectives. On such pretext, some definitive guidelines will certainly do a world of good for the issuers in the country.

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## Final Rules on Valuation of Unquoted Shares Notified – An Analysis

*“CBDT has notified the final rules prescribing ‘fair market value’ method for valuation of unquoted shares. The amended rules are called the Income-tax (20th Amendment), Rules, 2017 for Sections 56(2)(x) and 50CA, are broadly in line with the draft rules released by the CBDT in May. The amended rules shall come into force from April 1, 2018 and shall apply in relation to assessment year 2018-19 and subsequent years.”*

### Background

Finance Act, 2017 inserted two new provisions under the Act- clause (x) under Section 56(2) and section 50CA. The said sections were inserted to deal with a situation where the property, including unquoted shares, are being transacted for inadequate consideration much below the FMV of such property.

- Insertion of clause (x) in section 56(2) to provide that receipt of money or specified property by any person for inadequate consideration or without consideration from any person shall be subject to tax.
- Introduction of section 50CA to provide that where consideration for transfer of shares of a company other than a quoted share is less than the FMV of such share, the FMV determined as per the Rules shall be deemed to be the full value consideration for computing income under the head “capital gains”.



The CBDT had issued a draft notification in May 2017 that proposed to amend Rule 11UA and to introduce Rule 11UAA for computing the FMV of unquoted shares of a company for the purpose of Sections 56(2)(x) and 50CA respectively.

Thus, in case of transaction involving transfer of unquoted shares, the aforesaid computational mechanism seeks to tax the same differential amount of consideration and FMV in hands of both tax payers i.e., the transferor and transferee.

It is further important to note that clause (x) under section 56(2) has widened the scope of the provisions as the same becomes applicable for all taxpayers unlike provisions of clauses section (vii) and (viiia) of section 56(2) of the Act which were applicable to selected taxpayers.





## Final Rules on Valuation of Unquoted Shares Notified – An Analysis

### Final Rules Prescribed

For valuation of the unquoted shares, clause (x) under section 56(2), even after insertion, continued to make reference to provisions of Rule-11UA as was applicable for clauses section (vii) and (viiia) of section 56(2) of the Act. The CBDT, however, came out with the drafted amended Rule-11UA which were at variance with the erstwhile Rule-11UA.

The CBDT has now notified the amended Rule-11UA which provides for valuation of unquoted equity shares, as per the following formula:



$$\text{FMV of unquoted equity shares} = (A+B+C+D-L) \times \text{PV/PE}$$

where

*A - Book value of all the assets (except those mentioned at B, C and D below) as reduced by income tax paid (net of refund) and unamortised deferred expenditure*

*B - Fair market value of jewellery and artistic work based on the valuation report of a registered valuer*

*C - Fair market value of shares or securities as determined according to this rule*

*D - Stamp duty valuation in respect of any immovable property*

*L - Book value of liabilities, excluding paid up equity share capital, amount set apart for undeclared dividend, reserves and surplus, provision for tax, provisions for unascertained liabilities and contingent liabilities*

*PV - Paid up value of equity shares*

*PE - Total amount of paid up equity share capital as shown in the balance sheet.*

It is important to note that the book value has to be determined as per the 'balance sheet', which term has been defined under Rule-11U to mean the audited accounts of the company as drawn upto the 'valuation date'.

***“The rules state that the fair market value of unquoted equity shares will include the book value of all assets other than jewellery, artistic works, shares, securities and immovable property, and increased by the open market value of jewellery or artistic trust and shares, value adopted for payment of stamp duty for immovable properties. ”***



## Final Rules on Valuation of Unquoted Shares Notified – An Analysis

### The Impact

It has been observed that the erstwhile Rule 11UA(1)(c)(b) determined FMV of unquoted equity shares wholly on the basis of book value of the company without considering valuation impact relating to assets for which specific valuation rules were provided and thus, there was an inconsistency in direct and indirect valuation of certain assets. The amended rule 11UA(c)(b) removes above inconsistency and provides valuation adjustment for such assets in valuation of unquoted equity shares of company holding such assets.

Valuation of rest of the assets, including assets such as intangible assets, business undertaking, investment held in Limited Liability Partnership or partnership firm etc., and liabilities of the company continues to be valued at book value.

- Newly inserted Rules 11UAA provides valuation methodology to be adopted for the purpose of new section 50CA. It provides that equity shares covered thereunder should be valued as per above Rule 11UA(1)(c)(b) and preference shares should be valued as per Rule 11UA(1)(c)(c) which provides for valuation it will fetch if sold in open market.
- Final Rules have not addressed some issues which were necessary and were expected to be addressed:
- Adoption of actual fair value, in case the FMV of immovable property is less than the Stamp Duty Value;
- Reduction in relation to securities premium payable on redemption of preference shares,
- Rules being notified on 12<sup>th</sup> July, 2017 and being made effective from 1<sup>st</sup> April, 2017, relaxation should have been provided to transactions entered between 1<sup>st</sup> April, 2017 and 12<sup>th</sup> July, 2017.

The above rule, as notified, has been made applicable from April 1, 2017 and as such, all those transactions which took place during the period of April 1, 2017 and the date of notification of amended Rule 11UA, shall also be governed by such amended Rule 11UA. This, however, means that the Rule-11UA have been given a little retrospectivity.

That apart, the amended Rule 11UA mandates that stamp duty valuation (assessed/assessable) should be adopted for valuing any immovable property. The issue that would arise that whether such stamp duty valuation would still be adopted in case of a company having real estate business holding immovable property as stock-in-trade? If yes, then, it would have severe impact on such real estate companies.

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# RBI UPDATES

## ***1. Review of Government Securities Medium Term Framework for Investment made by FPI's-***

Reserve Bank of India (RBI) vide Circular No. 48 dated 3<sup>rd</sup> July, 2017 has reviewed the Framework for Investment by Foreign Portfolio Investors (FPIs) in Government Securities. Currently 'long term' category of FPI investors accounts for about 20% of the total investment by FPIs in Central Government securities. In order to recalibrate the Framework to meet the objective of a preference for long-term investors and also with a view to manage the macro-prudential implications of evolving capital flows, the MTF has been reviewed. Based on the review, the following modifications are made to the Framework.

- a. The overall cap of 5% for Central Government securities (G-Secs) and 2% for State Development Loans (SDLs) remain unchanged.
- b. Future increases in the limit for FPI investment in Central Government securities will be allocated in the following ratio - 75% for 'Long-Term' category of FPIs and 25% for 'General' category.
- c. The practice of transferring unutilized limits of 'Long-Term' category to 'General' category of FPIs is done away with.
- d. To harmonize the approach to FPI investments in SDLs with that for Central Government securities, future increases in SDLs would be in the ratio of 75% for 'Long Term' category and 25% for 'General' category of FPIs.

The revised limits will be effective from July 4, 2017.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11027&Mode=0>

## ***2. Master Circular – Facility for Exchange of Notes and Coins***

Reserve Bank of India (RBI) vide Notification No. RBI/2017-18/3 DCM(NE)No.G - 1/08.07.18/2017-18 dated 3<sup>rd</sup> July, 2017 has issued Master Circular on Facility for Exchange of Notes and Coins.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11028&Mode=0>

## ***3. Master Directions on Relief/Savings Bonds***

Reserve Bank of India (RBI) vide Notification No. RBI/2017-18/54 IDMD.CDD No.8/13.01.299/2017-18 dated 1<sup>st</sup> July, 2017 has issued master directions on reliefs/savings bonds.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11036&Mode=0>

## ***4. Master Direction – Reserve Bank of India (Relief Measures by banks in areas affected by Natural Calamities) Directions 2017***

Reserve Bank of India (RBI) vide Notification No. RBI/FIDD/2017-2018/55 Master Direction FIDD.CO.FSD.BC No.8/05.10.001/2017-18 dated 3<sup>rd</sup> July, 2017 has issued Master Direction – Reserve Bank of India (Relief Measures by banks in areas affected by Natural Calamities) Directions, 2017. The provisions of these Directions shall apply to every Scheduled Commercial Bank {including Small Finance Banks (SFBs) and excluding Regional Rural Banks(RRBs)} licensed to operate in India by Reserve Bank of India.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11037&Mode=0>

## ***5. Customer Protection – Limiting Liability of Customers in Unauthorised Electronic Banking Transactions***

Reserve Bank of India (RBI) vide Notification No. RBI/2017-18/15 DBR.No.Leg.BC.78/09.07.005/2017-18 dated 6<sup>th</sup> July, 2017 has revised the directions with regard to Customer Protection – Limited Liability of Customers in Unauthorized Electronic Banking Transactions. The same has been revised due to the increased thrust on financial inclusion and customer protection and considering the recent surge in customer grievances relating to unauthorized transactions resulting in debits to their accounts/ cards, the criteria for determining the customer liability in these circumstances.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11040&Mode=0>

## ***6. Point of Presence (PoP) Services under Pension Fund Regulatory and Development Authority (PFRDA) for National Pension System (NPS)***

Reserve Bank of India (RBI) vide Notification No. RBI/2017-18/16 DNBR(PD)CC.No.087/03.10.001/2017-18 dated 6<sup>th</sup> July, 2017, it has been decided that NBFCs with asset size of ₹ 500 crore and above which comply with the prescribed CRAR and made net profit in the preceding financial year be



## RBI UPDATES

permitted to undertake PoP services under PFRDA for NPS after registration with PFRDA. Eligible NBFCs extending such services shall ensure that the NPS subscription collected by them from the public is deposited on the day of collection itself (T+0 basis; T is the date of receipt of clear funds, either by cash or any other mode) with the Trustee Bank. The deposits shall be made in the Trustee Bank account opened for this purpose under the regulations framed by PFRDA for NPS. NBFCs conducting PoP services shall strictly adhere to the guidelines framed by PFRDA. Any violation of the instructions above would invite supervisory action, including but not limited to cancellation of permission to undertake PoP services.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11041&Mode=0>

### ***7. Master Circular – Detection and Impounding of Counterfeit Notes***

Reserve Bank of India (RBI) vide Notification No. RBI/2017-18/26 DCM (FNVD) G – 4/16.01.05/2017-18 dated 20<sup>th</sup> July, 2017 has issued Master Circular on Detection and Impounding of Counterfeit Notes.

<https://rbi.org.in/Scripts/NotificationUser.aspx?Id=11059&Mode=0>

### ***8. Master Direction - Lending to Micro, Small & Medium Enterprises (MSME) Sector***

Reserve Bank of India (RBI) vide Notification No. RBI/FIDD/2017-2018/56 Master Direction FIDD.MSME & NFS.12/06.02.31/2017-18 dated 24<sup>th</sup> July, 2017 has issued Master Direction on Lending to Micro, Small & Medium Enterprises (MSME) Sector. The provisions of these Directions shall apply to every Scheduled Commercial Bank {excluding Regional Rural Banks (RRBs)} licensed to operate in India by the Reserve Bank of India.

<https://rbi.org.in/Scripts/NotificationUser.aspx?Id=11060&Mode=0>





# MCA UPDATES

## **1. MCA Amends the Appointment and Qualification of Directors Rules**

Ministry of Corporate Affairs (MCA) vide Notification dated 5<sup>th</sup> July, 2017 has made amendment to Companies (Appointment and Qualification of Directors) Rules, 2014 (hereinafter referred to as the principal rules), rule 4 shall be numbered as sub rule (1) and after sub-rule (1) as so renumbered, the following sub-rule shall be inserted namely :-

"  
(2) The following classes of unlisted public company shall not be covered under sub-rule (1), namely:-

- (a) a joint venture
- (b) a wholly owned subsidiary; and
- (c) a dormant company as defined under section 455 of the Act.

[http://www.mca.gov.in/Ministry/pdf/CompaniesApptandQualificationofDirectorsAmdtRules\\_06072017.pdf](http://www.mca.gov.in/Ministry/pdf/CompaniesApptandQualificationofDirectorsAmdtRules_06072017.pdf)

## **2. MCA Amends Schedule IV of the Companies Act, 2013**

Ministry of Corporate Affairs (MCA) vide Notification dated 5<sup>th</sup> July, 2017 has made amendment to Schedule IV of the Companies Act, 2013.

In the Companies Act, 2013, in Schedule IV, -

(i) in paragraph III, in sub-para (12), for the words "acting within his authority",

the words "act within their authority" shall be substituted;

(ii) in paragraph VI, sub-para (2), for the words " a period of not more than one hundred and eighty days", the words "three months" shall be substituted;

(iii) in paragraph VII, in sub-para (1), for the words "in a year", the words "in a financial year" shall be substituted.

[http://www.mca.gov.in/Ministry/pdf/AmendmentIV\\_06072017.pdf](http://www.mca.gov.in/Ministry/pdf/AmendmentIV_06072017.pdf)

## **3. MCA Constitutes GST Facilitation Cell**

Ministry of Corporate Affairs (MCA) vide Office Memorandum dated 3<sup>rd</sup> July, 2017 has announced that it has formed the GST Facilitation Cell with an aim to ensure smooth and successful roll out of GST and will be in touch with all stakeholders as well as professional institutes.

[http://www.mca.gov.in/Ministry/pdf/OM\\_06072017.pdf](http://www.mca.gov.in/Ministry/pdf/OM_06072017.pdf)

## **4. MCA notifies Companies (Meetings of Board and its Powers) Second Amendment Rules, 2017**

MCA has notified the amended which may be called the Companies (Meetings of Board and its Powers) Second Amendment Rules, 2017 and shall come into force on the date of their publication in the Official Gazette i.e 13-07-2017. Amendments have been carried out to provide more clarity to Rule 3(3)(e), where in any director who intends to participate in the meeting through electronic mode may intimate about such participation at the beginning of the calendar year and such declaration shall be valid for one year. Further, such declaration shall not debar him from participation in the meeting in person in which case he shall intimate the company sufficiently in advance of his intention to participate in person. In Rule 3(11) additional requirement w.r.t draft minutes / proceedings so recorded shall be preserved by the company till the confirmation of the draft minutes are approved by the Board. The Committees of the Board as mentioned in Rule 6 of the said Rules shall now be directly linked with Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 and companies shall constitute an 'Audit Committee' and a 'Nomination and Remuneration Committee of the Board' accordingly.

[http://www.mca.gov.in/Ministry/pdf/CompaniesMeetingBoardPowersSecondRules\\_14072017.pdf](http://www.mca.gov.in/Ministry/pdf/CompaniesMeetingBoardPowersSecondRules_14072017.pdf)

## **5. Revision of E-Forms**

Form AOC-4, CRA-2 and 21A are likely to be revised on MCA21 Company Forms Download page w.e.f 21st Jul 2017. Stakeholders are advised to check the latest version before filing.

## **6. Clarification regarding applicability of exemption given to certain private companies under section 143(3)(i) of the Companies Act, 2013**

Ministry of Corporate Affairs (MCA) vide Circular No. 08/2017 dated 25<sup>th</sup> July, 2017 it has now been clarified regarding applicability of exemptions given to certain private companies w.r.t. the auditors of the companies to report as whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls. The exemption shall be applicable for those audit reports in respect of financial statements pertaining to financial



# MCA UPDATES

years commencing on or after 1<sup>st</sup> April, 2016, which are made on or after the date of notification dated 13<sup>th</sup> June, 2017.

[http://www.mca.gov.in/Ministry/pdf/GeneralCircular8\\_25072017.pdf](http://www.mca.gov.in/Ministry/pdf/GeneralCircular8_25072017.pdf)

## **7. MCA notifies Companies (Incorporation) Second Amendment Rules, 2017**

Ministry of Corporate Affairs (MCA) vide Notification dated 27<sup>th</sup> July, 2017 has notified the Companies (Incorporation) Second Amendment Rules, 2017 which shall come into force on the date of their publication in the official gazette i.e 27/07/2017. The complete process and procedure of Shifting of Registered office from one State to another has been changed. Rule 28, which deal with Shifting of registered office within same state but from one ROC to another, now there is no need to publish advertisement in newspaper and to issue individual notices to debenture holders, creditors and depositor. Further, Rule 30 which deal with Shifting of registered office from one state/UT to another has got some welcome changes like No hearing with Regional Director will be held, if no objection is received, Notice to creditors and advertisements in newspaper shall be made not more than 30 days before the date of filing Form INC-23. Earlier, it used to be "not more than 14 days before the date of hearing. Company needs to attach with Form INC-23 a copy of details w.r.t. each of the objection received and responses made by Company. As per amended rule, if no objection is received from any person, the application may be put up for orders without hearing and the order shall be passed within 15 days from the date of application. However, if objection is received, RD shall hold a hearing to get consensus after which, the RD shall pass order within 60 days of filing application.

<http://www.mca.gov.in/Ministry/pdf/CompaniesIncorporationSecondAmendmentRules2017.pdf>

## **8. Companies Amendment Bill passed in Lok Sabha**

Lok Sabha has passed the Companies Amendment Bill, 2016 on 27<sup>th</sup> July, 2017, the same was introduced in March last year.

The Bill amends more than 40 provisions of the Companies Act, 2013. The Bill was introduced based on the suggestions received from various stakeholders on the Companies Law Committee Report, which was published in February 2016

suggesting certain reforms to the Act.

The Bill simplifies the private placement process under Section 42, which currently prohibits an issue while an older one is pending, thus allowing companies to keep more than one issue of security open by simultaneously offering different kind of securities.

It further removes restrictions on layers of subsidiaries and investment companies which is currently limited to two.

Another interesting feature is that the Bill allows unrestricted object clause in the Memorandum of Association dispensing with 'detailed listing of objects, self-declarations to replace affidavits from subscribers to memorandum and first directors'.

Yet another important change is the replacing of Central Government approval under Section 197(1) of the Act with special resolution approval of shareholders in case the managerial remuneration crosses the prescribed thresholds.

Allows companies to advance a loan in relation to any person a director is interested in if the company passes a special resolution.

Provisions relating to forward dealing and insider trading from the Act have also been omitted, since they only apply to listed entities which are already covered under regulations promulgated by SEBI.





# SEBI UPDATES

## ***1. Investments by FPIs in Government Securities***

Securities Exchange Board of India (SEBI) vide Circular No. IMD/FPIC/CIR/P/2017/74 dated 4<sup>th</sup> July, 2017 has revised the limit for investment by Foreign Portfolio Investment (FPIs) in Government Securities for July-September 2017 quarter: Limit for FPIs in Central Government securities a. shall be enhanced to INR 187,700cr. b. Limit for Long Term FPIs (Sovereign Wealth Funds (SWFs), Multilateral Agencies, Endowment Funds, Insurance Funds, Pension Funds and Foreign Central Banks) in Central Government securities shall be revised to INR 54,300cr.

[http://www.sebi.gov.in/legal/circulars/jul-2017/investments-by-fpis-in-government-securities\\_35234.html](http://www.sebi.gov.in/legal/circulars/jul-2017/investments-by-fpis-in-government-securities_35234.html)

## ***2. Online Filing System for Foreign Venture Capital Investors***

Securities Exchange Board of India (SEBI) vide Circular No. SEBI/HO/IMD/DF1/CIR/P/2017/75 dated 6<sup>th</sup> July, 2017 SEBI has introduced an online system for filings related to Foreign Venture Capital Investors (FVCI). The online system can be used for application for registration, reporting and filing under the provisions of FVCI Regulations. All applicants desirous of seeking registration as a FVCI are now required to submit their applications online only, through SEBI Intermediary Portal at <https://siportal.sebi.gov.in>. Furthermore, all SEBI registered FVCIs are now required to file their compliance reports and submit applications for any request under the provisions of FVCI Regulations, through the online system only. The aforesaid online filing system for FVCI has been made operational from July 1, 2017.

[http://www.sebi.gov.in/legal/circulars/jul-2017/online-filing-system-for-foreign-venture-capital-investors\\_35246.html](http://www.sebi.gov.in/legal/circulars/jul-2017/online-filing-system-for-foreign-venture-capital-investors_35246.html)

## ***3. Guidelines for issuance of ODIs, with derivative as underlying, by the ODI issuing FPIs***

Securities Exchange Board of India (SEBI) vide Circular No. CIR/IMD/FPI&C/76/2017 dated 7<sup>th</sup> July, 2017 has issued guidelines for issuance of ODIs, with derivatives as underlying, by the ODI issuing FPIs. The ODI issuing FPIs are advised as follows:

The ODI issuing FPIs shall not be allowed to issue ODIs

with derivative as underlying, with the exception of those derivative positions that are taken by the ODI issuing FPI for hedging the equity shares held by it, on a one to one basis.

In the case of the existing ODIs which have been issued by the ODI issuing FPIs with derivatives as underlying, where the said underlying derivatives position are not for purpose of hedging the equity shares held by it, the ODI issuing FPI has to liquidate such ODIs latest by the date of maturity of the ODI instrument or by December 31, 2020, whichever is earlier. However, ODI issuing FPIs should endeavor to liquidate such ODI instruments prior to said timeline.

[http://www.sebi.gov.in/legal/circulars/jul-2017/guidelines-for-issuance-of-odis-with-derivative-as-underlying-by-the-odi-issuing-fpis\\_35266.html](http://www.sebi.gov.in/legal/circulars/jul-2017/guidelines-for-issuance-of-odis-with-derivative-as-underlying-by-the-odi-issuing-fpis_35266.html)

## ***4. Guidelines for participation/functioning of Eligible Foreign Investors (EFIs) and FPIs in IFSC – Amendment***

Securities Exchange Board of India (SEBI) vide Circular No. SEBI/HO/CIR/P/2017/79 dated 11<sup>th</sup> July, 2017 has made amendment to Guidelines for participation / functioning of Eligible Foreign Investors (EFIs) and FPIs in IFSC, it has now been decided that in case participation of an EFI, not registered with SEBI as an FPI, but desirous of operating in IFSC, a trading member of the recognized stock exchange in IFSC may carry out the due diligence on its own or it may rely upon the due diligence carried out by a bank, which is permitted by RBI to operate in IFSC, during the account opening process of an EFI.

[http://www.sebi.gov.in/legal/circulars/jul-2017/guidelines-for-participation-functioning-of-eligible-foreign-investors-efis-and-fpis-in-ifsc-amendment\\_35287.html](http://www.sebi.gov.in/legal/circulars/jul-2017/guidelines-for-participation-functioning-of-eligible-foreign-investors-efis-and-fpis-in-ifsc-amendment_35287.html)

## ***5. Amendment to Investor Grievance Redressal System and Arbitration Mechanism***

Securities Exchange Board of India (SEBI) vide Circular No. CIR/CDMRD/DEICE/CIR/P/2017/77 dated 11<sup>th</sup> July, 2017 has made amendment to Investor Grievance Redressal System and Arbitration Mechanism. In order to further enhance the effectiveness of grievance Redressal mechanism at Market Infrastructure Institutions (MIIs), based on the internal deliberations, discussions and feedback as received from MIIs, it has been decided to add/modify certain provisions in the



# SEBI UPDATES

existing process. In order to enhance transparency and also to provide choice to parties, Exchanges shall disseminate information w.r.t. brief profile, qualification, areas of experience/expertise, number of arbitration matters handled, pre-arbitration experience, etc. of the arbitrators on their website. In order to assist the arbitrators in pronouncing comprehensive and speedy awards, Exchanges shall make necessary arrangements in terms of hardware. There shall be separate panels for arbitration and appellate arbitration. Further, for appellate arbitration, at least one member of the panel shall be a Retired Judge. Exchanges shall obtain prior approval of SEBI before empanelment of arbitrators/appellate arbitrators.

[http://www.sebi.gov.in/legal/circulars/jul-2017/amendment-to-investor-grievance-redressal-system-and-arbitration-mechanism\\_35283.html](http://www.sebi.gov.in/legal/circulars/jul-2017/amendment-to-investor-grievance-redressal-system-and-arbitration-mechanism_35283.html)

## ***6. Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) (Amendment) Regulations, 2017***

Securities Exchange Board of India (SEBI) vide Notification dated 13<sup>th</sup> July, 2017 has issued Securities Exchange Board of India (Stock Brokers and Sub-Brokers) (Amendment) Regulations, 2017. In the Securities Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992 regulation 18C shall be omitted w.r.t restriction on share broking activities.

[http://www.sebi.gov.in/legal/regulations/jul-2017/securities-and-exchange-board-of-india-stock-brokers-and-sub-brokers-amendment-regulations-2017\\_35308.html](http://www.sebi.gov.in/legal/regulations/jul-2017/securities-and-exchange-board-of-india-stock-brokers-and-sub-brokers-amendment-regulations-2017_35308.html)

## ***7. SEBI (Debenture Trustees) (Amendment) Regulations, 2017***

Securities Exchange Board of India (SEBI) vide Notification dated 13<sup>th</sup> July, 2017 has issued SEBI (Debenture Trustees) (Amendment) Regulations, 2017. The amendments has been made with regard to certain definitions also regarding the amendments in Eligibility for being debenture trustee.

<http://www.sebi.gov.in/legal/regulations/jul-2017/sebi->

[debenture-trustees-amendment-regulations-2017\\_35310.html](http://www.sebi.gov.in/legal/regulations/jul-2017/securities-and-exchange-board-of-india-issue-and-listing-of-debt-securities-amendment-regulations-2017_35310.html)

## ***8. Securities and Exchange Board of India (Issue and Listing of Debt Securities) (Amendment) Regulations, 2017***

Securities Exchange Board of India (SEBI) vide Notification dated 13<sup>th</sup> July, 2017 has issued Securities and Exchange Board of India (Issue and Listing of Debt Securities) (Amendment) Regulations, 2017 a new regulation 20B has been inserted namely - "International Securities Identification Number. 20B. - Any issuer issuing debt securities on private placement basis, shall comply with the conditions relating to the issue of International Securities Identification Number, as may be specified by the Board from time to time.

[http://www.sebi.gov.in/legal/regulations/jul-2017/securities-and-exchange-board-of-india-issue-and-listing-of-debt-securities-amendment-regulations-2017\\_35314.html](http://www.sebi.gov.in/legal/regulations/jul-2017/securities-and-exchange-board-of-india-issue-and-listing-of-debt-securities-amendment-regulations-2017_35314.html)

## ***9. Disclosure of divergence in the asset classification and provisioning by banks***

Securities Exchange Board of India (SEBI) vide Circular No. CIR/CFD/CMD/80/2017 dated 18<sup>th</sup> July, 2017 has prescribed disclosures by banks in a prescribed format in certain cases of divergence in the asset classification and provisioning. all banks which have listed specified securities shall comply with the following: a)The banks shall disclose to the stock exchanges divergences in the asset classification and provisioning wherever:(I )the additional provisioning requirements assessed by RBI exceed 15 percent of the published net profits after tax for the reference period; and/or(ii)the additional Gross NPAs identified by RBI exceed 15 percent of the published incremental Gross NPAs for the reference period.

[http://www.sebi.gov.in/legal/circulars/jul-2017/disclosure-of-divergence-in-the-asset-classification-and-provisioning-by-banks\\_35339.html](http://www.sebi.gov.in/legal/circulars/jul-2017/disclosure-of-divergence-in-the-asset-classification-and-provisioning-by-banks_35339.html)



# SEBI UPDATES

## ***10. Investments by FPIs in Corporate Debt***

Securities Exchange Board of India (SEBI) vide Circular No. IMD/FPIC/CIR/P/2017/81 dated 20<sup>th</sup> July, 2017 has issued a Circular on Investments by FPIs in Corporate Debt. Earlier, SEBI has redefined the Corporate debt limit of INR 2,44,323 Cr for FPIs as the Combined Corporate Debt Limit (CCDL) for all foreign investments in Rupee denominated bonds issued both onshore and overseas by Indian corporates. The CCDL shall be available on tap for investment by foreign investors till the overall investment reaches 95%, after which, the auction mechanism shall be initiated for allocation of the remaining limits. The Circular also provides for the procedure to be followed in case the overall FPI investment in CCDL exceeds 95%.

[http://www.sebi.gov.in/legal/circulars/jul-2017/investments-by-fpis-in-corporate-debt\\_35362.html](http://www.sebi.gov.in/legal/circulars/jul-2017/investments-by-fpis-in-corporate-debt_35362.html)

## ***11. Online Filing System for Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs)***

Securities Exchange Board of India (SEBI) vide Circular No. SEBI/HO/IMD/DF1/CIR/P/2017/83 dated 24<sup>th</sup> July, 2017 has prescribed Online Filing System for Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs). The online system can be used for application for registration, reporting and filing under the provision of aforesaid Regulations. All applicants desirous of seeking registration as REITs or InvITs are now required to submit their applications online only, through SEBI Intermediary Portal at <https://siportal.sebi.gov.in>. Furthermore, all SEBI registered REITs and InvITs are now required to file/ submit/ apply for any request, as may be required under the provision of aforesaid Regulations & Circulars issued thereunder, through the online system only. The aforesaid online filing system has been made operational.

<http://www.sebi.gov.in/legal/circulars/jul-2017/online-filing-system-for-real-estate-investment-trusts-reits-and-infrastructure-investment-trusts-invits-35411.html>

## ***12. Securities and Exchange Board of India (International Financial Services Centres) Guidelines, 2015–Amendments***

Securities Exchange Board of India (SEBI) vide Circular No. SEBI/HO/CIR/P/2017/85 dated 27<sup>th</sup> July, 2017 has made amendments to Securities Exchange Board of India (International Financial Services Centres) Guidelines, 2015.

The amendment has been made with respect to eligibility and shareholding in Stock Exchanges, clearing corporations and Depositories and with regard to Governance of Stock Exchanges.

[http://www.sebi.gov.in/legal/circulars/jul-2017/securities-and-exchange-board-of-india-international-financial-services-centres-guidelines-2015-amendments\\_35452.html](http://www.sebi.gov.in/legal/circulars/jul-2017/securities-and-exchange-board-of-india-international-financial-services-centres-guidelines-2015-amendments_35452.html)

## ***13. Online Filing System for Alternative Investment Funds***

Securities Exchange Board of India (SEBI) vide Circular No. SEBI/HO/IMD/DF1/CIR/P/2017/87 dated 31<sup>st</sup> July, 2017 has issued circular with regard to Online Filing System for Alternative Investment Funds (AIF). The online system can be used for application for registration, reporting and filing in terms of the provisions of AIF Regulations and circulars issued thereunder. It has now been decided that all applicants desirous of seeking registration as an AIF are now required to submit their applications online only, through SEBI Intermediary Portal at <https://siportal.sebi.gov.in>. Also, all SEBI registered AIFs are now required to file their compliance reports and submit applications for any request under the provisions of AIF Regulations and circulars issued thereunder, through the online system only. The aforesaid online filing system for AIF has been made operational with immediate effect.

[http://www.sebi.gov.in/legal/circulars/jul-2017/online-filing-system-for-alternative-investment-funds\\_35480.html](http://www.sebi.gov.in/legal/circulars/jul-2017/online-filing-system-for-alternative-investment-funds_35480.html)





# TAXATION UPDATES

## ***1. Clarifications in respect of section 269ST of the Income-tax Act, 1961***

Ministry of Finance, Department of Revenue, Central Board of Direct Taxes (CBDT) vide Circular No. 22 of 2017 dated 3<sup>rd</sup> July, 2017 has issued clarifications in respect of Section 269ST of the Income Tax Act, 1961. The said section inter-alia prohibits receipt of an amount of two lakh rupees or more by a person, in the circumstances specified therein, through modes other than by way of an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account. Penal provisions have also been introduced by way of a new section 271DA, which provides that if a person receives any amount in contravention to the provisions of section 269ST, it shall be liable to pay penalty of a sum equal to the amount of such receipt.

It is clarified that in respect of receipt in the nature of repayment of loan by NBFCs or HFCs, the receipt of one instalment of loan repayment in respect of a loan shall constitute a 'single transaction' as specified in clause (b) of section 269ST of the Act and all the instalments paid for a loan shall not be aggregated for the purposes of determining applicability of the provisions section 269ST.

## ***2. CBDT amends form 3CD to revise reporting U/s. 269SS & 269T***

Ministry of Finance, Central Board of Direct Taxes (CBDT) vide Notification No. 58/2017 dated 3<sup>rd</sup> July, 2017 has amended Form 3CD to revise reporting under Section 269SS & 269T of the Income Tax Act, 1961. The amendment has been made to Income Tax Rules, 1962 and these rules may be called Income Tax (18<sup>th</sup> Amendment) Rules, 2017.

[http://www.incometaxindia.gov.in/communications/notifications/notification58\\_2017.pdf](http://www.incometaxindia.gov.in/communications/notifications/notification58_2017.pdf)

## ***3. PFRDA is observing NPS Service Fortnight from 27th June, 2017 to 11th July 2017 to promote and create awareness about the National Pension System (NPS) and improve the quality of services provided to the subscribers,***

Ministry of Finance, vide Press Release dated 6<sup>th</sup> July, 2017 in order to promote and create awareness about the National Pension System (NPS) and improve the quality of services provided to the subscribers, Pension Fund Regulatory and Development Authority (PFRDA) is observing NPS Service

Fortnight from 27<sup>th</sup> June, 2017 to 11<sup>th</sup> July 2017. During this period all the nodal offices, Pay and Account Offices and DDOs under the Central and State Governments, Points of Presence/ banks/ aggregators/ banking correspondents etc. involved with the acquisition and servicing of NPS subscribers across the country are required to provide all necessary assistance to the subscribers/ prospective subscribers, create awareness about the National Pension System, attend to their services requests, etc in a proactive manner.

It has been observed that the subscribers/employees in the Central Government and State Government are not fully aware of various functionalities/facilities available under the NPS. A large number of the queries/grievances received from these subscribers, pertain to elementary issues like non-receipt of Statement of Transaction, I-PIN, T-PIN etc. However, it is seen that majority of these information gaps are on account of non-availability of the latest contact details of the subscribers in the respective documents/PRANs etc.

In order to promote awareness regarding importance of updation of latest contact details in PRANs and to provide basic facilities on the spot, the NPS Service fortnight is being organised. On this occasion, besides sharing information on the range of functionalities and services now available under the NPS, the subscribers need to be apprised about the need for constant updation of data/information under various fields to enable the system to operate at its optimum service level and enable the subscribers to make the best use of the functionalities available under NPS.

The following activities need to be given focused attention during the NPS Service fortnight:

- Distribution of the NPS brochure to the subscribers
- Updation of subscriber details like email, mobile number, address, etc through S-2 form
- Conversion of non IRA to IRA compliant status by submission of physical subscriber registration forms
- Advising subscribers regarding benefits associated with PRAN being IRA compliant and updation of contact details
- Printing of Transaction Statement for the subscribers and distributing the same on the specific request of the subscriber
- Updation of nomination details
- Resolving pending grievances and exit cases



# TAXATION UPDATES

PFRDA has also advised separately the Central Recordkeeping Agency (CRA/NSDL) and all the nodal offices/ PAOs/ DDOs/PoPs/ Banks etc in this matter for actively assisting the subscribers during this campaign

#### ***4. Presentations on Concepts of GST: Registration, Migration, transition and Invoice: PIB***

Ministry of Finance, vide Press Release dated 7<sup>th</sup> & 8<sup>th</sup> July, 2017 in order to ease out the understanding on the basic concepts of GST has come out with the presentations on Composition and record keeping, Basic Concepts of Transition & Invoice and on Concepts of GST: Registration and Migration.

[Click here to see ppt on GST – PPT on Transition & Invoice](#)

[Click here to see PPT on GST – PPT on composition and record keeping](#)

[Click here to see PPT on GST – PPT on Registration and Migration.](#)

#### ***5. Clarification on Migration, New Registration, Opting for Composition Scheme and Issue of Bills of Supply.***

Ministry of Finance, vide Press Release dated 8<sup>th</sup> July, 2017 has issued clarification on Migration, New Registration, Opting for Composition Scheme and Issue of Bills of Supply. The Rules related to Registration and Composition Scheme have been notified on 19<sup>th</sup> June, 2017. These Rules have been brought into effect from 22<sup>nd</sup> June, 2017. The intent of notifying these rules is to start the process of issue of registration certificate, called Goods and Services Tax Identification Number (GSTIN), to taxpayers who have already been issued provisional ID for registration (PID) as well as to the new taxpayers.

Any person who has been granted PID and who opts for composition scheme, should submit an intimation of option in a prescribed form on GSTN on or before 21<sup>st</sup> July, 2017.

Any persons who has PID may submit the required documents on GSTN for getting the certificate of registration. It is clarified that a period of three months is allowed to complete this procedure i.e. the formalities can be completed on or before 22<sup>nd</sup> September, 2017. In the interim, they can issue tax invoice using the PID already allotted to them.

A person seeking fresh registration can apply for registration within thirty days from the date on which he becomes liable

for registration. They can also opt for composition scheme at the time of filing of registration form.

The applicant for grant of new registration can issue a bill of supply for supplying goods or services during the period from the date of liability to obtain registration till date of issuance of the registration certificate, if he has applied for registration within thirty days from the date he has become liable for registration. On grant of certificate of registration, he can issue revised tax invoices for the supplies made during this period.

#### ***6. Gifts up to a value of Rs 50,000/- per year by an employer to his employee are outside the ambit of GST. However, gifts of value more than Rs 50,000/- made without consideration are subject to GST, when made in the course or furtherance of business.***

Ministry of Finance vide Press Release dated 10<sup>th</sup> July, 2017, It is being reported that gifts and perquisites supplied by companies to their employees will be taxed under GST. Gifts upto a value of Rs 50,000/- per year by an employer to his employee are outside the ambit of GST. However, gifts of value more than Rs 50,000/- made without consideration are subject to GST, when made in the course or furtherance of business.

The question arises as to what constitutes a gift. Gift has not been defined in the GST law. In common parlance, gift is made without consideration, is voluntary in nature and is made occasionally. It cannot be demanded as a matter of right by the employee and the employee cannot move a court of law for obtaining a gift.

Another issue is the taxation of perquisites. It is pertinent to point out here that the services by an employee to the employer in the course of or in relation to his employment is outside the scope of GST (neither supply of goods or supply of services). It follows therefrom that supply by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST. Further, the Input Tax Credit (ITC) Scheme under GST does not allow ITC of membership of a club, health and fitness centre [section 17 (5) (b) (ii)]. It follows, therefore, that if such services are provided free of charge to all the employees by the employer then the same will not be subjected to GST, provided appropriate GST was paid when procured by the employer. The same would hold true for



# TAXATION UPDATES

free housing to the employees, when the same is provided in terms of the contract between the employer and employee and is part and parcel of the cost-to-company (C2C).

***7. No GST is applicable on free food supplied in anna kshetras run by religious institutions; prasadam supplied by religious places like temples, mosques, churches, gurudwaras, dargahs, etc. attracts Nil CGST and SGST or IGST, as the case may be.***

Ministry of Finance, vide Press Release dated 11<sup>th</sup> July, 2017 it has been clarified that no GST applies on free food supplied in anna kshetras run by religious institutions. Further, prasadam supplied by religious places like temples, mosques, churches, gurudwaras, dargahs, etc. attracts Nil CGST and SGST or IGST, as the case may be.

However, some of the inputs and input services required for making prasadam would be subject to GST. These include sugar, vegetable edible oils, ghee, butter, service for transportation of these goods etc. Most of these inputs or input services have multiple uses. Under GST regime, it is difficult to prescribe a separate rate of tax for sugar, etc. when supplied for a particular purpose.

Further, GST being a multi-stage tax, end use based exemptions or concessions are difficult to administer. Therefore, GST does not envisage end use based exemptions. It would, therefore, not be desirable to provide end use based exemption for inputs or input services for making prasadam or food for free distribution by religious institutions.

***8. GST - An Ordinance to provide for the extension of the Central Goods and Services Tax Act, 2017 and Integrated Goods and Services Tax Act, 2017 to the State of Jammu and Kashmir.***

An Ordinance to provide for the extension of the Central Goods and Services Tax Act, 2017 and Integrated Goods and

Services Tax Act, 2017 to the State of Jammu and Kashmir. The Goods and Services Tax has been introduced in the whole of India except the State of Jammu and Kashmir with effect from the 22<sup>nd</sup> day of June, 2017 and the Legislative Assembly of the State of Jammu and Kashmir has passed the resolution adopting the provisions of the Constitution (One Hundred and First Amendment) Act, 2016. The Constitution (Application to Jammu and Kashmir) Amendment Order, 2017 has been issued by the President extending the provisions of the Constitution (One Hundred and First Amendment) Act, 2016 to the State of Jammu and Kashmir and the State has proposed to implement the goods and services tax in the said State with effect from the 8<sup>th</sup> day of July, 2017. The provisions of the Central Goods and Services Tax Act, 2017 and Integrated Goods and Services Tax Act, 2017 are required to be extended to the State of Jammu and Kashmir. As Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action.

***9. Launch of Aaykar Setu - Another E-Initiative by CBDT***

Ministry of Finance vide its press release has launched Aaykar Setu - Another E-Initiative by CBDT. 'Aaykar Setu' is an android based application to directly communicate with the taxpayers, on a range of multiple informative and useful tax services aimed at providing tax information at their fingertips. The tax payers will also be able to receive regular updates regarding important tax dates, forms and notifications on mobile numbers registered with the ITD. All taxpayers who wish to receive such SMS alerts are advised to register their mobile numbers in the Aaykar Setu module.

<http://www.incometaxindia.gov.in/Lists/Press%20Releases/Attachments/639/PressRelease-Launch-AayakarSetu10-07-2017.pdf>





# TAXATION UPDATES

## ***10. Further clarification on tax in reverse charge on gold ornaments;***

***Sale of old jewellery by an individual to a jeweller will not make the jeweller liable to pay tax under reverse charge mechanism on such purchases;***

***However, if an unregistered supplier of gold ornaments sells it to registered supplier, the tax under RCM will apply.***

Ministry of Finance vide Press Release dated 13<sup>th</sup> July, 2017 has issued clarification with regard to purchase of old gold jewellery by a jeweller from a consumer will be subject to GST @3% under reverse charge mechanism in terms of the provisions contained in Section 9(4) of the CGST Act, 2017.

Section 9(4) of the said Act mandates that tax on supply of taxable goods (gold in this case) by an unregistered supplier (an individual in this case) to a registered person (the jeweller in this case) will be paid by the registered person (the jeweller in this case) under reverse charge mechanism. This provision, however, has to be read in conjunction with section 2(105) read with section 7 of the said Act. Section 2 (105) defines supplier as a person supplying the goods or services. Section 7 provides that a supply is a transaction for a consideration by a person in the course or furtherance of business.

Even though the sale of old gold by an individual is for a consideration, it cannot be said to be in the course or furtherance of his business (as selling old gold jewellery is not the business of the said individual), and hence does not qualify to be a supply per se. Accordingly, the sale of old jewellery by an individual to a jeweller will not attract the provisions of Section 9(4) and jeweller will not be liable to pay tax under reverse charge mechanism on such purchases. However, if an unregistered supplier of gold ornaments sells it to registered supplier, the tax under RCM will apply.

## ***11. No GST on Annual subscription/fees charged as lodging/boarding charges by educational institutions from its students for hostel accommodation;***

***Services provided by an educational institution to students, faculty and staff are fully exempt from GST.***

Ministry of Finance vide Press Release dated 13<sup>th</sup> July, 2017 it has been clarified that GST@18% will be levied on annual subscription/fees charged for lodging in hostels. This is not true. There is no change in tax liability relating to education and related services in the GST era, except reduction in tax rate

on certain items of education.

It may be mentioned that services provided by an educational institution to students, faculty and staff are fully exempt. Educational institution has been defined as an institution imparting

- (i) pre-school education and education up to higher secondary school or equivalent;
- (ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;
- (iii) education as a part of an approved vocational education course.

Thus, services of lodging/boarding in hostels provided by such educational institutions which are providing pre-school education and education up to higher secondary school or equivalent or education leading to a qualification recognised by law, are fully exempt from GST. Annual subscription/fees charged as lodging/boarding charges by such educational institutions from its students for hostel accommodation shall not attract GST.

## ***12. Services provided by the Housing Society Resident Welfare Association (RWA) not to become expensive under GST; There is no change made to services provided by the Housing Society (RWA) to its members in the GST regime.***

Ministry of Finance vide Press Release dated 13<sup>th</sup> July, 2017 it has been clarified that Services provided by the Housing Society Resident Welfare Association (RWA) not to become expensive under GST; There is no change made to services provided by the Housing Society (RWA) to its members in the GST regime. It may be mentioned that supply of service by RWA (unincorporated body or a registered non- profit entity) to its own members by way of reimbursement of charges or share of contribution up to an amount of five thousand rupees per month per member for providing services and goods for the common use of its members in a housing society or a residential complex are exempt from GST.

Further, if the aggregate turnover of such RWA is upto Rs.20 Lakh in a financial year, then such supplies would be exempted from GST even if charges per member are more than Rs. five thousand.



# TAXATION UPDATES

RWA shall be required to pay GST on monthly subscription/contribution charged from its members if such subscription is more than Rs. 5000 per member and the annual turnover of RWA by way of supplying of services and goods is also Rs. 20 lakhs or more. Under GST, the tax burden on RWAs will be lower for the reason that they would now be entitled to ITC in respect of taxes paid by them on capital goods (generators, water pumps, lawn furniture etc.), goods (taps, pipes, other sanitary/hardware fillings etc.) and input services such as repair and maintenance services. ITC of Central Excise and VAT paid on goods and capital goods was not available in the pre-GST period and these were a cost to the RWA.

Thus, there is no change made to services provided by the Housing Society (RWA) to its members in the GST era.

### ***13. Position regarding applicability of GST on Legal Services provided by individual Advocates including Senior Advocates and a Firm of Advocates.***

Ministry of Finance vide Press Release dated 15<sup>th</sup> July, 2017 has issued clarification regarding applicability of GST on legal services provided by advocates – whether it is in forward charge or reverse charge. It may be mentioned that there is no change made in taxation of legal services in the GST era.

In this context, it is further clarified that legal service has been defined to mean any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority.

It is further clarified that notification No. 13/2017-Central Tax (Rate) dated 28.6.2017 (Serial No. 2) specifies, inter alia, the following service under reverse charge mechanism,-

“Services supplied by an individual advocate including a senior advocate by way of representational services before any court, tribunal or authority, directly or indirectly, to any business entity located in the taxable territory, including where contract for provision of such service has been entered through another advocate or a firm of advocates, or by a firm of advocates, by way of legal services, to a business entity.”

The words “by way of legal services” are preceded and succeeded by comma. Therefore, the said words apply to an individual advocate including a senior advocate and a firm of

advocates. Legal services provided by either of them are liable for payment of GST under reverse charge by the business entity. The words “by way of representational services before any court, tribunal or authority....” appear in conjunction with senior advocate without a comma and merely describe the nature and mode of representational services provided by a senior advocate to a business entity. It, therefore, follows that legal services, which includes representational services, provided by advocates are under reverse charge.

### ***14. Increase in the Compensation Cess rate on cigarettes to make the total tax incidence on cigarettes in GST regime at par with the total tax incidence in pre-GST regime.***

Ministry of Finance vide Press Release dated 17<sup>th</sup> July, 2017 has issued clarification In respect of cigarettes, the Fitment Committee had recommended that in line with the weighted average VAT rate [28.7%], the GST rate on cigarettes may be kept at 28%. In addition, Compensation Cess may be levied on cigarettes at rates equal to 1.05 times the Specific Excise Duty Rates [net of NCCD]. However, this method of calibrating the Compensation Cess did not take into consideration the cascading of taxes [that is in earlier regime VAT being charged on value inclusive of the excise duty]. As a result, the total tax incidence on cigarettes in GST regime has come down, as compared to the total tax in pre-GST regime.

While any reduction in tax incidence on items of mass consumption would be welcome, the same would be unacceptable in case of demerit goods like cigarettes.

The GST Council in its 19<sup>th</sup> Meeting held today i.e. on 17.07.2017 reviewed the Compensation Cess rates on cigarettes and recommended the increase in the same with effect from 00 hours on 18<sup>th</sup> July, 2017 i.e. the midnight of 17<sup>th</sup> and 18<sup>th</sup> July, 2017.



# TAXATION UPDATES

***15. Reserve Bank of India (RBI) has constituted an Internal Advisory Committee (IAC), which arrived at an objective, non-discretionary criterion for referring accounts for resolution under Insolvency and Bankruptcy Code, 2016 (IBC).***

Ministry of Finance vide Press Release dated 18<sup>th</sup> July, 2017, it has been provided that Reserve Bank of India (RBI) has constituted an Internal Advisory Committee (IAC), which arrived at an objective, non-discretionary criterion for referring accounts for resolution under Insolvency and Bankruptcy Code, 2016 (IBC). In particular, the IAC recommended for IBC reference all accounts with fund and non-fund based outstanding amount greater than Rs.5000 crore, with 60% or more classified as non-performing by banks as of March 31, 2016.

Accordingly, Reserve Bank of India has issued directions to certain banks for referring 12 accounts, qualifying under the aforesaid criteria, to initiate insolvency process under the Insolvency and Bankruptcy Code, 2016. As regards the other non-performing accounts which do not qualify under the above criteria, the IAC recommended that banks should finalize a resolution plan within six months. In cases where a viable resolution plan is not agreed upon within six months, banks should be required to file for insolvency proceedings under the IBC.

However, the names and details of borrowers are not disclosed as prescribed under section 45E of the Reserve Bank of India (RBI) Act, 1934 and Banking Laws, which provide for the obligation of a bank or financial institution to maintain secrecy about the affairs of its constituents.

In respect of the above-mentioned 12 accounts, Reserve Bank of India has advised the banks to make provisions as under:

“The minimum provisions required to be maintained against the said accounts would be the higher of the following:

- (a) 50 per cent for secured portion of the outstanding balance plus 100 percent for the unsecured portion.
- (b) Provisions required to be maintained as per the extant Asset classification norms.”

The additional provisions, as required in each case, should be proportionately spread over the remaining quarters of the current financial year, starting Q2, so that the required provisions are fully in place by March, 2018.

The effect of the provisioning requirement prescribed in

respect of the said 12 accounts would vary for each account and for the respective banks depending upon the current asset classification, current provisions held, security coverage, etc.

***16. GST exemption for products used by differently abled people***

Ministry of Finance, vide Press Release dated 18<sup>th</sup> July, 2017 has issued clarification with respect to GST exemption for products used by differently abled people.

Specified assistive devices, rehabilitation aids and other goods for differently abled people attract the lowest (non-Nil) GST rate of 5%. Most of the inputs for such goods attract 18% GST. Nil GST on any goods zero rates inputs, while domestic goods continue to bear input taxes. Further, for any goods which attract GST rate (other than Nil) which is lower than the inputs for such goods, the Central Goods and Services Tax Act, 2017 (GST law) provides for refund of accumulated input tax credit. Thus, 5% GST on assistive devices, rehabilitation aids, their manufacturers would enable their domestic manufacturers to claim refund of any accumulated Input Tax Credit. That being so, the 5% concessional GST rate on these devices/equipment would result in reduction of the cost of domestically manufactured goods, as compared to the pre-GST regime.

As against that, if these devices/equipments are exempted from GST, then while imports of such devices/equipments would be zero rated, domestically manufactured such devices/equipments will continue to bear the burden of input taxes, increasing their cost and resulting in negative protection for the domestic value addition.

***17. Government clarifies that accommodation in any hotel, including 5-star hotels, having a declared tariff of a unit of accommodation of less than INR 7500 per unit per day, will attract GST @ 18% ; Star rating of hotels is, therefore, irrelevant for determining the applicable rate of GST.***

Ministry of Finance, vide Press Release dated 18<sup>th</sup> July, 2017, it is hereby clarified that accommodation in any hotel, including 5-star hotels, having a declared tariff of a unit of accommodation of less than INR 7500 per unit per day, will attract GST @ 18%. Star rating of hotels is, therefore, irrelevant for determining the applicable rate of GST.



# TAXATION UPDATES

***18. Government decides to extend the time limit for filing intimation for Composition Levy (filing of intimation FORM GST CMP-01) up to 16th August, 2017; The period of applying for Cancellation of Registration is being extended up to 30th September, 2017.***

Ministry of Finance vide Press Release dated 22<sup>nd</sup> July, 2017 in order to ease the compliance burden of provisionally migrated small taxpayers opting to pay tax under the Composition scheme, it has been decided to extend the time limit for filing intimation for Composition levy (filing of intimation FORM GST CMP-01) up to 16th August, 2017.

Similarly, the taxpayers who were provisionally migrated by virtue of being registered under the existing laws, but who are no longer required to be registered under GST, the period of applying for Cancellation of Registration is being extended up to 30th September, 2017. Relevant notifications are being issued.

***19. Modification of Circular No.1 of 2014 in view of substitution of Service Tax by Goods and Services Tax (GST).***

The Central Board of Direct Taxes (the Board) had earlier issued Circular No. 1/2014 dated 13.01.2014 clarifying that wherever in terms of the agreement or contract between the payer and the payee, the Service Tax component comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source on the amount paid or payable without including such Service Tax component. In the light of the fact that even under the new GST regime, the rationale of excluding the tax component from the purview of TDS remains valid, the Board hereby clarifies that there is no need to deduct TDS on GST component if shown separately on invoice. Wherever in terms of the agreement or contract between the payer and the payee, the component of 'GST on services' comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source, on the amount paid or payable without including such 'GST on services' GST for these purposes shall include Integrated Goods and Services Tax, Central Goods and Services Tax, State Goods and Services Tax and Union Territory Goods and Services Tax. Further, for the purposes of this Circular, any

reference to 'service tax' in an existing agreement or contract which was entered prior to 01.07.2017 shall be treated as 'GST on services' with respect to the period from 01.07.2017 onward till the expiry of such agreement or contract.

[http://www.incometaxindia.gov.in/communications/circular/circular\\_23\\_2017.pdf](http://www.incometaxindia.gov.in/communications/circular/circular_23_2017.pdf)

***20. Optional reporting of details of one foreign bank account by the non-residents in refund cases***

Ministry of Finance vide Press Release dated 24<sup>th</sup> July, 2017 has provided that a facility has been provided in return utility for reporting of details of bank account by non-residents, who do not have bank account in India and who are claiming income-tax refund. Therefore, the non-residents who are not claiming refund or non-residents who are claiming refund but having a bank account in India are not required to furnish details of their foreign bank account in the return of income. However, the non-residents, who are claiming income-tax refund and not having bank account in India may, at their option, furnish the details of one foreign bank account in the return of income for issuance of refund.

***21. Issues arising from the implementation of Minimum Alternate Tax (MAT) provisions relating to Indian Accounting Standards (Ind AS) compliant companies.***

Ministry of Finance vide Press Release dated 25<sup>th</sup> July, 2017 has announced the issuance of circular in the form of FAQs have been accepted by the Government and circular in the form of FAQs has been issued vide No 24/2017 dated 25.07.2017.

Finance Act, 2017 amended the provisions of section 115JB of the Income-tax Act, 1961 ('the Act') so as to provide the framework for computation of book profit for the purposes of levying Minimum Alternate Tax (MAT) in case of Indian Accounting Standards (Ind AS) compliant companies in the year of adoption and thereafter. This framework was specified on the basis of the recommendations of the MAT-Ind AS Committee ('the Committee') constituted for this purpose. Subsequently, representations have been received from various stakeholders regarding certain issues arising from the





# TAXATION UPDATES

implementation of provisions of amended section 115JB of the act. These representations were forwarded to the Committee for examination. After detailed examination of implementation issues raised by the stakeholders, the Committee vide report dated 17th June, 2017 has recommended certain amendment to the provisions of section 115JB of the Act with effect from 1st April, 2017 (i.e. A.Y. 2017-18) which is the date of coming into effect of the amendments made in section 115JB of the Act by the Finance Act, 2017.

## ***22. Cabinet approves revision of guidelines of Sovereign Gold Bonds Scheme***

Ministry of Finance vide Press Release dated 26<sup>th</sup> July, 2017 has given approval for revision of guidelines of Sovereign Gold Bonds (SGB) Scheme with a view to achieve its intended objectives.

Two sets of changes have been made in the scheme:

I. Specific changes have been made in the attributes of the scheme to make it more attractive, mobilise finances as per the target and reduce the economic strains caused by imports of gold and reduce the Current Account Deficit (CAD).

II. Flexibility has been given to Ministry of Finance to design and introduce variants of SGBs with different interest rates and risk protection / pay-offs that would offer investment alternatives to different category of investors. Ministry of Finance (the issuer) has been delegated this power to amend / add to the features of the Scheme with approval of the Finance Minister to reduce the time lag between finalizing the attributes of a particular tranche and its notification. Such flexibility will be effective in addressing the elements of competition with new products of investment, to deal with very dynamic and sometimes volatile market, macro-economic and other conditions such as gold price.

Following specific changes in the scheme have been approved:

i. The investment limit per fiscal year has been increased to 4 kg for individuals, 4 Kg for Hindu Undivided Family (HUF) and 20 Kg for Trusts and similar entities notified by the Government from time to time.

ii. The ceiling will be counted on Financial year basis and will include the SGBs purchased during the trading in the secondary market.

iii. The ceiling on investment will not include the holdings as collateral by Banks and Financial institutions.

iv. SGBs will be available 'on tap'. Based on the consultation with NSE, BSE, Banks and Department of Post, features of product to emulate 'On Tap' sale would be finalised by Ministry of Finance.

v. To improve liquidity and tradability of SGBs, appropriate market making initiatives will be devised. Market makers, could be commercial banks or any other public sector entity, such as MMTC or any other entity as decided by Gol.

vi. The Government may, if so felt necessary, allow higher commission to agents.

## ***23. #Income Tax: Returns Can Now Be Filed Till August 5, Deadline Extended***

The last date for filing of Income Tax Returns (ITRs) for the financial year 2016-17 has been extended to August 5, 2017.

## ***24. DVAT: Due date extended to 17/08/2017 for Filing Q1 returns of 2017-18***

Government of NCT of Delhi Department of Trade and Taxes vide Circular No. 11 dated 28<sup>th</sup> July, 2017 has extended the last date of filing online / hard copy of first quarter return for the year 2017-18 in Form DVAT 16, DVAT 17 and DVAT 48 up to 17<sup>th</sup> August, 2017.



# TAXATION UPDATES

## ***25. CBEC issues clarification regarding exports under claim for drawback in the GST Scenario***

Central Board of Excise and Customs (CBEC) vide Circular no. 32/2017 dated 27<sup>th</sup> July, 2017 has issued Clarification regarding exports under claim for drawback in the GST scenario. As, the higher All Industry Rates (AIRs) under Duty Drawback scheme viz. rates and caps available under columns (4) and (5) of the Schedule of All Industry Rates of Duty Drawback have been continued for a transition period of three months i.e. 1.7.2017 to 30.9.2017. The Government has amended Note and Condition 12A of Notification 131/2016-Cus (N.T.) and dispensed with the requirement of the certificate from GST officer to claim higher rate of drawback. To facilitate exports, the higher rate of drawback can be claimed on the basis of self-declaration to be provided by exporter in terms of revised Note and Condition 12A of aforesaid Notification. Another aspect that may be noted is that there could be cases where export goods had been cleared from factory, warehouse, etc. prior to 1.7.2017 but let export order has not been issued before 1.7.2017. Such goods are not supplies under GST and accordingly, said Note and Condition 12A is not applicable. For such goods, the declaration from exporter or certificate from the then Central Excise officer as

applicable in terms of Note and Condition 12 of said Notification No. 131/2016-Customs (NT) shall continue. In order to further facilitate exporters, it may be ensured that all pending drawback claims are disposed of on priority and zero pendency be maintained and Supplementary claims whenever filed should also be processed on priority.

<http://www.cbec.gov.in/resources/htdocs-cbec/customs/cs-circulars/cs-circulars-2017/circ32-2017cs.pdf>





## OTHER UPDATES

### *Cabinet approves Labour code on Social Security 2017*

Ministry of Labour & Employment vide Press Release dated 26th July, 2017, on the recommendation of Second National Commission on Labour the Ministry has taken steps for drafting four Labour Codes on Wages; Industrial Relations; Social Security & Welfare; and Safety and Working Conditions respectively, by simplifying, amalgamating and rationalizing the relevant provisions of the existing Central Labour Laws. Ministry of Labour and Employment has prepared a preliminary draft on Labour Code on Social Security 2017 by simplifying, amalgamating and rationalizing the relevant provisions of the 15 existing Central Labour Laws and placed on the website of the Ministry on 16.3.2017, inviting comments of the public/stakeholders. The provisions of the Code on Social Security 2017 are under consideration.



# Contact Us

## Delhi-NCR

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

## Mumbai

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

## Jaipur

1st F, B-144 A,  
Mangal Marg,  
Bapu Nagar,  
Jaipur  
Rajasthan 302015  
Tel: + 91 141 4050920  
Fax: +91 141 4050 921

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- Tax Consulting (Direct & Indirect)

Krishan Goyal

[krishan.goyal@acquisory.com](mailto:krishan.goyal@acquisory.com)

Rajarshi Datta

[rajarshi.datta@acquisory.com](mailto:rajarshi.datta@acquisory.com)

Divya Vij

[divya.vij@acquisory.com](mailto:divya.vij@acquisory.com)

Aftab Shaikh

[aftab.shaikh@acquisory.com](mailto:aftab.shaikh@acquisory.com)

Website- [www.acquisory.com](http://www.acquisory.com)

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