



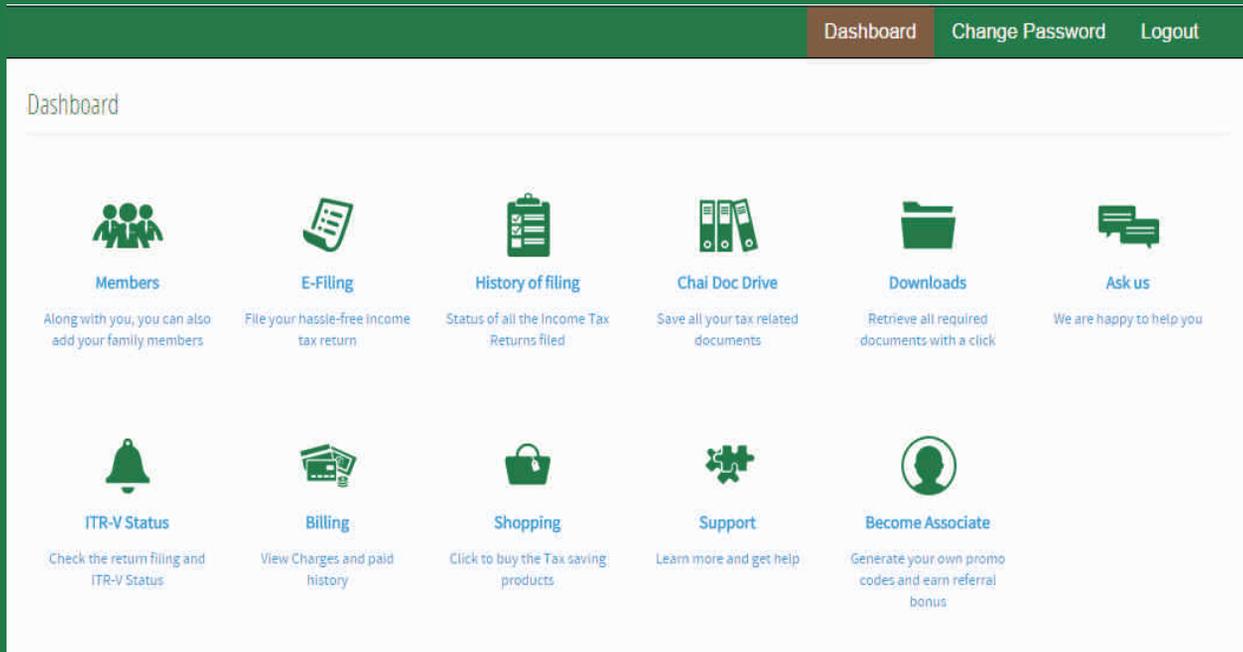
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Digest
An attempt to share knowledge

By

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COMPANIES ACT, 2013

CONTRIBUTIONS TO POLITICAL PARTIES BY COMPANIES

Contributed by Venkata Krishna & Vetted by CS D V K Phanindra |

Introduction:

Political parties have become a bridge between the Government and the Citizens. Indian elections are famous for festival-like atmosphere, full of colour, sound, and enormous gatherings of people in election rallies, the funds for which largely come from contributions to political parties by the Companies. It is essential to have comprehensive and transparent accounting methods and systems for the contributions, so that the true financial position of the parties could be revealed. To answer this, one needs to understand the following sections in different Enactments in India as detailed below:

Sec. 29B of the Representation of the People Act, 1951:

Every political party is entitled to accept contribution offered to it by any person or company voluntarily, other than a Government company [Sec. 2(45) of the Companies Act, 2013]. No political party is allowed to accept any contribution from any foreign source as defined under Sec 2 of the Foreign Contribution (Regulation) Act, 1976.

Sec. 29C of the Representation of the People Act, 1951:

Political parties are required to declare the details of contributions of more than Rs. 20,000 and prepare a report for the same in each financial year. Here, contribution includes contributions from both private persons as well as companies.

It is made mandatory for the political parties to submit to the Election Commission of India a list of donations they receive of over Rs. 20,000, giving names and addresses of the donors. If they fail to do so, then such political parties are disentitled from getting any tax relief. *[In the Budget Speech 2017-18, it was mentioned that Government is planning to reduce the limit of Rs. 20,000 to Rs. 2,000. However, such reduction is not referred elsewhere].*

Sec. 182 of the Companies Act, 2013 (as amended by the Finance Act, 2017):

1. Eligible Company:

Company which has been existence for a minimum period of three Financial Years but does not include Government Company.

2. Amount of Contribution:

- ❖ Companies can contribute any amount to the Political parties. However, the contribution shall not be made except by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account. And also, a company may make contribution through any instrument, issued pursuant to any scheme notified under any law for the time being in force, for contribution to the political parties.

3. Resolution of the Board of Directors:

Such contribution shall be made by a company only after passing a resolution at the meeting of Board of Directors and such resolution shall be deemed to be justification in law for the making the contribution.

3. Inclusions in Contributions:

- ❖ any donation or subscription or contribution given by a company on its behalf or on its account to a person who, to its knowledge, is carrying on any activity which, at the time at which such donation or subscription or payment was given or made, can reasonably regarded as likely to affect public support for a political party shall also be deemed to be contribution of the amount of such donation, subscription or payment to such person for a political purpose.
- ❖ the amount of expenditure incurred, directly or indirectly, by a company on an advertisement in any publication, being a publication in the nature of souvenir, brochure, tract, pamphlet or the like, shall also be deemed-
 - where such publication is by or on behalf of a political party, to be a contribution of such amount to such political party and
 - Where such publication is not by or on behalf of, but for the advantage of a political party, to be a contribution for a political purpose.

4. Disclosure requirements:

- ❖ Company shall disclose in its profit and loss account any amount or amounts contributed by during the financial year to which that account relates, giving particulars of the total amount contributed [Sec. 182(3) of the Companies Act, 2013]. There is no requirement of disclosure as to the details of the political party.
- ❖ However, Companies contributing any amount or amounts to an 'Electoral Trust Companies' for contributing to a political party or parties are not required to make disclosures required under sec. 182(3) of the Companies Act, 2013 [Pursuant to the Ministry General circular No. 19/2013]. It will be sufficient, if the accounts of the company disclose the amount released to an Electoral Trust Company.
- ❖ Electoral Trust Companies will be required to disclose all amounts received by them from other companies/sources in their Books of Accounts and also disclose the amount or amounts contributed by them.

5. Punishment for Violation:

- ❖ Company shall be punishable with fine which may extend to five times the amount so contributed and
- ❖ Every officer of the Company who is in default shall be punishable with imprisonment for a term which may extend to six months and with fine which may extend to five times the amount so contributed.

Electoral Trust:

The government enacted the 'Electoral Trusts Scheme, 2013' in order to streamline the process of funding and to ensure the transparency of corporate funding to the political parties' poll expenses. According to this scheme, Electoral Trust companies were set up and were promised tax benefits in proportion to the funds they provided to various political outfits. The Corporate Affairs Ministry amended its 'Name Availability Guidelines' for the companies to enable registration of non-profit companies. The companies were required to have the phrase 'Electoral Trust' before their names and get registered, so as to differentiate them from other companies, as allowed under Sec 25 of the Companies Act, 1956 [Sec. 8 of the Companies Act, 2013] under the Electoral Trusts Scheme, 2013. The companies were supposed to have an affidavit to the effect that they would be limited only for the purpose of registration of companies under the Electoral Trust Scheme of Central Board of Direct Taxes.

The companies were allowed tax benefits on one condition, i.e. only if they distribute 95% of total contributions received by them in any financial year to the registered political parties within that year itself. The Electoral Trust companies were not allowed to accept contributions from foreign citizens or companies. They need to take the PAN number of all contributors who were resident Indians and passport number of NRI citizens at the time of receiving the contribution.

Sec. 80GGB & 80GGC of the Income Tax Act, 1961:

Deduction for contributions made to any political party or Electoral Trust is not allowed if the contribution is made in Cash.

Conclusion:

There is a grave need for a strict mechanism for ensuring that there is transparency and accountability on the part of the political parties. In order to put forward a true picture of the financial position of the political parties, there must be a standardized procedure and framework of reports. Institute of Chartered Accounts of India (ICAI) has taken a step towards this direction on the request of the Election Commission of India (ECI) and urged that the financial statements of political parties should conform to 'Guidance Note on Accounting and Auditing of Political Parties' as mandated by 'Guidelines on transparency and accountability in party funds and election expenditure' issued by Election Commission of India.

If the system in India is to be made transparent and corrupt free then it is good to begin the same from the transparency in financials of Political parties. However, the present move of Government that the Political Donations by Companies should be made only by either account payee cheque drawn on bank, account payee bank draft, electronic clearing system or prescribed bonds might bring transparency at least for Political Donations by Companies in the financials of the political parties.

This article is contributed by Venkata Krishna, Intern of SBS and Company LLP. The author can be reached at interns@sbsandco.com

AUDIT

KEY CHALLENGES FACED BY AUDITORS DURING FIELD WORK

Contributed by Chandra Shekar & Vetted by CA Sandeep Das |

Introduction: Auditors can excel in field work when they can carry out their work freely and objectively. Support from personnel of the client permits auditors to render the impartial and unbiased judgments essential to the proper conduct of audits. However, lack of support from personnel of the client on a timely basis will be challenge to the auditor to achieve his objectives.

Objective: The objective of the study is to understand

- a. the nature and type of challenges that usually auditors come across with clients
- b. the consequences of such challenges
- c. the remedies to overcome such challenges

Standards for Field work

- The auditor must adequately plan the work and must properly supervise any assistants.
- The auditor must obtain a sufficient understanding of the entity and its environment, including its internal control, to assess the risk of material misstatement of the financial statements whether due to error or fraud, and to design the nature, timing, and extent of further audit procedures.
- The auditor must obtain sufficient appropriate audit evidence by performing audit procedures to afford a reasonable basis for an opinion regarding the financial statements under audit.

Challenges: Usually during the field work of audit the auditors may face with two major challenges with obtaining,

1. Data and
2. Explanation

1.Data: Datis of physical or electronic information, for example sales invoices, Sales register dump etc. As a part of field work Auditors would request the personnel of the client for data so as to perform data analytics, reach conclusion sand carry out the audit in an efficient manner. However, due to below mentioned reasons the auditors may not be provided with necessary explanation or may be provided with incorrect/ incomplete information.

- a. Busy Schedules
- b. Negligence

2. Explanation: Explanation is of oral information. The auditors shall need to obtain explanation against the queries from personnel of the client so as to get their doubts clarified. However, due to below mentioned reasons the auditors may not be provided with necessary explanation or may be provided with incorrect/incomplete information.

- a. Lack of awareness
- b. Lack of clarity
- b. Busy Schedules
- c. Negligence

Consequences of Challenges: The above challenges shall result in below stated consequences

- a. Extension of audit timeline
- b. Change in nature of audit procedures
- c. Change in extent of audit procedures
- d. Change in audit plan
- e. Change in audit resources

Remedies to overcome: The auditor must ensure below listed criteria to overcome the challenges

- a. Auditor must keep a provision for challenges at the time of planning the audit
- b. Auditor must alert the management at the initial meeting about the resources availability on a timely basis
- c. Auditor must maintain a **track of queries** raised with full particulars and send the status of the same to management at regular intervals during the audit and should seek for their comments
- d. Auditor must maintain a **track of data** requested with full particulars and send the status of the same to management at regular intervals during the audit and should seek for their comments
- e. Auditor must take necessary actions against the non-availability of data and explanation on a timely basis

FEMA**PROJECT EXPORTS**

Contributed by Visweswara Rao & Vetted by CA MuraliKrishna G |

In view of the increase in export of goods and services abroad for execution of various contracts abroad and its importance in terms of the foreign trade being undertaken by the various exporters, the author has made modest attempt to bring the fine nuances of the Project Exports, through this article

Governing regulation

As per FEM (Export of Goods & Services) Regulations 2015, [notification no. 23(R)], where export of goods or services is proposed to be made on deferred payment terms or in execution of a turnkey project or a civil construction contract, the exporter shall, before entering into any such export arrangement need to take prior approval of Authorised Dealer(AD) /Exim Bank as applicable.

Meaning of project export

Export of engineering goods on deferred payment terms (realisation of export proceeds beyond time limit allowed by RBI) and execution of turnkey projects and civil construction contracts abroad are collectively known as 'Project Exports'. Project export contracts are generally of high value and exporters are required to offer competitive credit terms because of international competition.

1) Matters to be considered by AD / Exim Bank**a) Matters to be considered before granting of Approval**

AD / Exim Bank will mainly examine, the following aspects while considering grant of package approval for proposals for export of engineering goods on deferred payment terms or for undertaking turnkey/construction contracts abroad:

- (i) Period of deferred credit offered vis-a-vis foreign competition, moratorium (deferment of payment), rate of interest, adequacy of advance and down payment provided for as well as requirement of foreign exchange for execution of contract (viz. imports from third countries, agency commission, freight, etc.) and overall economics of the proposal.
- (ii) Nature of security obtainable from the foreign buyers against payments due and nature and extent of various bonds/guarantees required to be offered by the exporter (including those for procuring third country supplies).
- (iii) Nature of escalation, force majeure and arbitration clauses provided in the contract and penalty/damages payment provisions.
- (iv) Extent of fund-based and non-fund-based facilities required in India including pre-shipment and post-shipment credit and/or bridge finance requirement.
- (v) In case of turnkey contracts, economic and technical viability thereof as well as special features relating to erection, supervision and commissioning of the contract.

As regards civil construction contracts, turnkey engineering contracts, process and engineering consultancy services and project construction items (excluding steel and cement), the AD / Exim Bank will consider proposals only from contractors who are on the approved list of Ministry of Commerce and Industry.

AD / Exim Bank may suitably relax the above criteria at its discretion where warranted by merits of the proposal. While considering proposals, AD / Exim Bank may also make such suggestions or may advice in such a way that the foreign exchange benefit for the country is maximised.

b) Conditions necessary for Clearance of proposals by AD/ Exim Bank

While it is not necessary for exporters to obtain prior approval for submission of bids/offers for execution of contracts, AD / Exim Bank should, while granting post-award clearance, ensure that the export proposals satisfy, inter-alia, the following conditions:

- (i) Moratorium(extension) or grace period applicable to repayment of principal (and not to payment of interest) should not exceed one year in respect of export of capital or producer goods. In the case of turnkey contracts, the moratorium should not exceed two years. No moratorium should be permitted in respect of export of consumer durables. Interest should be payable even during the period of moratorium.
- (ii) In case of supply contracts, deferred receivables should be received in equal half-yearly instalments over the agreed period with relation to mean date of shipment (i.e. the date by which 50 per cent supplies in terms of value will be completed) or the date of respective shipment. In case of turnkey projects, instalments should be related to either date of contract or the mean date of shipment or commissioning as agreed upon between the parties.
- (iii) The rate of interest on deferred receivables should be such that taking into account the cost of deferred credit in India the overall profitability is ensured.
- (iv) Ordinarily, down payment together with advance payment or mobilisation advance should not be less than 15 per cent of the contract value. In exceptional cases, this may be reduced to 5 per cent of the contract value. In the case of civil construction contracts, it should not ordinarily be less than 5 per cent.
- (v) Down payments and deferred instalments receivable should be secured by a letter of credit/acceptable bank guarantee. In case the overseas importer/project authority is a Government department or a public sector undertaking, a guarantee from the foreign Government and /or a promissory note from the foreign Government /public sector undertaking will suffice.
- (vi) As far as possible, turnkey projects and civil construction contracts should be self-financing. However, bridge finance required for meeting temporary shortfalls in working capital should not normally exceed 25 per cent of the contract value. However, AD / Exim Bank may also clear proposals involving bridge finance in excess of 25% of contract value wherever they are satisfied that such finance is necessary.
- (vii) Ordinarily, deferred payment terms in respect of the services segment of a turnkey contract may be offered only if the competitors of the exporter from other countries are known to have offered similar terms. In such cases, other terms for the deferred receivables towards services like period of credit, rate of interest and security should be the same as offered for the supply portion of the contract.

2) Matters that are to be considered by Exporter

a) **Post award stage approval**

Indian exporters have to obtain prior approval at post award stage from AD / Exim Bank for credit terms to be offered, third country imports etc., in respect of export of goods and for turnkey projects, civil construction contracts.

Exporters, who have secured orders for undertaking supply contracts on deferred payment terms or those who have secured turnkey/civil construction contracts abroad or for export of services in the area of management, technical consultancy, etc., where execution of the contracts involves grant of fund-based and/or non-fund-based facilities from the Indian banking system or where deferred payment terms are to be offered, require approval from AD / Exim Bank.

c) **Extension of deferred payment Terms**

Contracts for export of goods against payment to be received partly or fully beyond the period statutorily prescribed for realisation of export proceeds are treated as **“Deferred payment exports”**. Ordinarily, contracts providing for deferred payment terms will be allowed only for export of engineering goods (capital goods and consumer durables).

“Turnkey projects” involve rendering of services like designing, civil construction and erection and commissioning of plant / factory along with supply of machinery, equipment and materials.

“Execution of civil construction contracts” abroad involves mainly erection and civil construction work and supply of construction materials and equipment going into the civil works.

Payment in respect of goods supplied under both turnkey and civil construction contracts may be received on 'cash' basis but sometimes exporters are required to offer deferred payment terms in respect of such supplies depending on the nature and size of the project.

b) **Procedure for Clearance of Proposals**

Applications in the prescribed form are required to be submitted by the exporters sufficiently in advance to the AD / Exim Bank to enable it to consider the proposal and grant a package clearance to it.

Exporters desiring to submit bids for execution of projects abroad including service contracts will not be required to obtain prior clearance for submission of bids from AD / Exim Bank.

d) Declaration of the Exports and Handling of EDF/SDF

In order to facilitate maintenance of proper record of exports made on deferred payment terms, exporters should prominently mention both copies of relative EDF/SDF with the name of export contract for which supplies are being made and the number and date of the approval granted by the approving authority (viz. AD, Exim Bank). The duplicate copies of the forms should be retained by ADs duly certified after realisation of the last instalment together with interest from overseas buyers. Similar procedure should be followed by sub-suppliers also while declaring their exports on EDF/SDF.

In connection with execution of projects, exporters may sometime be required to export 'consumables' such as tools, tackles, machinery spares etc. for which separate payments will not be made by the overseas buyers. Such consumables will have also to be declared on EDF/SDF in the same manner as exports of machinery, materials, etc., which are not separately paid for. In such cases, AD may, on application, permit exporters to raise invoices against their own site offices abroad, send the shipping documents direct to those offices and realise the value due thereon in convenient instalments out of the progress payments for the contracts. The application to AD may be accompanied by a declaration by the exporter that the consumables are being exported for execution of the project export contract. The number and the date of approval for the project export contract granted by the approving authority may be indicated on EDF / SDF.

e) Nature of Credit

Contracts for export of goods on deferred payment terms may be financed either under supplier's credit or buyer's credit. Under supplier's credit the exporter extends credit directly to the overseas buyer. Buyer's credits are credits extended to the foreign buyers by AD or financial institutions in India (including a consortium of ADs or financial institutions in India) and the exporters realise the export value in Indian rupees from the institution/s concerned straightaway. As repayments under deferred payment arrangements are spread over a long period of time, exporters extending supplier's credit as well as those desiring to undertake exports to be financed under buyer's credit may seek the advice of Exim Bank or Exports Credit Guarantee Corporation (ECGC) in regard to various risks inherent in extension of such long-term credits and ways and means of protecting themselves against these risks.

f) Period of Deferred Credit

The periods for which credit may be offered for export of goods, consumer durables, turnkey contracts and civil construction contracts will depend on merits of individual case and may be determined by the exporter and his banker in mutual consultation on the basis of commercial judgement. However, consumer durables and miscellaneous engineering goods should ordinarily be exported on cash terms. Four major factors viz. anticipated life of the goods to be exported, extent of foreign competition, nature of the foreign market and the contract value constitute the criteria for determining the overall terms of credit.

g) Post-award Clearance of Proposals

After entering into contract, the exporter should submit to his bankers an application in form DPX-1 (in respect of turnkey and deferred payment supply contracts) or in form PEX-1 (in respect of civil construction contracts), as the case may be, in six copies along with six copies of the contract. ADs should promptly verify all applications made by exporters in connection with project exports. In cases where the proposal is within the powers delegated to him, AD may grant post-award approval for the terms and conditions of the contract, provided the contract basically satisfies the conditions laid down in point 1(b). Copies of the approval letter along with copies of the application and the contract may be forwarded by the AD to ECGC and Exim bank where their participatory interest by way of funded / non-funded facilities, insurance / risk cover etc., is involved.

ADs / Exim Bank may grant post-award clearance to the project proposal without any monetary limit. If the AD desires participation of Exim Bank in the financial arrangements and /or guarantee facilities, concurrence of Exim Bank should be obtained before granting post award clearance.

In case, the AD is unable for any reason to grant post award clearance, he should forward four copies of the application to Exim Bank for consideration within two days indicating, inter alia, the extent upto which his bank would be prepared to take a share in the fund-based and /or non-fund based facilities required by the exporter for execution of the overseas contract.

Exim Bank may also receive directly applications for project export proposals of the value without any limit, without being routed through an AD provided

- (i) all facilities required for execution of the project are being extended by Exim Bank,
- (ii) Exim Bank makes necessary arrangement with an AD to handle exchange control matters like EDF formality, etc. in connection with execution of the project and
- (iii) Exim Bank monitors such projects cleared by them till their completion and ensures compliance with the requirements of completed projects as per the information mentioned below

In all cases mentioned above, ADs/ Exim Bank have to consult ECGC in advance if counter-guarantees of the Corporation are required and/or insurance cover is desired to be obtained from it. In cases where ECGC agrees to extend counter-guarantees /insurance cover, the AD / Exim Bank should, while granting clearance, advise the exporter that they will become effective only after the guarantee commission/ deposit premium as prescribed by the Corporation is paid to it.

While according package approval, ADs / Exim Bank should specifically indicate in the approval letter, the terms of clearance giving, inter alia, the break-up of contract value with details of Indian, third country and local supplies and services, payment terms, currency of payment, rate of agency commission, amount of overseas borrowings, funded and non-funded facilities with respective shares of different agencies therein, the value of plant, machinery, equipment etc., to be exported on reimport basis and the extent of ECGC cover guarantee.

If there are any Indian sub-contractors, they should be advised by the prime contractor to submit similar applications to the bankers of the prime contractor for obtaining approval for the portion of the contract entrusted to each sub-contractor. The institution which will consider the application of the prime contractor at the post-award stage will also clear applications of all the sub-contractors.

h) Foreign Currency Account

Outside India:

Exporter can maintain a single foreign currency account for more than one project being executed in the same country. He is however, required to submit project-wise statements of accounts to the AD/Exim Bank.

As regards the foreign currency account/s opened abroad, the exporter may submit the following information/statement to the concerned AD.

- (i) Intimate the account number, name of the bank, place and country where such account is opened within 15 days from the date of opening of such account.
- (ii) Statement of operations on the account should be on half yearly basis.
- (iii) Bank certificates evidencing the amount repatriated, periodically.
- (iv) Closure of foreign currency account with bank certificates evidencing transfer of balance to India immediately on completion of the relevant contract.

In India

Approving authority of the overseas contract i.e. Authorised Dealer/Exim Bank can now allow project/service exporters to open, hold and maintain foreign currency account in India subject to certain terms and conditions.

i) Appointment of Sub-contractors

In the case of large value contracts, applicant firms/companies normally take the assistance of other contractors. In such cases the applicant firm/company will be treated as the prime contractor while other contractors will be treated as sub-contractors. The prime contractor will be accountable to the various authorities in India for compliance with the requirements laid down by them and will at the same time be equally responsible to the overseas buyer for proper and timely completion of the contract. The prime contractor should accordingly enter into suitable inter se arrangement with the sub-contractors after satisfying himself about the capacity and competence of the latter. Credit reports on sub-contractors and confirmation of financial arrangement proposed to be made by them in respect of their portion of the contract should be obtained by the prime contractor from their bankers and furnished along with the application. Overseas financial requirements of the sub-contractors will have to be met by the prime contractor. Appointment of all sub-contractors and / or any subsequent change in sub-contractors will require prior clearance of the concerned approving authority.

j) Follow-up of Turnkey / Construction Contracts

Exporters and all their Indian sub-contractors executing turnkey contracts or civil construction contracts abroad should furnish progress reports in form DPX 2 on a half-yearly basis (June and December) to concerned approving authority viz. AD / Exim Bank, and to ECGC / Exim Bank in all cases where their risk / guarantee cover participation in the funded / non-funded facilities has been obtained. The final Report in Form DPX 2 should clearly indicate the fact of completion of the project and full compliance with the requirements relating to completed projects as laid down in point 2(k).

k) Requirements relating to Completed Projects

Exporters executing turnkey/construction contracts abroad should take the following steps after completion of the contracts:

- (i) close the foreign currency accounts and transfer the balances to India;
- (ii) wind up site and liaison offices opened abroad;
- (iii) ensure that the guarantees for performance of the contract and other guarantees issued are cancelled and returned to exporters;
- (iv) liquidate fully overseas borrowings/overdrafts obtained, if any and cancel counter-guarantees;
- (v) make suitable provision for payment of taxes, customs and other statutory obligations in the country of project;
- (vi) dispose of the equipment, machinery, vehicles, etc., purchased abroad and/or to arrange their import into India. [In case the machinery etc., is to be used for another overseas project, the market value (not less than book value) should be recovered from the project to which equipment/machinery has been transferred].
- (vii) recover funds, if any, transferred to other overseas project/s and repatriate them to India.

A report giving full account of the various steps taken should be sent by the exporter through his bankers to the concerned AD / Exim Bank as the case may be depending upon the authority, which had granted post-award approval for the project contract within one month from the completion of the project. Such report should also invariably be sent to Exim Bank / ECGC where their participation in funded / non-funded facilities, risk sharing is involved. The following documents should also be forwarded along with such report:

- (i) A completion or final handing over certificate.
- (ii) A certificate from the overseas bank regarding closure of the account held with it.
- (iii) A statement of remittances made to India. Bank certificates about repatriation of funds to India should be enclosed.
- (iv) Tax clearance certificate/No tax liability certificate about the overseas project.
- (v) Bills of Entry for re-import of machinery, etc.
- (vi) Statements of income and expenditure and profit and loss account of the project duly certified by a Chartered Accountant/Project Manager.

This article is contributed by Visweswara Rao, Intern of SBS and Company LLP. The author can be reached at interns@sbsandco.com

FEMA

FEMA UPDATES

I. Investment by Foreign Portfolio Investors (FPI) in Government Securities Medium Term Framework (MTF) – Review:

The current MTF for FPI investment in Central Government Securities (G-Secs) and State Development Loans (SDLs) has been modified. Based on the review, the following modifications are made to the Framework.

- a. The overall cap of 5% for G-Secs and 2% for SDLs remains same as earlier.
- b. FPI investment in G-Secs will be allocated in the ratio of 75% for 'Long-Term' category of FPI's and 25% for 'General' category when compared to 60% for 'Long-Term' category of FPI's and 40% for 'General' category as allocated earlier.
- c. Practice of transferring unutilized limits of 'Long-Term' category to 'General' category of FPI's has been closed.

Revision of Limits for the July-September 2017 Quarter:

- d. With effect from July 4, 2017 the limits for investment by FPI's in G-Secs and SDLs for the July-September 2017 quarter are increased by INR 110 billion and INR 61 billion respectively and allocated as under: -

Limits for FPI investment in Government Securities (' INR billion)							
	G-Secs			SDLs			Aggregate
	General	Long Term	Total	General	Long Term	Total	
Existing Limits	1,849	461	2,310	270	-	270	2,580
Revised Limits	1,877	543	2,420	285	46	331	2,751

- e. All other existing conditions, including the security-wise limits, investment of coupons being permitted outside the limits and investments being restricted to securities with a minimum residual maturity of three years, will continue to apply.

For further details, please refer the **Notification-RBI/2017-18/12, A.P. (DIR Series) Circular No.1 dated July 3, 2017.**

II. Foreign Exchange Management (Export of Goods and Services)(Amendment) Regulations, 2017:

The Reserve Bank of India makes the following amendments in the Foreign Exchange Management (Export of Goods & Services) Regulations, 2015 which are as follows:

- a. These Regulations may be called the Foreign Exchange Management (Export of Goods & services) (Amendment) Regulations, 2017.
- b. They shall come into force from the date of publication in the official Gazette.

Amendment of the Regulation 6:

- c. In sub-regulation (C), after the words, “viz. EDF and SOFTEX”, the words “and Exchange Control copies of the shipping bills” shall be deleted.

For further details, please refer the **Notification No. FEMA 23(R)/ (1)/2017-RB dated June 23, 2017.**

These updates are contributed by Sunil Kumar and vetted by CA Murali Krishna G of SBS and Company LLP, Chartered Accountants. For any queries, please reach at gmk@sbsandco.com

INCOME TAX**INCOME TAX UPDATES**

1. CBDT has issued a Circular vide No. 23/2017 dated 03rd July, 2017 clarifying that Rationale of excluding the tax component from the purview of TDS remains valid (as earlier issued circular vide no 1/2014). The Board hereby clarifies that 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 under Chapter XV II-B of the Act on the amount paid or payable without including such 'GST on services component.

For the purposes of this Circular, any reference to 'service tax ' in an existing agreement or contract shall be treated as 'GST on services' with respect to the period from 01.07.20 17 onward till the expiry of such agreement or contract.

2. CBDT has issued a Notification vide No. 57/2017 dated 03rd July, 2017 specifies that as per the powers conferred by clause (iii) of the proviso to section 269ST of the Income-tax Act, 1961 section 269ST shall not apply to following namely :
 - a. Receipt by a business correspondent on behalf of a banking company or co-operative bank, in accordance with the guidelines issued by the RBI.
 - b. Receipt by a white label automated teller machine operator from retail outlet sources on behalf of a banking company or co-operative bank, in accordance with the authorisation issued by the RBI under the Payment and Settlement Systems Act, 2007 (51 of 2007).
 - c. Receipt from an agent by an issuer of pre-paid payment instruments, in accordance with the authorisation issued by the RBI under the Payment and Settlement Systems Act, 2007 (51 of 2007).
 - d. Receipt by a company or institution issuing credit cards against bills raised in respect of one or more credit cards
 - e. Receipt which is not includible in the total income under clause (17A) of section 10 of the Income-tax Act, 1961.

The notification shall be deemed to have come into force with effect from the 1st day of April 2017.

3. CBDT has issued a Notification vide No. 73/2017 dated 26th July, 2017 clarified that in clause (19AA) of section 2 of the Income-tax Act, 1961 the following shall be substituted :
 - in clause (i), for the words "to transfer", the words "by way of transfer of" shall be substituted
 - in clause (ii) for the words "public sector company", the words "public sector company on the appointed date indicated in the scheme approved by the Appellate Tribunal constituted u/s 410 of the Companies Act, 2013 (18 of 2013) in this behalf" shall be substituted.

4. CBDT has issued a Notification vide No.58/2017 dated 3rd July, 2017 in Form No. 3CD, for serial number 31 and the entries relating thereto the following shall be substituted, namely
- (a) Particulars of each loan or deposit in an amount exceeding the limit specified in section 269SS taken or accepted during the previous year:—
- name, address and PAN of the lender or depositor
 - amount of loan or deposit taken or accepted
 - whether the loan or deposit was squared up during the previous year
 - maximum amount outstanding in the account at any time during the previous year
 - whether the loan or deposit was taken or accepted by cheque or bank draft or use of electronic clearing system through a bank account
 - in case the loan or deposit was taken or accepted by **cheque or bank draft**, whether the same was taken or **accepted by an account payee cheque or an account payee bank draft**.
- (b) Particulars of each specified sum in an amount exceeding the limit specified in section 269SS taken or accepted during the previous year.
- name, address and PAN of the person from whom specified sum is received;
 - amount of specified sum taken or accepted
 - whether the specified sum was taken or accepted by cheque or bank draft or use of electronic clearing system through a bank account;
 - in case the specified sum was taken or accepted by **cheque or bank draft**, whether the same was taken or **accepted by an account payee cheque or an account payee bank draft**.
- (c) Particulars of each repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T made during the previous year:
- name, address and PAN of the payee
 - amount of the repayment;
 - maximum amount outstanding in the account at any time during the previous year;
 - whether the repayment was made by cheque or bank draft or use of electronic clearing system through a bank account
 - in case the repayment was made by **cheque or bank draft**, whether the same was taken or accepted by an **account payee cheque or an account payee bank draft**.
- (d) Particulars of repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T received otherwise than by a cheque or bank draft or use of ECS.
- i. name, address and PAN (if available with the assessee) of the lender, or depositor or person from whom specified advance is received.
 - ii. whether such loan or deposit is taken by **cheque, bank draft or ECS**. If the same is by cheque or bank draft, whether the same was taken **or accepted by way of account payee cheque/bank draft has to be reported**.

- (e) Particulars of repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T received by a cheque or bank draft which is not an account payee cheque or account payee bank draft during the previous year:—
- i. name, address and Permanent Account Number (if available with the assessee) of the lender, or depositor or person from whom specified advance is received.
 - ii. amount of loan or deposit or any specified advance received by a **cheque or a bank draft** which is not an account payee cheque or account payee bank draft during the previous year.

The above particulars need not be given in the case of a repayment of any loan or deposit or any specified advance taken or accepted from the Government, Government company, banking company or a corporation established by the Central, State or Provincial Act.

5. CBDT has issued a Notification vide No. 60/2017 dated 06th July, 2017 stating that in notification 58/2017, dated the 3rd July, 2017 the following shall be substituted:

- a) in clause (d), in sub-clause (l) —

Before modification	After modification
Name, address, PAN of the lender, or depositor or person from whom specified advance is received	name, address and PAN of the payer

- b) in clause (e), in sub-clause (i) —

Before modification	After modification
Name, address, PAN of the lender, or depositor or person from whom specified advance is received	name, address and PAN of the payer

6. CBDT through press release dated 10th July, 2017 launched a new tax payer service module '**Aaykar Setu**' to directly communicate with the taxpayers and provide useful tax services aimed at providing tax information at their fingertips

These updates are contributed by Harini and vetted by CA Ram Prasad of SBS and Company LLP, Chartered Accountants. For any queries, please reach at caram@sbsandco.com

COMPANIES ACT, 2013**RULES, CIRCULARS, NOTIFICATIONS AND ORDERS ISSUED DURING THE MONTH OF JULY, 2017****RULES****❖ The National Company Law Tribunal (Amendment) Rules, 2017, Dt:05.07.2017:**

Vide the said amendment rules, the Ministry has amended the National Company Law Tribunal Rules, 2016, as amended ("the Principal Rules") by inserting a New Rule 87-A, after the existing Rule 87. The newly inserted rule prescribes the procedure for filing an application or appeal under sub-section (1) and (3) of Section 252, i.e., in connection with the for restoration of the Company whose name has been struck-off from the Register of Companies by the Registrar of Companies pursuant to the provisions of Section 248 of the Act.

http://mca.gov.in/Ministry/pdf/NationalCompanyLawTribunalAmdtRules_06072017.pdf

❖ The Companies (Appointment and Qualification of Directors) Amendment Rules, 2017, Dt:05.07.2017:

Vide the said amendment rule, the Ministry has amended the Companies (Appointment and Qualification of Directors) Rules, 2014, as amended from time to time ("the Principal Rules"), so as to exclude the requirement of having Independent Directors on their Board to the following Unlisted Public Companies:

- (a) A Joint Venture Company;
- (b) A wholly owned subsidiary; and
- (c) A Dormant Company.

Vide the said amendment rules, a new Form DIR-5, was substituted in place of the existing form DIR-5, for surrender of DIN.

http://mca.gov.in/Ministry/pdf/CompaniesApptandQualificationofDirectorsAmdtRules_06072017.pdf

❖ The Companies (Meetings of Board and its Powers) Second Amendment Rules, 2017, Dt:13.07.2017:

Vide the said amendment rule, the Ministry has amended the following rules in the Companies (Meetings of Board and its Powers) Rules, 2014, as amended from time to time ("the Principal Rules"):

SI.No.	Amended/Substituted provision	Particulars of the Amendment/Substitution
	Clause (e) of Sub-rule (3) of Rule-3 <i><u>Substitution of the existing Clause (e) with a new sub-clause to provide that</u></i>	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; and any declaration so provided shall not debar the said director to participate in a Board meeting in person, and he shall intimate the company sufficiently in advance of his intention to participate in person.
	Clause (a) of Sub-rule (11) of Rule-3 <i><u>Insertion of a provision to the existing Clause (a) to provide that</u></i>	the draft minutes of a meeting held through Video Conference, shall be preserved by the company till the confirmation of the draft minutes.
	Rule-6 <i><u>Substitution of the existing Rule to provide that</u></i>	The Board of directors of every listed company and a company covered under rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014, i.e., requirement as to appointment of a minimum 02 (Two) Independent Director, shall constitute an 'Audit Committee' and a 'Nomination and Remuneration Committee of the Board'.

http://www.mca.gov.in/Ministry/pdf/CompaniesMeetingBoardPowersSecondRules_14072017.pdf

❖ **The Companies (Incorporation) Second Amendment Rules, 2017, Dt:27.07.2017:**

Vide the said amendment rule, the Ministry has substituted the existing Rule No.28 and 30 in the Companies (Incorporation) Rules, 2014 ("the Principal rules"), with regard to Shifting of registered office within the same state (Rule 28); and Shifting of registered office from one state or union territory to another state (Rule 30), with new Rules and listed out the detailed procedure therefor.

Additionally a new form INC-23, was substituted in place of the existing Form INC-23.

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

NOTIFICATIONS

❖ **Amendment to Schedule IV of The Companies Act, 2013, Dt:05.07.2017:**

Vide the said notification, the Ministry has made certain amendments to Schedule-IV (Code for Independent Directors). http://www.mca.gov.in/Ministry/pdf/AmendmentIV_06072017.pdf

❖ **Corrigendum to the Notification G.S.R. 583(3), dated 13.06.2017, Dt:13.07.2017:**

Vide the said corrigendum, the Ministry has made correction to the Notification no. G.S.R. 583(3), dated 13.06.2107, wherein for the purpose of reckoning the Exemption/Requirement/Applicability of IFC, both the criteria's of Turnover and Borrowings are to be considered, instead of either of them.
http://mca.gov.in/Ministry/pdf/NotificationxEmptionPrivateCompany_14072017.pdf

CIRCULARS

❖ **Circular No.8/2017, Dated: 25.07.2017 - Clarification regarding applicability of exemption given to certain private companies under section 143(3)(i) of the Companies Act, 2013, Dt:25.07.2017:**

Ministry vide the above circular, has clarified that, in connection with the exemption given to certain private companies, regarding the reporting under Section 143(3)(i) [in addition to other exemptions given vide Exemption notification Dt: 13.06.2017] shall be applicable for those Audit Reports, which are made on or after the date of the said notification, in respect of financial statements pertaining to financial years commencing on or after 1st April, 2016.

http://mca.gov.in/Ministry/pdf/GeneralCircular8_25072017.pdf

These updates are contributed by Arun Kumar T and vetted by CS D V K Phanindra of SBS and Company LLP, Chartered Accountants. For any queries, please reach at phanindra@sbsandco.com

SATURDAY SESSIONS

S.No.	Event	Date	Speaker	Venue
1	GST returns	12/08/2017	Bhavani	SBS - Hyd
2	Annual Return on Foreign Liabilities and Assets (FLA return)	19/08/2017	Visweswara Rao	SBS - Hyd
3	Usage of Audit and compliance option in Tally	26/08/2017	Kanakraju	SBS - Hyd
4	MSME Products	02/09/2017	Hemanth	SBS - Hyd
5	Audit of Purchases	09/09/2017	S. Sarvani	SBS - Hyd

SESSIONTIMINGS: 2:30 to 4:30 PM***Levy and Collection of GST - Sairam******Returns under GST Regime-Bhavani******Tax invoice, Debit and Credit Invoices - Sairam******Time and Value of Supply - Bhavani***



Team SBS

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Nellore: 16-6-259, 1st Floor, Near Santi Sweets Opp: SBI ATM, Vijayamahal Centre, SPSR Nellore, Andhra Pradesh

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