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SBS Interns' Digest

An attempt to share knowledge

By

Interns of
SBS and Company LLP

CONTENTS

AUDIT

SA 701 COMMUNICATING KEY AUDIT MATTERS IN THE INDEPENDENT AUDITOR'S REPORT

Contributed by Suma. B & Vetted by CA Bhyrav

This articleaims to explain the concept of Key Audit matters that are part of new Auditor's report.

SA 701 deals with the Auditor's responsibility to communicate key Audit matters in the Auditor's report. It is intended for addressing both the judgement of an Auditor as to what is required to be communicated in Audit report and the content and form of such communication. The purpose of communicating key audit matters is to enhance the communicative value of the auditor's report.

This SA applies to audits of complete sets of general purpose financial statements of listed entities and circumstances when the auditor otherwise decides to communicate key audit matters in the auditor's report. This SA also applies when the auditor is required by law or regulation to communicate key audit matters in the auditor's report.

This SA is effective for audits of financial statements for periods beginning on or after April 1, 2018

Purpose of introduction of SA:

- To enhance the communicative value of the auditor's report by providing greater transparency about the audit that was performed.
- Provides basis to further engage enquiry with management.

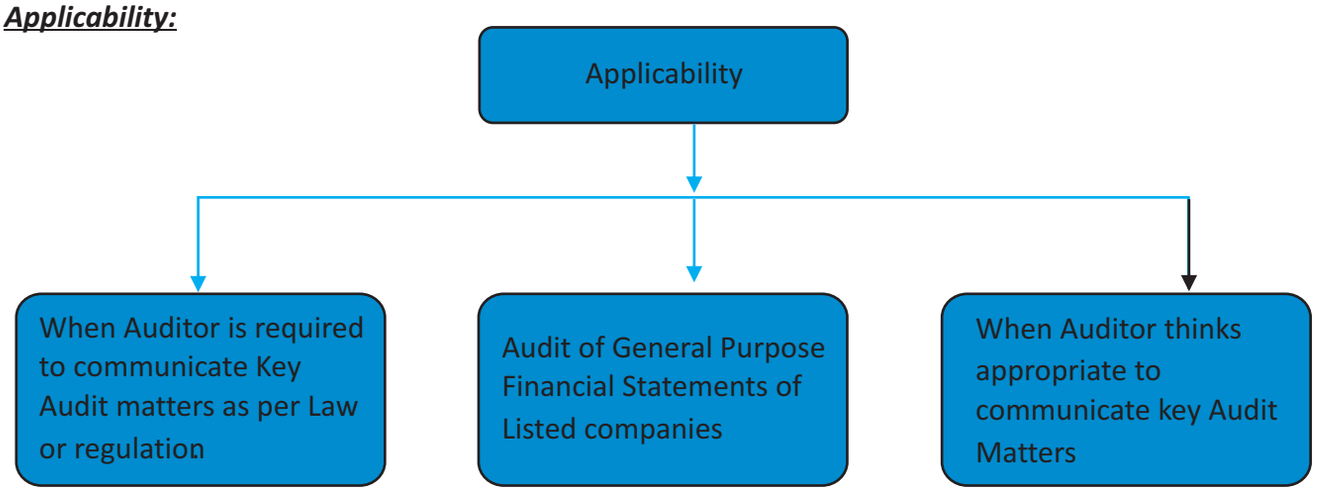
Key Audit matter (KAM):

Those matters that, in the auditor's professional judgment, were of most significance in the audit of the financial statements of the current period. Key audit matters are selected from matters communicated with those charged with governance.

Scope of the standard:

- Deals with the auditor's responsibility to communicate key audit matters in the auditor's report.
- It is intended to address both the auditor's judgment as to what to communicate in the auditor's report and the form and content of such communication.

Applicability:



Note:

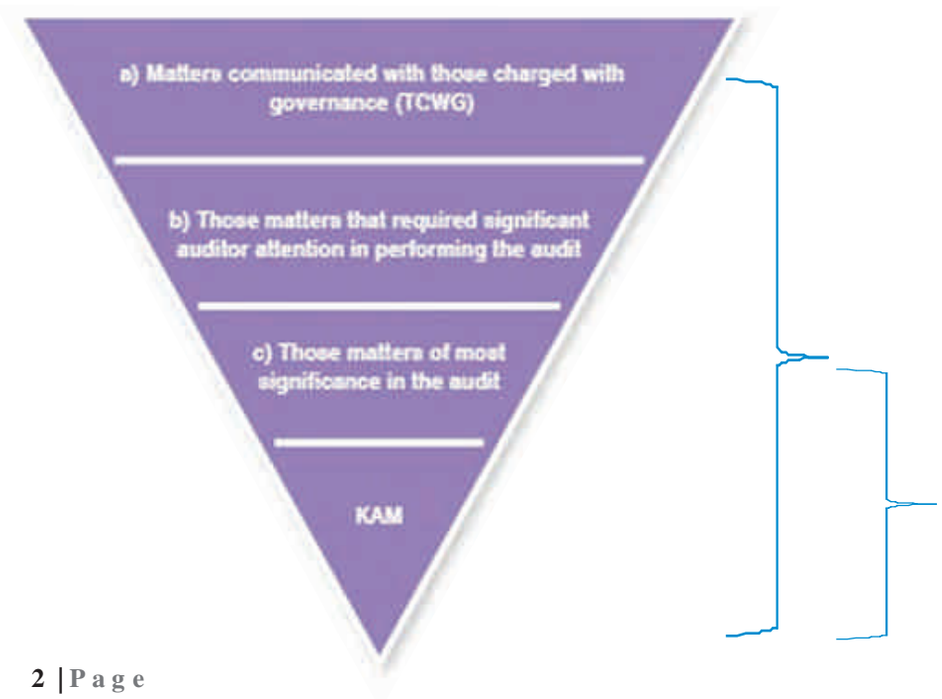
This SA is effective for audit of financial statements for periods beginning on or after April 1, 2018.

Determination of Key audit matters:

The following matters are to be considered while determining key Audit matters:

- Matters which involves significant Auditor's judgement while conducting Audit.
- Matters which Involves difficulty in obtaining sufficient and appropriate Audit evidences.
- Those areas where significant deficiencies were found in the Internal controls.
- Those matters which makes Auditor difficult in performing Audit.
- Matters which are identified as significant risk.
- Circumstances required significant modifications in Audit plan.

It can be explained with the help of a diagram:



These are the matters to be discussed with those charged with governance.

Out of the matters discussed with those charged with governance this traingle represents the KAM.

Communication:

Communication of Key Audit matter is not:

- ❖ A substitute for disclosure in FS that Financial reporting framework requires management to make.
- ❖ A substitute for modified opinion required by the circumstances as per SA 705.
- ❖ A substitute for reporting as per SA 750 when material uncertainty exists relating to events that may cast significant doubt on entity's ability to continue a going concern.
- ❖ A separate opinion on individual matters.

Reporting:

Audit report shall state that:

- ❖ KAM are those matters which are in Auditor's judgement were of the most significant in Audit.
- ❖ KAM are selected from matters communicated with TCWG, but not intended to represent all matters discussed.
- ❖ The Auditor's procedures relating to these matters were designed in context of the Audit of financial statements as a whole.
- ❖ The Auditor's opinion is not modified with respect to any of the Key Audit Matter and Auditor doesn't express an opinion on these individual matters.

Disclosure:

- ❖ Describe each Key Audit Matter under appropriate subheading.
  - For example, if the KAM is on debtors, then Auditor must state in report that Key Audit Matter - Debtors.
- ❖ Explanation as to why item considered significant and its effect on the Audit.
- ❖ A reference to related disclosure in financial statements.

Exceptions:

- ❖ Law or regulation precludes public disclosure about the matter; or
- ❖ In extremely rare circumstances, the Auditor determines that the matter should not be communicated in the Auditor's report because the adverse consequences of doing so would reasonably be expected to outweigh the public interest benefits of such communication. This shall not apply if the entity has publicly disclosed information about the matter.

Documentation:

The Auditor shall include in the Audit documentation:

- The matters that required significant Auditor attention as determined in accordance with SA, and the rationale for the Auditor's determination as to whether or not each of these matters is a KAM.
- Where applicable, the rationale for the auditor's determination that there are no key audit matters to communicate in the auditor's report or that the only key audit matters to communicate are those matters addressed by paragraph 15; and
- Where applicable, the rationale for the auditor's determination not to communicate in the auditor's report a matter determined to be a key audit matter.

If there are no Key Audit matters found during the Audit:

- Document the rationale that there are no key Audit matter to report.
- Communicate this conclusion with TCWG.
- Report expressly in the report after defining KAM, that the Auditor has determined that there are no such key Audit matters to report.
- Discuss this conclusion with quality control review (if any).

Example of Key Audit Matter (KAM):

KCB group financial report:

- Effective 12-8-17 KCB group upgraded its core banking system from T24R08 to T24R14
- Due to inherent risks associated with the system upgrade and processes around data migration we identified IT systems and controls over financial reporting as a Key Audit matter.
- There is a risk that automated accounting procedures and related IT dependent manual controls are not designed and operating effectively.

How the matter was addressed:

- Our Audit procedure in this area included among others, reviewing the data migration process, testing general IT controls around system access and change management and testing controls over computer operations within specific applications which are required to be operating correctly to mitigate the risk of management in the FS.
- With the help of our own IT specialists testing these controls through examining whether changes made to the systems were appropriately approved and assessing whether appropriate restrictions were placed on access to core systems through reviewing permissions and responsibility of those given that access and where we identified the need to perform additional procedures place reliance on manual controls such as reconciliations between systems and other information sources or performing addition testing such as extending the size of our samples to obtain appropriate audit evidence for the financial statement balances that were impacted.

Difference between Other matter paragraph, Emphasis of matter paragraph and Key audit matter:

Other matter paragraph	*Emphasis of matter paragraph*	*Key Audit matter*
It is a paragraph included in the Auditor's report that refers to a matter other than those presented or disclosed in the financial report that, in the Auditor's judgement, is relevant to users understanding of the Audit.	It is a paragraph included in the Auditor's report that refers to a matter appropriately presented or disclosed in the financial statements that, in the Auditor's judgement, is of such importance that it is fundamental to users understanding of financial statements.	These are the matters that provides additional information to users of the financial statements to assist them in understanding those matters that, in the Auditor's professional judgement, were of most significant in the Audit of the financial statements.

Amendments in related Standards:

- Auditor shall report the matter in separate section of going concern as per SA 570.
- SA 700 - disclosure shall be made unless law and regulation precludes public disclosure about the matter or when adverse consequences of doing so would reasonably be expected.
- SA 705 – When Auditor disclaims an opinion of FS, the Auditor's report shall not include KAM.
- SA 706 – The Auditor shall include EMP provided that Auditor is not required to modify his opinion as a result of those matters.
  - Matter not determined as KAM as per SA 701.

Conclusion:

As SA 701 intends to disclose the most significant matters in the Independent Auditor's report, it will help the users of the financial statements to focus on those matters and make decisions accordingly. It also helps the Auditor to express those matters which he thinks that it is useful for the decision making of the users of the financial statements.

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INDIRECT TAX

GST APPLICABILITY ON GTA SERVICES WHERE PLACE OF SUPPLY IS OUTSIDE INDIA

Contributed by Bharadwaja. S & Vetted by CA Manindar

INTRODUCTION:

1. On 01.02.2019, the amendments made to Goods & Services Tax (GST) laws vide Central Goods and Services Tax (Amendment) Act, 2018 are made effective. One of the amendment relates to determination of place of supply for transportation of goods. Though, it was clarified that the purpose of this amendment is to grant relief to taxpayers, the manner in which the amendment was brought in does not legally assure such relief. In this article, we are going to discuss this issue.

LEGAL POSITION:

Pre-Amendment Position:

2. Section 5 of Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as 'IT Act') provides for levy and collection of Integrated tax (IT) on all the inter-state supplies, that takes place in case of goods or services or both, whether by way of forward charge or reverse charge. Similarly, with respect to intra-state supplies, section 9 of Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'CT Act') read with section 9 of respective State Goods and Services Tax Act, 2017 (hereinafter referred to as 'ST Act') shall provide for payment of Central Tax (CT) and State Tax (ST) for intra-state supply of goods or services or both whether by way of forward charge or reverse charge.

3. To determine whether transaction is an Inter-state or Intra-state supply, one has to look at the definition which is provided in Section 7 and 8 of IT Act respectively. To determine whether a transaction is Inter-State supply or Intra-State Supply, it should be determined based on location of the supplier and the place of supply. Where, the location of the supplier and the place of supply are in two different states or union territories, then the transaction shall be treatedas Inter-State Supply in general. If the location of supplier and the place of supply are within the same state or union territory, then the transaction shall be treated as Intra-State supply in general.

4. To know what Place of Supply is (hereinafter referred to as 'POS'), one has to go through the provisions that has been provided in the IT Act. There are separate set of provisions provided for determining the POS in case of goods and services. The POS in case of services have been provided in section 12 (where the location of supplier and recipient are in India) and 13 (where the location of supplier and recipient are outside India) of IT Act.

5. In this article, we are dealing with a situation which is covered under the provisions of Section 12 of IT Act. In other words, it is assumed for the purposes of this article, the location of supplier and POSare in India. This section has specified both the general provision and the specific provisions for determining the POS. The general provision specified under sub-section (2) is applicable only when the specific provisions under sub-sections (3) to (14) are inapplicable.

6. POS of services by way of transportation of goods, including by way of courier or mail has been provided under sub-Section (8) of Section 12of IT Act. The same are reproduced hereunder for ready reference:

(8) The place of supply of services by way of transportation of goods, including by mail or courier to,-
(a) a registered person, shall be the location of such person;
(b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation.

7. Consider a situation where a supplier engaged in provision of transportation services in India has provided goods transport agency services to a recipient in India for transport of goods to a place outside India. In terms of the above sub-section, with respect these transport services, the POS in case of registered recipient shall be the location of such person. Thus, POS for the above services will be the location of recipient of supply, which is in India and accordingly, the applicable GST would be required to be paid by recipient under reverse charge or under forward charge by the supplier, as the case may be, despite of the fact that the goods are transported outside India.

Post-Amendment Position:

8. With effect from 01.02.2019, Section 12 (8) of IT Acthas been amended by inserting a proviso which is reproduced hereunder;

"Provided that where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods"

9. In view of the insertion of proviso, with effect from 01.02.2019, where goods are meant for transportation to a place outside India, the POS shall be the place of destination of such goods. For example, if the goods are moved from Telangana to Nepal, then the POS by virtue of above proviso is Nepal, which outside India.

10. As the place of supply is outside India even though the supplier is located in India, it is relevant examine the provisions of section 7(5) of the IT Act to determine whether the supply is inter-state or intra-state. The relevant extracts are reproduced hereunder;
7(5) Supply of goods or services or both, —
(a) ***when the supplier is located in India and the place of supply is outside India;***
(b) to or by a Special Economic Zone developer or a Special Economic Zone unit; or
(c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section, shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.

11. From the above provisions, it is clear that even though the POS is outside India, since the supplier is located in India, the supply shall be treated as inter-state supply. Under IT Act, with respect to inter-state supplies, the relief from payment of tax is available only when they amount to zero-rated supplies or a specific exemption was given under any notification.

12. Export of goods or services and supplies to SEZ unit/developer will be considered as zero-rated supplies under section 16 of IT Act. Let us consider whether the transport services fall under the meaning of export of services in order to consider them as zero-rated supply warranting to no requirement to pay GST. The term 'Export of Services' is defined under section 2(6) of IT Act. Accordingly, it means a supply of service when the following conditions are satisfied.
    a. The supplier of service is located in India
    b. The recipient of service is located outside India
    c. The POS of the service is outside India
    d. The payment for such service has been received by supplier of service in CFE or Indian rupees wherever permitted by RBI.
    e. The supplier and recipient of service are not mere establishments of same person i.e. HO and Branch

13. In terms of the above conditions, in order to call a service as export outside India, apart from POS being outside India, the recipient of service should also be located outside India. As the recipient of service (who is located in India), the transport services supplied by transporter (who is also in India) will not be considered as export of service even though the POS is outside India. Accordingly, the same are subject to GST as the same qualify as inter-state supplies under section 5 of IT Act.

14. Further, with respect to transport services undertaken by aircraft and vessel to a place outside India, there is an exemption given under Sl.no 20A and 20Bof Notification No. 9/2017-IT (R) dated 28.06.2017 but similar exemption is not available for transport of goods by road.

15. In the explanatory notes given CBIC to explain the reasons for the proposed amendments, with respect to insertion of proviso to section 12(8), it has been explained that the amendment is proposed to provide that the services provided for transport of goods from a place in India to a place outside India would not be chargeable to GST, as POS is outside India.

16. Though the above clarification is extended by CBIC with respect to the above amendment in section 12(8), the exemption for the transport services by road to a place outside India cannot be affected by mere amendment to POS alone. As charging section under section 5 covers inter-state supplies having place of supply outside India, and as the service cannot be considered as export, the said transportation services by road to a place outside India cannot be kept outside GST ambit in the absence of specific exemption like the case of transport services by vessel or aircraft. In the absence of such notifications being brought into force, the transport services provided would be subject to GST as inter-state supplies.

CONCLUSION:

17. In view of the above discussion, though there is an amendment in section 12(8) of IT Act to provide that the POS of transport services is outside India, the said amendment does not change the tax position as the said supplies continue to be an inter-state supplies attracting levy under section 5 of IT Act. As the said services are not exempt, it is required to pay GST on these services. In view of these reason, an appropriate representation is required to be made to GST Council to review the same and make suitable amendments or grant exemptions in the manner similar to transport services by vessel or air to confer the relief that was intended to be achieved.

(For further detailed understanding of the above issue on the aspects location of recipient of supply and input tax credit, kindly refer to our detailed article published in this month's Wiki Journal)

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DIRECT TAX

SECTION 56 OF INCOME TAX ACT, 1961

Contributed by Ravi Raju. D & Vetted by CA Madhusudan & CA Ramprasad

Introduction:

- Income that is taxable under the Income Tax Act 1961 ("Act") shall fall under the Head "Income from Other Source" if it is not chargeable under any other heads of income.
- Heads of Income covered under the act are as below:

Income from:

- ❖ Salaries (Sec. 15)
- ❖ House Property (Sec. 22)
- ❖ Profits and Gains of Business or Profession (Sec. 28)
- ❖ Capital Gains (Sec. 45)
- ❖ Income from Other sources (Sec. 56)

From the above, it was clear that incomes not falling under first four heads as above shall b be charged under the head "Income from Other Sources".

The Taxability of Topics covered in the article:

I. Gift
II. Income from winnings
III. Share premium paid in excess of Fair Market Value
IV. Income from Dividends
V. Income from Interest on compensation
VI. Advance forfeited
VII. Hire charges

I. Gift:

Gift refers to ***sum of money or value of property received without any consideration or inadequate consideration.*** It is chargeable to tax in hands of recipient subjected to following criteria

S No	Nature	Taxability
1	Money (Aggregate)	If aggregate value exceeds Rs. 50,000/- (F.Y)
2	Movable Property (Aggregate)	**No consideration:** If aggregate fair market value exceeds Rs. 50,000/- (F.Y)
		Inadequate consideration: Where the difference of fair market value and the consideration exceeds Rs. 50,000/- is subject to tax under OS
3	Immovable property (Individual)	**No consideration:** If stamp duty value of the property exceeds Rs. 50,000/-
		Inadequate: The difference between Stamp duty value and the consideration exceeds, Higher of the below: • Rs. 50,000/- • 5 percent of the consideration. W.e.f from 1-4-19 (Finance act 2018)

Determination of Value of Immovable Property:

1. **No consideration:** Stamp Duty Value as on date of registration (DOR) is to be considered.
2. **Inadequate consideration:** If Date of Agreement (DOA) and Date of Registration (DOR) are different and Part (or) Full Consideration is paid on (or) before Date of agreement (DOA) then value as on **Date of agreement (DOA) be considered.**
   Otherwise Date of Registration (DOR) should be considered.
3. Payment should be made by Account Payee cheque or account payee draft or any electronic mode.

If the Stamp Duty Value of immovable property is disputed by the assessee:

The assessing officer may refer the valuation of such property to valuation Officer if such value is less than Stamp Duty Value, the same value as determined by valuation officer should be taken as consideration for the computation of income under this head.

Example for transfer of Immovable property for inadequate consideration:

Case-1*Mr. A transfer an Immovable property for Rs.1.00Crore consideration on 2nd June 2019. The stamp duty value ["SDV"] of property as on the day is 1.04 Crores. Is it taxable?*

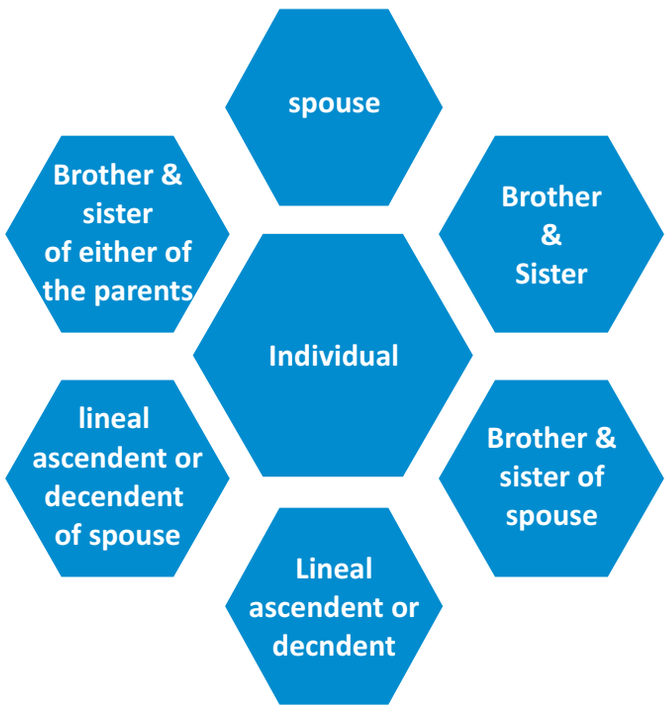
Ans: No.
As per provision difference amount of Rs.50,000 (or) 5% of consideration, whichever is higher should be considered. Since the difference between Stamp Duty Value and Consideration is 4 lakhs So, 5% of value to be considered. Since the difference does not exceed 5% of the consideration it is not Taxable.

Case-2*Mr. A transfer a Immovable property for 1 Crore consideration on 2nd June 2019. The stamp duty value of property as on the day is 1.06 Crores. Is it taxable?*

Ans:Yes.
Herse, Difference between SDV and Consideration is 6.00 lakhs. Since the difference exceeded 5% of the consideration whole difference amount is Taxable. Hence, Rs.6.00 lakhs is taxable.

Exceptions to gift: If gift is received from following persons it is completely exempt irrespective of the amount.

- Relative: All these persons are covered under relative definition.



- ***On occasion of marriage:*** If gift is received on occasion of marriage then it is fully exempt from tax.
- ***In contemplation of death of donor or payer :***Any sum of money or any property is received in contemplation of death is also exempt from gift tax.
  Example: ***Mr.A expected to die shortly due to cancer. Now, Mr. A transferred his property to Mr.B under contemplation of his death, then such transfer is not taxable.***
- Under any will Document
- Trust or institution Registered under 12A or 12AA of the Act
- By any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to Section 10.
- From an individual by a trust created or established solely for the benefit of relative of the individual
- By way of transaction not regarded as transfer under section 47 of the Act

If gift is received from any fund any university or other educational institution or any hospital or other medical institution referred to Section 10.

If gift is received from any Trust or institution Registered under 12A or 12AA of the Act.

Property includes capital of the assessee

- Immovable property being land or building or both
- Shares and securities
- Jewellery
- Archaeological collections
- Drawings
- Paintings
- Sculptures
- Any art of work
- Bullion

II. Income from Winnings:

Income earned by way of winnings from

- Lotteries
- Crossword puzzles
- Races incl. (Horse races)
- Card games
- Gambling and betting
- Entertainment shows

All the income from winnings are subjected Tax @ 30% and Cess @ 4% at flat rate without considering the basic exemption limit of Rs.2,50,000/

Under section 194B of the Act, 30% of tax is deducted on any prize money in excess of Rs 10,000 and other winnings from games, lotteries etc.

In case of winnings from horse races exceeds Rs. 5,000/- for applicability of TDS under section 194BB of the Act is Rs 5000/-

Example: Calculation of Tax on Income from Winnings:

Mr. A has won the prize money of Rs 3 lakhs from a game show and he has an interest income of Rs 5 lakhs p.a. Calculate Tax liability of Mr. A.

Ans: Tax on Rs 3 lakhs @ 30% + 4% H and Ed cess = 93,600/- and Tax on Rs 5 lakhs as per income tax slab rates after claiming the relevant deductions =13,000/-. The total tax liability is Rs. 1,06,600/-

If prize is received in kind, Tax is to be paid on Fair Market Value of the prize.

Example: Mr. X won an Alto car in a contest whose market value is Rs 4 lakhs, then tax @ 30% + 4% cess is to be paid on 4 lakhs, which is equal to 1,24,800.

III. Share premium paid in excess of Fair Market Value:

As per section 56(2)(Viib) of the Act, Where a closely held company issues shares at a price which is more than its Fair Market Value then the amount received in excess of Fair Market Value is chargeable to tax.

Exceptions:

- Receipt of share application money from Non-resident applicants.
- Issue price exceeding fair market value of shares but not exceeding face value of shares.
- Consideration for issue of shares is received by a venture capital undertaking from a venture capital company or a venture capital fund.
- Consideration for issue of shares is received by a company from a class or classes of persons as may be notified by the Central Government in this behalf, till date no such person are notified by the central government.
- Strat-up companies

Determination of fair market value:

Fair Market Value of the shares must be ***higher of the following methods:***

- Determined In accordance with the prescribed methods (or)
- Substantiated by a company to the satisfaction of the assessing officer, based on value of its assets on the date of issue of the shares.

For the calculation of value of the assets include the value of intangible assets such as goodwill, know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature.

Rule 11UA prescribes two methods for calculating Fair Market Value of the assets

1. Fair Market Value = $\frac{(A-L) * (PV)}{PE}$

   - ❖ A = Book value of assets – Net taxes paid during year under Act + unamortized amount of deferred expenditure which does not represent the value of any asset;
   - ❖ L = Book value of liabilities – Paid up equity share capital – Amount set apart for payment of dividend – Reserves and Surplus - Provisions made, if any – contingent liabilities
   - ❖ PV = Paid up value of equity shares
   - ❖ PE = Total amount of paid up equity share capital as shown in the balance sheet

2. The fair market value of the unquoted equity shares determined by a merchant banker as per the Discounted Free Cash Flow method.

Example:

Company	No. of shares	Face value	F.M.V	Issue Price	Taxability
A (P) Limited	10000	100	120	130	Yes
B (P) Limited	10000	100	120	110	No
C (P) Limited	10000	100	90	98	No
D (P) Limited	10000	100	90	110	Yes

IV. Income from Dividends [Section(56)(2)(I)]:

Definitions: Section 2(22A).

Domestic company means an Indian company, or any other company which, in respect of its income liable to tax under this Act, has made the prescribed arrangements for the declaration and payment, within India, of the dividends (including dividends on preference shares) payable out of such income.

Foreign company is a company other than domestic company.

Dividends from the foreign companies:

Dividends from the foreign companies are completely taxable.

Dividend under section 115bbda:

If Aggregate dividend income earned by ***specified assesse*** in excess of Rs. 10 lakhs, then such income in excess of Rs.10 lakhs is taxable @ 10% and applicable surcharge, if any.

Specified assessee is a person other than Domestic company and a fund or institution or trust or any university or other educational institution or any hospital or other medical institution.

Dividend received under Section 2(22)(e) is completely exempt in the hands of shareholders even if it exceeds Rs. 10 lakhs.

Section 115BBDA excludes dividend received under Section 2(22)(e).

Example:If Mr A's total income is Rs. 20 lakhs, which includes dividend income of Rs. 15 lakhs during the financial year 2017-18, then he is liable to pay additional tax at 10 per cent on Rs. 5 lakh and under normal slab rates to the extent of Rs. 5.00 lakhs

Deemed Dividends [Section 2(22)]: Deemed dividends are covered by sections 2(22)(a) to 2(22)(e).

a) **Distribution of accumulated profits:**
Any distribution of accumulated profits, whether capitalised or not, by the company to its shareholders is treated as deemed dividend

b) **Distribution of debentures, deposits certificates to shareholders and bonus to Preference shareholders:**
Any distribution of debentures, deposits certificates in any form, whether with or without any interest and bonus to Preference shareholders to extent of accumulated profits, whether capitalised or not, is treated as deemed dividend.
Bonus shares given to equity shareholders is not treated as deemed dividend

c) **Distribution on liquidation:**
Any distribution made to shareholders of a company on its liquidation, to the extent of accumulated profit, whether capitalised or not, is treated as deemed dividend.

d) **Distribution on reduction of capital**:
Any distribution made to shareholders of a company on reduction of capital, to the extent of accumulated profit, whether capitalised or not, is treated as deemed dividend.

e) **A company in which public are not substantially interested extends loans or an Advance:**
If it extends loans or advances to following persons;
- Shareholders who has more than 10% of voting power or
- To any concern in which such shareholder is substantially interested or
- To individual benefit of such share holder or
- On behalf of such shareholder

Exceptions to Section 2(22)(e):

a) If loan is granted in ordinary course of business and lending of money is the substantial part of company's business.
b) Where loan is treated as dividend and subsequently, the company declares and distributes dividend and such loan is setoff by company against dividend declared.
c) Any payment made by a company on purchase of its own shares from a shareholder
d) Any distribution of shares pursuant to a demerger by the resulting company to the shareholders of the demerged company

Example:*ABC Pvt Ltd. is a company, in which public are not substantially interested. Hari an individual being one of the shareholders having 15% voting power. The company has accumulated profits of Rs. 25 lakhs as on 31 March 2018. The company granted a loan of Rs. 100,000 to Hari, by way of an account payee cheque. He repaid the amount on 5 May 2018.*

Ans:In this case, even if the loan has been repaid by Hari, the loan amount granted to the extent of accumulated profits are treated as deemed dividend.

Accumulated profits:

- All the profits of the company up to the date of distribution or payment of Dividends

In case of liquidation:

- Accumulated profits include all profits up to the date of liquidation.
- When liquidation is consequent to compulsory acquisition of government or any corporation owned by government, then accumulated profits does not include any profits prior to 3 years preceding the previous year in which such acquisition takes place.

Dividend Distribution Tax:

Any income earned by way of dividends, is exempted in hands of shareholders under section 10(34) as companies are liable to Di***vidend distribution tax at the rate of 15%*** and cess and applicable surcharge, if any. However, Dividend distribution tax in case of **Section 2(22)(e) is 30%** and cess and applicable surcharge, if any.

It should be noted that exemption under section 10(34) is not applicable in case of Dividend taxable under Sec.115bbda.

V. Income from Interest on compensation:

Any amount received as interest on compensation or enhanced compensation on compulsory acquisition by government is chargeable to tax under income from other source.

However, 50% deduction can be claimed under Sec.57

VI. Advance forfeited:

Any sum received by way of advance or any other course of negotiations for transfer of capital asset and such amount is forfeited and such negotiation did not result to transfer of such asset then such income is chargeable to tax under income other source.

VII. Hire charges:

Income from machinery, plant or furniture belonging to the assessee and let on hire, if the income is not chargeable to income-tax under the head "Profits and gains of business or profession" then it is chargeable under income from other sources.

If an assessee lets on hire plant or furniture, machinery and building and letting of that building is inseparable from such letting of plant or furniture, machinery then such income is taxable under IFOS.If there is letting of Building as well amenities but without any letting of Assets, then this section is not applicable & the whole of such Income earned will be taxed under Income from House Property.

Example: Theatre Building and its Furniture is taxable under the head Income from Other Sources, if not charged as Business Income.

Summary

Gift:

Without consideration :If value exceeds Rs.50,000/-, then completely taxable

Inadequate consideration:

- **For movable Property:** Difference between FMV and consideration exceeds Rs. 50,000/-
- **For immovable property:** If difference exceeds higher of Rs.50,000/- or 5% of consideration

Determination of value of property(Immovable property):
No consideration ⟶ Value as on Date of Registration
Inadequate consideration:
DOA and DOR on different dates ⟶ DOA*
*part or full payment should be made by account payee cheque or account payee draft on or before DO
.
Share premium paid in excess of fair market value:

Conditions:

- Shares issued by closely held companies
- Issued at premium

Result:

- Amount received over and above the fair market value is taxable in the hands of company

Exceptions:

- Start-up companies
- Shares subscribed by Non-Residents
- Consideration is received by venture capital company venture capital undertaking

Dividends:

In Hands of Shareholders
Taxable Dividends:

- Dividends from foreign companies
- Section 115bbda:Dividend Received in excess of Rs. 10 lakhs by specified assessee.
- Section 115BBDA excludes dividend received under Section 2(22)(e).

Exempted dividends:(section 10(34))

- Dividends under section 2(22)(a) to section 2(22)(d) not exceeding Rs 10 lakhs
- Dividend under section 2(22)(e)

In Hands of company:

- Dividend under section 2(22)(a) to 2(22)(e) are subjected to ***dividend distribution tax***
- Dividend declared by all domestic companies are subjected to ***dividend distribution tax***

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FEMA

IMPORT OF GOODS BY SEZ DEVELOPER AND UNIT

Contributed by Sauchit. V & Vetted by CA Bharani & CA Murali Krishna

❖ General:

Rule 27(1) of Special Economic Zone Rules, 2006 (herein after referred as SEZ Rules) allows the Developer of SEZ and Units in SEZ to import[1] all types of goods, including capital goods (new or second hand), raw materials, semi-finished goods (including semi-finished Jewellery), component, consumables, spares goods and materials for making capital goods without payment of duty, taxes or cess, required for the purpose of ***authorised operations*** except the goods which are prohibited for import under Indian Tariff Classification (Harmonised System) for Import and Export.

From the above it is evident that in order to import the goods duty free, following two criteria should primarily be satisfied:

- ❖ Goods imported or procured must be covered under the authorised operations of SEZ Developer/Unit and
- ❖ Such goods should not be prohibited for import under Indian Tariff Classification (Harmonised System) for Import and Export.

However, the said rule allows the Developer of SEZ and Units in SEZ to import the prohibited goods too subject to the prior approval of Board of Approval (BOA).The phrase 'Authorised operations' has been defined vide Section 2(c) of SEZ Act, 2005 to mean operations which are authorised by the Board in case of Developer under Section 4(2) and by Development Commissioner (DC) in case of Units in SEZ under Section 15(9) of SEZ Act, 2005.

Import of goods by Developer of SEZ and Units in SEZ is exempted from ***any duty of customs*** leviable under Customs Act, 1962 or the Customs Tariff Act, 1975 or any other law for the time being in force under Section 26(1)(a) of the SEZ Act, 2005.

Further, Article 269A of Constitution of India provides that supply of goods and services in the course of import into the territory of India shall be deemed to be supply of goods and services in the course of inter-state trade or commerce. Thus, any import of goods by SEZ Developer/Unit would attract integrated tax leviable thereon under section 3(7) of Customs Tariff Act, 1975. Similarly, import of services by SEZ Developer/Unit would require payment of Integrated tax leviable under section 5 of Integrated Goods and Service Tax Act, 2017 (herein after referred as IGST Act, 2017).

However, Ministry of Finance (Department of Revenue) vide Notification No. 64/2017 – Customs, dated 05-07-2017 has exempted goods imported by SEZ Developer/Unit from whole of integrated tax leviable thereon under section 3(7) of the Customs Tariff Act, 1975 read with section 5 of IGST Act, 2017. Similarly, vide Notification No. 18/2017 – Customs, dated 05-07-2017 has exempted services imported by SEZ Developer/Unit from whole of Integrated tax leviable thereon under section 5 of IGST Act, 2017.

[1]Generally, goods procured by SEZ and Units in SEZ from DTA is also termed as import, but the article specifically focuses on import of goods by SEZ and Units in SEZ from outside India. Therefore, herein after the word "Import"in this article means import specifically from outside India.

❖ **Administrative set up for SEZs :**

The functioning of the SEZs is governed by a three-tier administrative set up that are framed to look into the matters of SEZ.

(i) ***Board of Approval/Board :*** The Board is the apex body/authority in case of approval mechanisms and other related issues related to SEZ that is constituted by the central government to exercise the powers conferred under the SEZ Act. All major decisions related to SEZ will be taken by Board. The Board consists of 19 members representing various Ministries and Departments.

(Note: *Board constituted by Central Government for SEZ is also the apex body for Export Oriented* Units(EOUs)to exercise powers conferred under EOU Scheme)

(ii) ***Unit Approval Committee(UAC) :*** Every request for setting up of Units in the SEZ are approved at the Zone[2] level by the UAC consisting of Development Commissioner, after a discussion with the Customs Authorities and representatives of State Government. It is the authority which mainly deals with the matters related to Units in SEZ and its related approvals.

(iii) ***Development Commissioner(DC) :***Development Commissioner is a chairman of the UAC. DC is the nodal officer for SEZs and helps in resolution of problem, if any, faced by the units or developer.

Under the DC, there will be Specified Officers(SO) to look the overall functioning of each SEZ in zone, Authorised Officers (AO) to look into the day to day transactions of Units in SEZ and provide necessary approvals/clearances for imports, exports etc.

❖ **Importof goods by SEZ Developer:**

For import of goods duty free, the Developer would be required to fulfil the following procedures and conditions as prescribed, namely:

(i) Only the ***goods which are approved by the UAC*** as goods required for authorised operations would be allowed to be imported or procured by Developer. However, in case of SEZ set up by Central Government, the goods required for the authorised operations would be approved by BOA. *[Ref: Rule 10 of SEZ Rules, 2006]*

(ii) The Developer is required to make an ***application*** to DC after obtaining approval from BOA(for setting up of SEZ)specifying the list of goods or services including equipments, construction materials required for authorised operations ***duly certified by Chartered Engineer*** for approval by UAC. *[Ref: Rule 12(2) of SEZ Rules, 2006]*

[2]All states and Union territories are divided into 7 Zones based on various criteria and requirements. Each Zone will have a UAC to exercise the powers conferred under the SEZ Act.

(iii) The Developer should declare the ***place of storage*** within processing area of SEZ to the Specified Officer (SO).In case the storage is outside the processing area but within SEZ, the Developer would be required to comply with the safeguards as may be specified by SO. *[Ref: Rule 12(3) of SEZ Rules, 2006]*

(iv) The goods imported are required to be kept in a ***clearly demarcated area for inspection*** by the Authorised Officer before such goods are brought to use. *[Ref: Rule 12(4) of SEZ Rules, 2006]*

(v) The Developer is required to execute Bond-cum-Legal undertaking **(BLUT)**[3] **in Form D,** jointly with DC and SO undertaking to account for the goods, to utilize the goods for authorised operations within the period of 1 year or such period as may be extended by the SO. [*Ref: Rule 12(5) of SEZ Rules, 2006]*

(vi) The Developer shall maintain a proper account of the import / procurement, consumption and utilization of goods and submit ***quarterly and half-yearly returns to the DC in Form E*** for placing the same before the UAC for consideration. *[Ref: Rule 12(6) of SEZ Rules, 2006]*

(vii) The Developer shall submit a ***half-yearly certificate*** for the period ending 31st March and 30th September of every financial year regarding utilization of goods from an Independent Chartered Engineer or Independent Chartered Accountant or Cost Accountant as the case may be, to DC and SO and such certificate shall be filed ***within 30 days*** of period specified, as the case may be. *[Ref: Rule 12(7) of SEZ Rules, 2006]*

(viii) The Developer shall not remove goods from SEZ to Domestic Tariff Area[4] (DTA) except with the ***permission of the SO*** and on payment of duty applicable on such goods. [Ref: Rule 12(8) of SEZ Rules, 2006]

❖ **Import of goods by SEZ Unit:**

For import of goods duty free, the Units in SEZ would be required to follow the below procedures and conditions as prescribed namely:

(i) As in the case of developer, the Units are also required to execute a BLUT in ***Form H*** with DC and SO. Therefore, before allowing duty free import, it may be ensured that the unit has executed BLUT and the goods intended to be imported are for the purpose of authorised operations.*[Ref: Rule 22 of SEZ Rules, 2006]*

(ii) The Unit shall ***maintain proper accounts,*** financial year wise, and such accounts should clearly indicate the value of goods imported or procured from DTA, consumption or utilization of goods, production of goods, including by-products, waste or scrap or remnants, disposal of goods manufactured or produced, by way of exports, sales or supplies in DTA or transfer to SEZ or EOU or Electronic Hardware Technology parks (EHTP) or Software Technology Parks (STP), as the case may be, and balance in stock;

Provided that Units/Developer shall maintain such records for a period of ***7 years*** from the end of relevant financial year;

Provided further that the Unit engaged in both trading and manufacturing activities shall maintain separate records for trading and manufacturing services. *[Ref: Rule 22(2) of SEZ Rules, 2006]*

[3]BLUT is different from LUT, where BLUT is an agreement by way of bond between SEZ Developer/Unit and DC to utilize the goods imported or procured duty free for authorised operations within the time specified& to abide with the terms and conditions of such BLUT, whereas LUT is used to make zero rated supplies to SEZ Developer/Unit by units in DTA.

[4]DTA means whole of India (including the territorial waters and continental shelf) but does not include the areas of SEZ.

(iii) The Unit shall submit ***Annual Performance Report (APR) in Form I*** to the DC ***within 90 days*** of the end of financial year and the DC shall place the same before the UAC for consideration. *[Ref: Rule 22(3) of SEZ Rules, 2006]*

(iv) In case of any doubt as to whether any goods are required for authorised operation by the developer or unit, it shall be decided by DC. *[Ref: Rule 27(2) of SEZ Rules, 2006]*

❖ **Procedure for Import of goods by SEZ Developer and Unit:**

Procedure for import of goods by the Developer and Unit has been provided in Rule 28 of SEZ Rules, 2006. As per the SEZ Rules, a Unit or Developer may directly import goods into SEZ or through any of below–

(i) Ports or Airports;
(ii) Land Customs Stations[5] ;
(iii) Inland Container Depots[6] (ICD);
(iv) Foreign Post Offices;
(v) Authorised Couriers;
(vi) Personal baggage of passengers authorised by the SEZ Unit and
(vii) Via Satellite data communications such as internet or any other telecommunication link for software related Units.

❖ *Overview on procedure for Import by Port/Airport/land Customs Stations/ICD:*

(a) The SEZ Developer and Unit (herein after referred as Importer) is required to file ***Bill of Entry (BOE) for Home Consumption*** in "SEZ Online Portal[7] " in quintuplicate(5) giving the detailed description of goods and specifically endorsed as "Special Economic Zone Cargo" along with bill of lading, invoice, airway bill and packing list with the AO.
The BOE would be ***assessed by AO*** in the same manner as BOE for normal import is assessed and such BOE assessed by AO would not require any counter signature of SO. In case BOE is not assessed on the date of filing itself, the goods shall be allowed to be transferred on the basis of registration of BOE and by providing an endorsement on the BOE by AO to this effect.*[Ref: Rule 29(2) of SEZ Rules, 2006]*

(b) The registered and duly assessed BOE is to be ***submitted to the Customs officers*** at the port of import and the same shall be treated as permission for transfer of consignment to the SEZ.

(c) The goods are allowed ***clearance on the basis of the BOE assessed by SEZ customs authority*** and the goods are allowed transferred to SEZ either under customs escort[8] or under a transhipment[9] procedure, at the option of the SEZ importer.

[5]Land Customs Station in simple terms means a customs station, situated where there is a land connectivity between two different nations to ship the goods via road.

[6]ICD is a dry port equipped for handling and temporary storage of containerized cargo as well as empties. This means that hinterland/local customers can receive port services more conveniently closer to their premises.
Ex: Goods imported from USA via port is unloaded at Chennai Port and transferred to the importer at Hyderabad through transhipment by Rail for customs clearance of such goods at the ICD in Hyderabad and not at the Chennai port even though the goods were unloaded at Chennai port.

[7]SEZ Online system is a web-based application that enables the SEZ Developer and Units to report various transactions undertaken by them and to obtain the necessary approvals from SEZ officials online.

[8]Customs escort means goods that are transferred to SEZ will be accompanied by the customs officialstill it reachesSEZ.

[9]Transhipment means transfer of a shipment from one carrier, or more commonly, from one vessel to another in order to deliver the goods to the ultimate destination.

(d) Once the goods have been received into SEZ, SEZ importer is required to ***submit the fifth copy of BOE bearing endorsement by AO*** that goods have been received at the SEZ, to the Customs Officer at the port of import within 45 days from the date of clearance of goods failing which the incharge of the port of import shall write to the SO of the concerned SEZ for raising demand of duty on the importer. *[Ref: Rule 29(2)(g) of SEZ Rules, 2006]*

(e) Endorsement by AOand submission of endorsed BOE to customs officer is deemed to be completion of the customs procedure for the purpose of issuing ***"Out of Charge"*** to the BOE initially filed in SEZ Online portal. *[Ref: Rule 29(2)(h) of SEZ Rules, 2006]*

❖ *Overview on procedure for Import through courier:*

The SEZ importers prefer to import small consignment through courier mode owing to the fact that parcels are delivered at the door of the importers and the process of delivery is comparatively faster

As per rule 29(2)(i) of the SEZ Rules, 2006, the following procedure shall be adopted:

(a) The procedure for filing BOE, getting it assessed by AO and submitting the fifth copy of BOE to customs authorities with 45 days will be same as specified in import by port/airport/land Customs Station/ICD.

(b) The courier will deliver the goods to the SEZ importer under customs escort or shall hand over to the custodian for transhipment to SEZ under transhipment procedure.

(c) In case the SEZ importer is not able to get the parcel duty free, the duty paid by importer on such eligible goods shall be refunded by the SO as drawback under section 74 of Customs Act, 1962.

❖ *Overview on procedure for Import by post:*

Rule 29(4) of the SEZ Rules deals with the procedure for imports of goods by SEZ's through post. The SEZ importer is required to follow the below procedure:

(a) The procedure for filing BOE and getting it assessed by AO will be same as specified in import by port/airport/land Customs Station/ICD.

(b) The copy of intimation letter received from the post office is required to be pasted on the reverse side of the original BOE.

(c) The assessed BOE is to be submitted to the Customs Officer at the post office and the same would be treated as permission for transfer of consignment to the SEZ.

(d) Where the SEZ is situated away from the post office, the goods are to be moved to the SEZ under customs escort or may be handed over to the custodian of SEZ or delivered to the Units or its authorized representative after sealing of the parcel.

❖ *Overview on procedure for Import through personal Baggage:*

Under Rule 29(5) of the SEZ Rules, SEZ may import goods including precious goods, namely gold/silver/platinum or gems and jewellery as personal baggage through an authorized passenger subject to the following procedure :

(a) The authorized passenger bringing the goods must declare the goods with the customs at port/airport in the arrival hall in the declaration form as specified by commissioner incharge of the airport and hand over the goods duly packed indicating the name, address of the consignee accompanied by invoice and packing list to the customs authorities at the port/airport for detention in the warehouse under a detention receipt.
(b) The Customs officer of the port/airport shall detain the goods and issue detention receipt.
(c) The Importer shall file BOE online and submit the original BOE for assessment along with the copy of detention receipt issued by port custom authorities to AO for assessment.
(d) The authorized representative shall present assessed BOE and original detention receipt at the detention counter where goods are allowed clearance after making entries in the warehouse register and detention receipt register.
(e) After release, the goods may either be moved to the SEZ importer under customs escort or may be handed over to the custodian or authorised representative of SEZ after sealing the parcel with customs seal.
(f) The goods are allowed to be taken after verification by AO at SEZ gate.

❖ *Overview on procedure for Import through Internet or through Data communication or Telecommunications Links:*

Import of Information technology enabled services including software is allowed through Internet or through Data Communication links or e-mails subject to following procedure :

(a) In respect of all the materials imported through internet or through data communication or telecommunication links or e-mail, importer is required to file consolidated BOE for a month within 3 working days of closure of the month along with invoice and other relevant documents and shall obtain "Out of Charge" from AO subject to following conditions, namely:
  (i) Import documents are required to be routed through banks or advance payments for imports could be routed through Foreign Currency Account;
  (ii) Instructions, if any, issued by RBI from time to time, in this behalf shall be complied with.[Ref: Rule 29(6) of SEZ Rules, 2006]

Post Import requirements:

A. *Submission of Reports:*

(a) Developer shall submit Quarterly Report on import and procurement of goods from the Domestic Tariff Area, utilization of the same and the stock in hand, in Form E to DC within 30 days from the end of the specified period [Ref: Rule 22(4) of SEZ Rules, 2006]
(b) Unit shall submit Annual Performance Report(APR) in Form I to DC, within 6 months from the end of relevant financial year [Ref: Rule 22(3) of SEZ Rules, 2006]
Unit and Developer can also opt to submit monthly reports online in SEZ Online portal. However, submission of monthly reports does not replace the obligation of Developer and Unit to submit the quarterly reports and APR.

B. *Time Limit for Settlement of Import Payments (under FEMA Regulations):*

(a) Remittance for imports should be completed not later than six months from the date of shipment, except where amounts are withheld towards guarantee of performance, etc.
(b) If payment has been deferred above six months, then such payment arrangement in excess of six months up to three years (Capital Goods) / one year (Non-Capital Goods) would be treated as Trade Credit for which Trade Credit Regulations under ECB need to be followed.
(c) Any deferment beyond the above period needs RBI approval.
(d) Importer can make advance remittance for import of goods subject to the conditions specified by RBI vide AP (DIR Series) Circulars (and Master Direction on Imports) and AD bank must ensure to create Outward Remittance Message (ORM) for all outward remittances in IDPMS.

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

SATURDAY SESSIONS

S.No.	Event	Date	Speaker	Venue
1	TCS provisions under Income Tax Act, 1961	01/06/2019	Varshitha	SBS - Hyd
2	SA 260 Communication with TCWG		Suma	SBS - Hyd
3	Insights of Place of Supply- Part I	08/06/2019	Sai Ram	SBS - Hyd
4	FEM (Export of Goods & Services) Regulations, 2015		Sauchit	SBS - Hyd
5	MAT Credit u/s 115JB of Income Tax Act,1961	15/06/2019	Varun	SBS - Hyd
6	Discussion on any of the Interns Digest article		-	SBS - Hyd
7	Concept of reverse charge under GST	22/06/2019	Gnaneswar	SBS - Hyd
8	Discussion on any of the Interns Digest article		-	SBS - Hyd
9	Residential Status Under Income Tax Act, 1961	29/06/2019	Raviteja	SBS - Hyd
10	Accelerated Assessment		Monika	SBS - Hyd

SESSION TIMINGS: 2:30 to 4:30 PM

Applicability of GST on GTA services - Bharadwaja

Audit of Trade Receivables - Raghuram

Deemed dividend us 2(22)(e) of IT Act, 1961 - Murali Krishna

FEM (Guarantee) Regulations - Sailaasya

Notice us 148 of IT Act, 1961 - Harini

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