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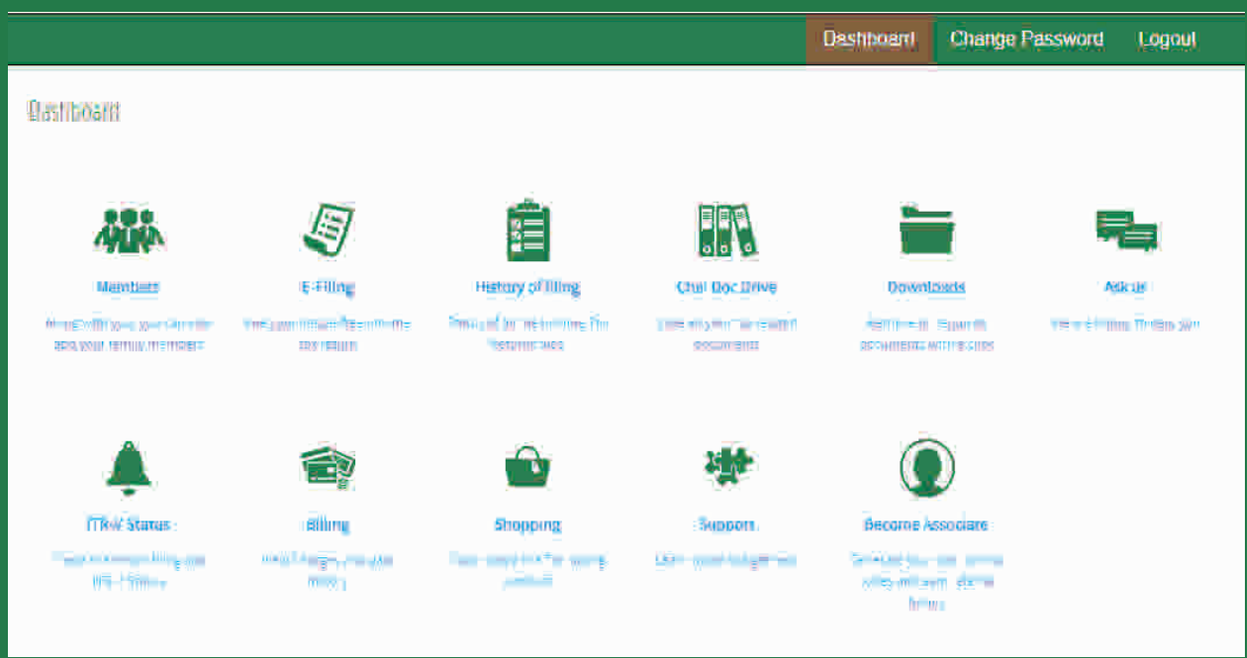

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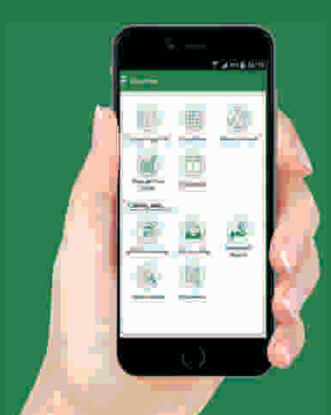

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CONTENTS

INTERNATIONAL TAXATION

AMENDMENT SAFE HARBOR RULES

Contributed by CA Suresh Babu S

The Finance (No 2) Act (FA), 2009 introduced provisions in the Indian Income-tax Law (ITL) that empowered the Central Board of Direct Taxes (CBDT), the apex Indian Tax Administration, to issue transfer pricing "safe harbor" rules. A "safe harbor" is defined in the ITL as circumstances in which the Tax Authority shall accept the transfer price declared by the taxpayer. The CBDT on 14 August 2013 released draft safe harbor rules for public comments. After considering comments of various stake holders, on 18 September 2013, the CBDT issued the final safe harbor rules.

These rules provide minimum operating profit margins in relation to operating expenses a taxpayer is expected to earn for certain categories of international transactions, such as provision of software development services, information technology enabled services, (ITES), knowledge process outsourcing (KPO) services, contract research and development (R&D) services, manufacture and export of automotive components etc. that will be acceptable to the Tax Authority. The rules also provide acceptable norms for certain categories of financial transactions such as intra-group loans made or guarantees provided to nonresident affiliates of anIndian taxpayer.The CBDT, issued transfer pricing (TP) safe harbour rules on 18 September 2013, applicable for five years beginning from financial year (FY) 2012-13 to FY 2016-17. A "safe harbour" is defined in the Indian Income tax law (ITL) as circumstances in which the tax authority shall accept the transfer price declared by the taxpayer.

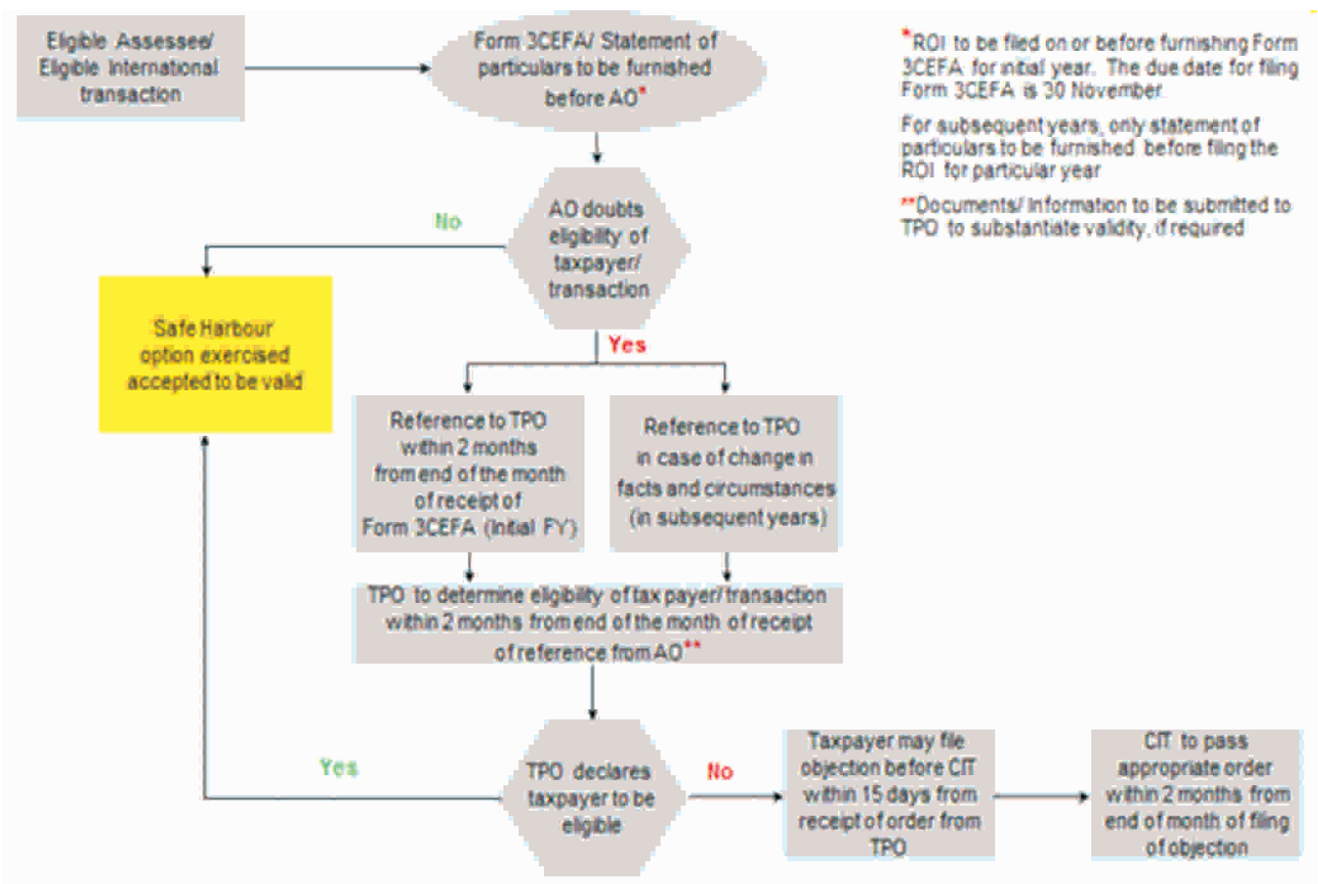
The **CBDT, vide notification 46/2017 dated 7 June 2017**, has now amended the safe harbour rules by extending the applicability to an additional category of international transaction as well revising the applicable price/margins that would be accepted as arm's length. The safe harbour provisions are now extended up to FY 2018-19 with certain modifications in thresholds for the eligible international transactions. For FY 2016-17, the taxpayer has the option to opt for the safe harbours under the old rules or the amended rules, whichever is more beneficial. As per the amended rules, a new category of international transaction for receipt of low value-adding intra-group services has been added. In general, the amended rules seek to make the safe harbour rules more attractive for eligible taxpayers with the objective of reducing TP litigation.

International transactions and applicable safe harbour transfer price

The transfer price declared by an eligible taxpayer shall be accepted by the tax authorities for the below mentioned eligible international transactions subject to the ceilings/circumstances stated as under:

Eligible international transaction	Up to FY 2016-17		From FY 2016-17 to 2018-19	
Threshold limit prescribed	**Safe harbour margin**	**Threshold limit prescribed**	**Safe harbour margin**	
Provision of software development services other than contract research & development (R&D) services with insignificant risks	Up to INR 5 billion	20 % or more on total operating costs	Up to INR 1 billion	17 % or more on total operating costs
Above INR 5 billion	22 % or more on total operating costs	Above INR 1 billion but up to INR 2 billion	18 % or more on total operating costs	
Provision of information technology enabled services (ITES) with insignificant risks	Up to INR 5 billion	20 % or more on total operating costs	Up to INR 1 billion	17 % or more on total operating costs
Above INR 5 billion	22 % or more on total operating costs	Above INR 1 billion up to INR 2 billion	18 % or more on total operating costs	
Provision of knowledge process outsourcing (KPO) services with insignificant risks	No Threshold	25 % or more on total operating costs	Up to INR 2 billion	I) 24 % or more on total operating costs; and the employee cost in relation to the Operating cost is at least 60 %; ii) 21 % or more on total operating costs; and the employee cost in relation to the Operating cost is 40 % or more but less than 60 %; or iii) 18 % or more on total operating costs; and the employee cost in relation to the Operating cost does not exceed 40%

Advancing of intra-group loan to a non-resident wholly owned subsidiary (WOS)	Up to INR 500 million	The Interest rate declared in relation to the international transaction, is equal to or greater than the base rate of State Bank of India (SBI) as of 30 June of the relevant previous year plus 150 basis points.	NA
Above INR 500 million	The Interest rate declared in relation to the international transaction is equal to or greater than the base rate of SBI as of 30 June of the		NA



Implications:

- If safe harbour opted, taxpayer not entitled to make any comparability adjustments nor avail benefit of the prescribed variation.
- Taxpayer required to comply with TP documentation & Form 3CEB filing requirements even if they opt for the safe harbour rules.
- Form 3CEFA to be furnished for the initial year to exercise safe harbour option. Option exercised to remain in force for lesser of the period specified in Form 3CEFA
- Relatively simplified audit process prescribed for taxpayers opting for safe harbour in respect of eligible transactions
- Ineligible to invoke MAP if taxpayer's safe harbour option is accepted

The other key aspects relating to the amended rules are as follows:

- A definition has been provided for low value adding services.
- To claim eligibility under the safe harbour rules for receipt of low value adding services, the allocation methodology needs to be certified by an Accountant as defined the rules.
- The definition of contract R&D services relating to software development has amended to exclude services which involve making available source code to carry out routine functions.
- Definition of employee costs has been provided.
- Definition of operating costs and operating income has been expanded to include costs relating to stock based compensation provided to employees and reimbursement of expenses.
- For the FY 2016-17, the taxpayer has the option to opt for the safe harbours under the old rules or the amended rules whichever is more beneficial.
- Most of the other provisions, including those relating to maintenance of documentation and compliance procedures continue to apply under the amended rules.

This article is contributed by CA Suresh Babu S, Partner of SBS and Company LLP, Chartered Accountants. The author can be reached at suresh@sbsandco.com

AUDIT

CHANGES IN ACCOUNITNG STANDARD - IND AS 16

Contribauted by CA Sandeep Das

Ind AS 16on Property Plant and Equipment and a difference between AS 10 Accounting for Fixed assets and AS 6 on Depreciation Accounting

On March 2016, MCA issued the Companies (Accounting Standards) Amendment Rules, 2016 and following are key amendment with revised AS 10, Property, Plant and Equipment (PP&E).

AS 6, Depreciation Accounting requirements for depreciation are now incorporated in revised AS 10.

AS 10, PP&E is largely aligned with Ind AS10, PP&E. Key new concepts in the standards are as follows:

Cost of an item of property, plant and equipment would be cash price equivalent at the recognition date. If payment is deferred beyond normal credit terms, the difference between the cash price equivalent and the total payment is recognised as interest over the period of credit unless such interest is capitalized in accordance with AS16 Borrowing cost.

Component accounting would be mandatory (in line with Schedule II to the Companies Act, 2013 (2013 Act)

The depreciation method applied to asset would be required to be reviewed at least at each financial year end. If there is a change in the method , then such change would be accounted for as a change in accounting estimate in accordance with AS 5, Net profit or loss for the period, Prior period items and changes in Accounting policies.

Transitional Provisions

For the revisions where specific transitional provisions have not been prescribed, the requirements of AS 5 for changes in accounting policies shall apply i.e. companies will be required to apply the changes retrospectively.

Following are the transitional provisions:

AS 10

Where an entity has in past recognised an expenditure in the statement of profit and loss which is eligible to be included as a part of the cost of a project for construction property, plant and equipment in accordance with the requirements of paragraph 9 of AS 10, it may do so retrospectively for such a project. The effect of such retrospective application of this requirement should be recognised net-of –tax in revenue reserves.

Where one or more items of property , plant and equipment have been acquired in exchange for a non – monetary asset or assets, or a combination of monetary and non – monetary assets, then the initial measurement of an item of property, plant and equipment acquired in an exchange of assets transaction should be applied prospectively only to transactions entered into after AS 10 becomes mandatory.

On the date of AS 10 becoming mandatory, the spare parts, which hitherto were being treated as inventory under AS 2 and are now required to be capitalized in accordance with the requirements of AS 10, should be capitalized at their respective carrying amounts. The spare parts so capitalized should be depreciated over their remaining useful lives prospectively as per the requirement of AS 10.

The revaluation model should be applied prospectively as per the revised guidance. In case any entity does not adopt the revaluation model as its accounting policy but the carrying amount of item(s) property, plant and equipment reflects any previous revaluation, then it should adjust the amount outstanding in the revaluation reserve against the carrying amount of that item. However, the carrying amount of that item should never be less then residual value and any excess of the amount outstanding as revaluation reserve over the carrying amount of that should be adjusted in revenue reserves.

Difference between Ind AS 16 on Property, Plant and Equipment, existing AS 10 on Accounting for Fixed Assets and AS 6 on Depreciation Accounting

1. Existing AS 10 specifically excludes accounting for real estate developers from its scope, whereas Ind AS 16 does not exclude such developers from its scope.

2. Ind AS 16, apart from defining the term property, plant and equipment, also lays down the following criteria which should be satisfied for recognition of items of property, plant and equipment i.e:

   - it is probable that future economic benefits associated with the item will flow to the entity, and
   - the cost of the item can be measured reliably.

   Existing AS 10 does not lay down any specific recognition criteria for recognition of a fixed asset. As per the standard, any item which meets the definition of a fixed asset should be recognised as a fixed asset.

3. As per Ind AS 16, initial costs as well as the subsequent costs are evaluated on the same recognition principles to determine whether the same should be recognised as an item of property, plant and equipment. Existing AS 10 on the other hand, prescribes separate recognition principles for subsequent expenditure. As per existing AS 10, subsequent expenditures related to an item of fixed asset are capitalized only if they increase the future benefits from the existing asset beyond its previously assessed standard of performance. (Paragraph 7 of Ind AS 16 and Paragraph 12 of existing AS 10)

4. Ind AS 16 requires that major spare parts qualify as property, plant and equipment when an entity expects to use them during more than one period and when they can be used only in connection with an item of property, plant and equipment. As per existing AS 10, only those spares are required to be capitalized which can be used only in connection with a fixed asset and whose use is expected to be irregular. (Paragraph 8 of Ind AS 16 and Paragraph 8.2 of existing AS 10)

5. Ind AS 16 is based on the component approach. Under this approach, each major part of an item of property plant and equipment with a cost that is significant in relation to the total cost of the item is depreciated separately. As a corollary, cost of replacing such parts is capitalized, if recognition criteria are met with consequent derecognition of carrying amount of the replaced part. The cost of replacing those parts which have not been depreciated separately is also capitalised with the consequent

derecognition of the replaced parts. If it is not practicable for an entity to determine the carrying amount of the replaced part, it may use the cost of the replacement as an indication of what the cost of the replaced part was at the time it was acquired or constructed.

Existing AS 10, however, does not mandatorily require full adoption of the component approach. It recognizes the said approach in only one paragraph by stating that accounting for a tangible fixed asset may be improved if total cost thereof is allocated to its various parts. Apart from this, neither existing AS 10 nor existing AS 6 deals with the aspects such as separate depreciation of components, capitalizing the cost of replacement, etc. (Paragraphs 43, 70 of Ind AS 16 and paragraph 8.3 of Existing AS 10)

6. Ind AS 16 requires that the cost of major inspections should be capitalised with consequent derecognition of any remaining carrying amount of the cost of the previous inspection. Existing AS 10 does not deal with this aspect. (Paragraph 14 of Ind AS 16)

7. In line with the requirement of Ind AS 37 Provisions, Contingent Liabilities and Contingent Assets, for creating a provision towards the costs of dismantling and removing the item of property plant and equipment and restoring the site on which it is located at the time the item is acquired or constructed, Ind AS 16 requires that the initial estimate of the costs of dismantling and removing the item and restoring the site on which it is located should be included in the cost of the respective item of property plant and equipment. Existing AS 10 does not contain any such requirement. (Paragraphs16 (c) and 18 of Ind AS 16)

8. Ind AS 16 requires an entity to choose either the cost model or the revaluation model as its accounting policy and to apply that policy to an entire class of property plant and equipment. It requires that under revaluation model, revaluation be made with reference to the fair value of items of property plant and equipment. It also requires that revaluations should be made with sufficient regularity to ensure that the carrying amount does not differ materially from that which would be determined using fair value at the balance sheet date.

   Existing AS 10 recognizes revaluation of fixed assets. However, the revaluation approach adopted therein is ad hoc in nature, as it does not require the adoption of fair value basis as its accounting policy or revaluation of assets with regularity. It also provides an option for selection of assets within a class for revaluation on systematic basis. (Paragraphs 29 and 31 of Ind AS 16 and paragraph 27 of existing AS 10)

9. Ind AS 16 provides that the revaluation surplus included in equity in respect of an item of property plant and equipment may be transferred to the retained earnings when the asset is derecognized. This may involve transferring the whole of the surplus when the asset is retired or disposed of. However, some of the surplus may be transferred as the asset is used by an entity. In such a case, the amount of the surplus transferred would be the difference between the depreciation based on the revalued carrying amount of the asset and depreciation based on its original cost. Transfers from revaluation surplus to the retained earnings are not made through profit or loss. (Paragraph 41 of Ind AS 16)

   As compared to the above, neither existing AS 10 nor existing AS 6 deals with the transfers from revaluation surplus. To deal with this aspect, the Institute issued a Guidance Note on Treatment of Reserve Created on Revaluation of Fixed Assets. The Guidance Note provides that if a company has

transferred the difference between the revalued figure and the book value of fixed assets to the 'Revaluation Reserve' and has charged the additional depreciation related thereto to its profit and loss account, it is possible to transfer an amount equivalent to accumulated additional depreciation from the revaluation reserve to the profit and loss account or to the general reserve as the circumstances may permit, provided suitable disclosure is made in the accounts. However, the said Guidance Note also recognises that it would be prudent not to charge the additional depreciation arising due to revaluation against the revaluation reserve.

10. With regard to self-constructed assets, Ind AS 16, specifically states that the cost of abnormal amounts of wasted material, labour, or other resources incurred in the construction of an asset is not included in the cost of the assets. Existing AS 10 while dealing with self-constructed fixed assets does not mention the same. (Paragraph 22 of Ind AS 16)

11. Ind AS 16 provides that the cost of an item of property, plant and equipment is the cash price equivalent at the recognition date. If payment is deferred beyond normal credit terms, the difference between the cash price equivalent and the total payment is recognised as interest over the period of credit unless such interest is capitalised in accordance with Ind AS 16. Similarly, the concept of cash price equivalent has been followed in case of disposal of fixed assets also. Existing AS 10 does not contain this requirement. (Paragraphs 23 and 72 of Ind AS 16)

12. Existing AS 10 specifically deals with the fixed assets owned by the entity jointly with others. Ind AS 16 does not specifically deal with this aspect as these would basically be covered by Ind AS 31 as jointly controlled assets. (Paragraph 15.2 of existing AS 10)

13. Existing AS 10 specifically deals with the situation where several assets are purchased for a consolidated price. It provides that the consideration should be apportioned to the various assets on the basis of their respective fair values. However, Ind AS 16 does not specifically deal with this situation. (Paragraph 15.3 of existing AS 10)

14. Ind AS 16 requires that the residual value and useful life of an asset be reviewed at least at each financial year-end and, if expectations differ from previous estimates, the change(s) should be accounted for as a change in an accounting estimate in accordance with AS 5. Under existing AS 6, such a review is not obligatory as it simply provides that useful life of an asset may be reviewed periodically. (Paragraph 51 of Ind AS 16)
15. Ind AS 16 requires that the depreciation method applied to an asset should be reviewed at least at each financial year-end and, if there has been a significant change in the expected pattern of consumption of the future economic benefits embodied in the asset, the method should be changed to reflect the changed pattern. In existing AS 6, change in depreciation method can be made only if the adoption of the new method is required by statute or for compliance with an accounting standard or if it is considered that the change would result in a more appropriate preparation or presentation of the financial statements. (Paragraph 61 of Ind AS 16)

16. Ind AS 16 requires that change in depreciation method should be considered as a change in accounting estimate and treated accordingly. In existing AS 6, it is considered as a change in accounting policy and treated accordingly. (Paragraph 61 of Ind AS 16)

17. Ind AS 16 requires that compensation from third parties for items of property, plant and equipment that were impaired, lost or given up should be included in the statement of profit and loss when the compensation becomes receivable. Existing AS 10 does not specifically deal with this aspect. (Paragraph 65 of Ind AS 16)

18. Ind AS 16 specifically provides that gains arising on de-recognition of an item of property, plant and equipment should not be treated as revenue as defined in AS 9. Existing AS 10 is silent on this aspect. (Paragraph 68 of Ind AS 16)

19. Ind AS 16 deals with the situation where entities hold the items of property, plant and equipment for rental to others and subsequently sell the same. No such provision is there in existing AS 10. (Paragraph 68A of Ind AS 16)

20. Ind AS 16 does not deal with the assets 'held for sale' because the treatment of such assets is covered in Ind AS 105 Non-current Assets Held for Sale and Discontinued Operations. Existing AS 10 deals with accounting for items of fixed assets retired from active use and held for sale.

21. Ind AS 16 requires that if property, plant and equipment is acquired in exchange for a non-monetary asset, it should be recognised at its fair value unless (a) the exchange transaction lacks commercial substance or (b) the fair value of neither the asset received nor the asset given up is reliably measurable. The existing standard requires that when a fixed asset is acquired in exchange for another asset, its cost is usually determined by reference to the fair market value of the consideration given. It may be appropriate to consider also the fair market value of the asset acquired if this is more clearly evident. Existing AS 10 also prescribes an alternative accounting treatment that is sometimes used for an exchange of assets, particularly when the assets exchanged are similar, is to record the asset acquired at the net book value of the asset given up; in each case an adjustment is made for any balancing receipt or payment of cash or other consideration.

22. Ind AS 16 includes Appendix A which addresses how the changes in the measurement of an existing decommissioning, restoration and similar liability that result from changes in the estimated timing or amount of the outflow of resources embodying economic benefits required to settle the obligation, or a change in the discount rate, shall be accounted for.

23. The disclosure requirements of Ind AS 16 are significantly elaborate as compared to AS 10/AS 6.

New AS 10 has come into force on March 30th, 2016

This article is contributed by CA Sandeep Das, Partner of SBS and Company LLP, Chartered Accountants. The author can be reached at sandeepd@sbsandco.com

COMPANIES ACT, 2013

EXEMPTIONS TO PRIVATE LIMITED COMPANIES

Contributed by CS D V K Phanindra

All are aware that on 05.06.2015, the Ministry had issued Four Notifications all Dt: 05.06.2015, vide which the Minstry has provided certain exemptions/modifications and adaptations as to certain provisions of the Companies Act, 2013 which are applicable to:

- ➔ Government Companies
- ➔ Nidhi Companies (Nidhis)
- ➔ Private Company
- ➔ Section 8 Companies (Companies not for profit)

Even after issue of the said notifications, there were/are many provisions under the Companies Act, 2013, that require relaxations, and upon the representations received by the Ministry, from the Trade and profession, as to difficulties in implementation, the Ministry has issued notification Dt:13.06.2017, providing further exemptions/modifications/adaptations applicable to:

- ➔ Government Companies
- ➔ Private Company
- ➔ Section 8 Companies (Companies not for profit)

In this article, an effort is being made to look in to the further exemptions, modifications and adaptations to the provisions of the Companies Act, 2013, applicable to Private Limited Companies, as notified by the Ministry vide notification Dt:13.06.2017.

Sl. No.	Chapter/ Section number/ Sub-section(s) in the Companies Act, 2013 and Description of the Section, under which the changes were proposed.	Exceptions/ Modifications/Adaptations, as the case may be, as per the Notification	Remarks
1.		***Exception:-*** ➔ Financial Statement, with respect to one person company, small company, dormant company and private company (if such private company is a start-up) may not include the cash flow statement; *Explanation: For the purposes of this Act, the term „start-up" or "start-up company" means a private company incorporated under the Companies Act, 2013 (18 of 2013) or the Companies Act, 1956 (1 of 1956) and recognised as start-up in accordance with the notification issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry.".*	So a OPC, Dormant Company, Small Company and a Start-up Company, being a Private Limited Company, are not required to prepare Cash Flow Statement as part of their Financial Statements
2.	Chapter V, Clauses (a) to (e) of sub-section (2) of section 73 **(Acceptance of deposits from its Members)** ***[Modification to an existing exemption granted through notification Dt: 05.06.2015]***	**Exemption/Adaptation:-** Shall not apply to private companies which: ➔ accepts from its members monies not exceeding 100 % of aggregate of the paid up share capital, free reserves and securities premium account; or ➔ which is a start-up, for five years from the date of its incorporation; or ➔ which fulfils all of the following conditions, namely:-	Exemption to (a) private companies which propose to accept monies from its members not exceeding 100 % of aggregate of the Paid-up Share Capital and Free Reserves and securities premium; or (b) Start-ups for a period 5 years from the date of incorporation; or

		(a) which is not an associate or a subsidiary company of any other company; (b) if the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid up share capital or Rs.50 Crores, whichever is lower; and (c) such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section: Provided that the company referred to in clauses (A), (B) or (C) shall file the details of monies accepted to the Registrar in such manner as may be specified.	(c) A company not being a associate or subsidiary of another company, with borrowings less than twice of its paid up share capital or Rs.50 Crores, whichever is lower, and has not defaulted in repayment of borrowings/deposits. However, the details of deposits accepted needs to be informed to the Registrar.
3.	Chapter VII, clause (g) of sub-section (1) of section 92 **(Annual Return)** **New Exemption**	**Exemption:** Shall apply to private companies which are small companies, namely:- "(g) aggregate amount of remuneration drawn by directors;".	Disclosure as to the remuneration drawn by the directors is not required to be provided by **Small Companies,** in the Annual Return filed with the Registrar of Companies.
4.	Chapter VII, proviso to sub-section (1) of section 92 **(Annual Return)** **New Exemption/Adaptation.**	**Exemption/Adaptation:** For the proviso, the following proviso shall be substituted, namely:- Provided that in relation to One Person Company, small company and private company (if such private company is a start-up), the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.".	Exemption/Adaptation, to provide that in case of a Start-up Private Company, the annual return shall be signed by the CS, and if there is no CS, then by the Director of the Company.

5.	Chapter X, clause (i) of sub-section (3) of section 143 **(Powers and Duties of Auditors and Auditing Standards)- Internal Financial Controls** **New Exemption**	**Exemption:** Shall not apply to a private company:- (i) which is a OPC or a small company; or (ii) which has turnover less than Rs. 50 Crores, as per latest audited financial statement or which has aggregate borrowings from banks or financial institutions **or any body corporate** at any point of time during the financial year less than Rs.25 Crores.".	**Exemption to the Auditors** with regard to disclosure in their report, as to presence of IFC, in Company, in relation to (a) a OPC or a small company; or (b) Companies with Turnover less than Rs. 50 Crores, or Borrowings from banks or financial institutions or any Body Corporate, less than Rs.25 Crores.
6.	Chapter XII, sub-section (5) of section 173 **(Meetings of the Board)** **New Exemption/Adaptation.**	**Exemption/Adaptation:** For sub-section (5), the following sub-section shall be substituted, namely:- (5) A One Person Company, small company, dormant company and a private company (if such private company is a start-up) shall be deemed to have complied with the provisions of this section if at least one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than ninety days: Provided that nothing contained in this sub-section and in section 174 shall apply to One Person Company in which there is only one director on its Board of Directors	Exemption/Adaptation, with relation to a Start-up Company, to provide that holding of one meeting of the Board of Directors in each half of a calendar year, with e gap between the two meetings, not less than 90 days, shall be in compliance of Section 173.

7.	Chapter XII, sub-section (3) of section 174.**(Quorum for meetings of the Board)** **New Exemption**	**Exemption:** Shall apply with the exception that the interested director may also be counted towards quorum in such meeting after disclosure of his interest pursuant to Section 184.	To provide for counting of the interest director for quorum, after the said interested director has disclosed his interest as required under Section 184.

This article is contributed by CS D V K Phanindra. The author can be reached at phanindra@sbsandco.com

COMPANIES ACT, 2013

REVIVAL OF COMPANY STRUCK-OFF BY THE REGISTRAR OF COMPANIES

Contributed by CS D V K Phanindra

Introduction:

All are aware that pursuant to the provisions of Section 248 of the Companies Act, 2013, notices have been received from the Registrar of Companies, by those companies which have not commenced its business or is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455, and responses were sought from such companies within 30 days, failing which the name of the said Company would be removed from the Register of Companies.

After giving reasonable time, the Registrar of Companies, have removed the names of the Companies, which have not responded to their notice, or which have not updated their returns with the ROC, and accordingly the status of the said companies stands changed to **"Struck-off"**, in the Master Data of the said Companies, as appearing in the MCA Portal.

It would be not out of point to mention that, most of those companies, which have responded to the notice of ROC, have not been struck-off, and are still active and probably sometime will be available for those Companies to either update their returns or submit application for closure of the Company.

As the matter stands thus, what is the recourse available ???

Section 252(3) of the Companies Act, 2013, provides for making an application to the Hon'ble National Company Law Tribunal (NCLT) for revival/restoration.

Accordingly, the company itself, a member, a creditor or workman before the expiry of twenty years from the publication in the Official Gazette of the notice under Section 248 (5), may, make an application to the Hon'ble National Company Law Tribunal for restoring the name of the Company to the Register of Members.

The Ministry, vide amendment rules Dt:05.07.2017, has amended the National Company Law Tribunal Rules, by including a new Rule-87-A, so as to provide for the procedure for making the said application to the Hon'ble Tribunal.

Procedure/Process/Steps:

The procedure/process/steps for filing of application with Hon'ble National Company Law Tribunal for restoration of a Company Struck-off by the ROC is as below:

1. A Petition in **Form No.NCLT-9**, along with the relevant documents/annexures is to be prepared, and filed with the Hon'ble Company Law Tribunalin Triplicate.

   - ➔ Memorandum and Articles of Association of the Company;
   - ➔ Annual Reports which are pending filing, to show that the Company is having business and was operational;
   - ➔ Affidavit verifying the petition;
   - ➔ Memorandum of appearance/Vakalat supported by Board Resolution;
   - ➔ Such other documents as maybe required to be provided as proof to the Tribunal to consider the case;
   - ➔ Demand Draft towards fees, drawn in favour of the Pay and Accounts Officer, Ministry of Corporate Affairs, New Delhi/Kolkata/Chennai/Mumbai, as the case may be.

2. A copy of the application shall be served on the Registrar of Companies concerned and on such other persons as the Tribunal may direct, not less than 14 days before the date fixed for hearing of the application.

3. The Tribunal shall hear the Petitioner Company and the Registrar of Companies (ROC), being the Respondent. The ROC will file his replies to the averments made by the Company in the Petition, and the Tribunal may consider the same.

4. After hearing the Parties, if the Tribunal is satisfied, it may pass order the restoration of name of company in the record of the Register of Companies.

5. The order of the Tribunal restoring the name of a company in the register of companies, shall contain that:

   (a) the applicant shall deliver a certified copy to the Registrar of Companies within thirty days from the date of the order;

   (b) on such delivery, the Registrar of Companies do, in his official name and seal, publish the order in the Official Gazette;

   (c) the applicant do pay to the Registrar of Companies his costs of, and occasioned by, the appeal or application, unless the Tribunal directs otherwise; and

   (d) the company shall file pending financial statements and annual returns with the Registrar and comply with the requirements of the Companies Act, 2013 and rules made thereunder within such time as may be directed by the Tribunal.

6. The Company to file copy of the Order with ROC, with in period of 30 days from the date of the order. *Note:As the Company is in Strike-off mode, the Order of the Hon'ble Tribunal is to be submitted physically at ROC and acknowledgement obtained from ROC/Office of the ROC.*

7. ROC to take necessary action as to publish the order in the Official Gazette, and convert the status of the Company from Strike-off to Active, so as to enable the Company to upload the pending returns;

8. The Company to file all the pending returns with ROC, as per the Act, and also as per the directions of the Hon'ble National Company Law Tribunal.

Note: It is to be noted that the Hon'ble National Company Law Tribunal, may on a case to case basis impose such penalty on the Company and also on the Directors of the Company.

Conclusion:

The initiative of the Ministry to clean up the data of inactive Companies, is a welcome move. Though ample opportunity was given to Corporates, to make good the defects, the unresponsive attitude of the Corporates seems unchangeable, and now, has resulted in further burdening of the already burdened Hon'ble Tribunals.

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LABOUR LAWS

WHETHER BOCW ACT IS APPLICABLE TO FACTORIES - MISCLLENAOUS

Contributed by S V Ramachadra Rao

In our country construction and infrastructure industry is one of the major sector employing over 9 million workers in the construction activity and this sector plays a pivotal role in the development and progress of the nation and its economy. The workers in this sector are mostly migrant in nature and vulnerable unorganised labour. The nature of work is also characterized by inherent risk to the life and limb of the workers. The work is casual nature and has a very temporary employer employee relationship for short durations. In most of cases, they work through contractors and sub-contractors and they do not have any direct relationship with the principal employer or owner of the project. The project construction works are normally associated with uncertain working hours, lack of basic amenities and inadequacy of welfare facilities. Keeping in view these conditions, the BOCWAct and BOCW Welfare Cess Act have been brought into place by the legislature.

The BOCWA has defined building or other construction work as the construction, alternation, repairs,maintenance or demolition of or, in relation to, buildings,streets, roads, railways, tramways, airfields, irrigation,drainage, embankment and navigation works, floodcontrol works (including storm water drainage works),generation, transmission and distribution of power,water works (including channels for distribution ofwater), oil and gas installations, electric lines, ……..but does not include any building or other construction work to whichthe provisions of the Factories Act, 1948 (63 of 1948), orthe Mines Act, 1952 (35 of 1952), apply.

In view of the exclusion of construction work to which the provisions of the Factories Act, 1948 is applicable, the green field factories which are under construction have claimed that the BOCWA and Cess Act will not be applicable to them as the Factory Building plans are approved by the Director of Factories and the construction work is undertaken in accordance with the said approvals by the Director of Factories. Though the factory is under construction it has submitted itself to the control and supervision of the Director of Factories.

These contentions were reached the Supreme Court and finally it is now a settled law that the factories during the period of construction are not qualified to be termed as ‘Factory’ and they are covered under BOCWA and Cess Act.

Let us look at the rationale behind this decision. The Factories Act has defined a Factory as any premises including precincts thereof where ten or more workers are working with the aid of power in any part of which a manufacturing process is being carried on. The key issue in the definition is that there should be ‘manufacturing process’.

The factories act has defined manufacturing process as any process for making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting anyarticle or substance with a view to its use, sale, transport, delivery or disposal…
The construction of the factory is not falling within the definition of ‘manufacturing process’.

In addition to the requirement of carrying manufacturing process, to qualify as a factory, there is a requirement of number of workers and operations with the aid of power. The Act defined worker as a person employed in any manufacturing process or in cleaning any part of the machinery or premises used for a manufacturing process or in any other kind of work incidental to or connected with the manufacturing process.

When there is no manufacturing process, there can be no worker covered under the Factories Act during the period of construction of a factory.

The new factories during the period of construction do not have any 'manufacturing process' and also do not have any worker in accordance with the provisions of the factories act and hence the factory during the period of construction is not covered under Factories Act and it is not a factory till it commences 'manufacturing process'.

In view of the above, all the factories during the period of construction are required to be registered and BOCWA and also remit cess in accordance with the provisions of the BOCW Welfare Cess act.

Now the question remind unanswered is whether cess is payable on the total cost of the project that is including the cost of the machinery in addition to cost of civil construction cost. The authorities implementing the BOCW WelfareCess act are insisting payment on the total project cost of the factory including the cost of the machinery etc.,

In common parlance, installation of machinery is known as erection and commissioning and not construction. Now the future litigation is likely to be on these aspects with regard to the assessment of cess liability.

In a matter relating to the welfare cess, the Supreme Court expressed its anguish with regard to collection of over Rs. 27,000 crores as cess and not utilising the same for the purpose for which it is collected under act. It also expressed its view that the money, which should have been spent on the welfare of the labourers, was being spent on administration and advertisements, while the workers are condemned to live miserable life. The bench noted that it was extremely disturbed to find that the poorer people are not getting any benefits from the welfare measure.

The schemes implemented by A.P.Building & Other Construction Workers Welfare Board are: (i) Personal Accidental Death Relief, (ii) Permanent Disability Relief, (iii) Natural Death Relief, (iv) Maternity Benefit, (v) Temporary disability Relief (hospitalisation charges), (vi) Funeral Expenses, (vii) Marriage Gift, (viii) Reimbursement of training in safety and skill development expenses, (ix) Matching contribution towards Pension Scheme. (x) Vocational training to dependents. In its scheme the Welfare Board has extended support to unregistered workers also in case of accidental death and permanent disability.

While the observations made by the apex court are very true, the establishments engaged in construction activity should take up the responsibility of registering the beneficiaries that is the construction workers and assist them to claim the benefits provided under different schemes by the Government under the BOCW Act.

This article is contributed by S V Ramachadra Rao, an associate of SBS and Company LLP, Chartered Accountants. The author can be reached at svrr@resourceinputs.com

TECHNICAL SESSIONS:

S.No.	Event	Date	Speaker	Venue
1	Valuation under GST	21/07/2017	CA Manindar K	SBS - Hyd
2	Updates in Companies Act, 2013	28/07/2017	CS Phanindra DVK	SBS - Hyd
3	Internal Audit - Quality Reporting	04/08/2017	CA Bhyrav MHS	SBS - Hyd

Note:

The timings for the above events shall be from 16:30 hrs to 18:30 hrs. We request the recipients of "SBS Wiki" who are interested to attend the above events to send confirmation of your participation two days in advance to make appropriate arrangements. The relevant material will be hosted at slideshare shortly after the session. The link to download is *http://www.slideshare.net/Team-SBS*

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- CA Murali Krishna G

Concept of Substiuted Income under Income Tax
- CA Ramprasad T

By

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Nellore: 16-6-259, 1st Floor, Near Santi Sweets Opp: SBI ATM, Vijayamahal Centre, SPSR Nellore, Andhra Pradesh
Tada: 8-3-425/2, Flat No. 202, 2nd Floor, Bigsun Avenue, Near SRICITY, TADA, SPSR Nellore Dist, Andhra Pradesh
Visakhapatnam: # 39-20-40/6, Flat No.7, Sai Yasoda Apartments, Madhavadhara,Visakhapatnam (Urban),Vizag, Andhra Pradesh
Bengaluru: B104,RIRCO, Santosh Apartments, Wind Tunnel Road, Murugeshpalya, Old Airport Road, Bengaluru, Karnataka.

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