

ANIL AGRAWAL AND COMPANY

Chartered Accountants





Regulatory [ROC& FEMA]

CORPORATE SOCIAL RESPONSIBILITY

 W.e.f 01.04.2014, Companies specified u/s 135 to spend 2% of Net Profit on CSR. Format of CSR activities in Board Report also notified [CSR Rules, 2014 of 27-02-2014].

COMPULSORY PAN FOR FOREIGN NATIONALS

• MCA vides General Circular No. 12/2014 dated 22.05.2014 clarifies that PAN details are mandatory only for those foreign nationals who are required to possess "PAN" in terms of provisions of the I T Act, 1961 on the date of application for incorporation. Where intending Director who is a Foreign National is not required to compulsorily possess PAN, it will be sufficient for such a person to furnish his/her passport number. alongwith undertaking stating that provisions of mandatory applicability of PAN are not applicable to the person concerned.

<u>CORPORATE IDENTIFICATION NO. ("CIN") NECESSARILY MENTIONED ON</u> OFFICIAL DOCUMENTS

- CIN, along with Name, Registered office address, Telephone number, Fax number, Email and Website to be necessarily mentioned by Companies on their other official Documents
- Failure to do so may attract penalty @ Rs 1,000 per day for the period of default (maximum penalty chargeable Rs. 100,000).

FILING OF FORM MGT-14 WITH ROC

Form MGT-14 to be filed with ROC (Registrar of Companies) within 30 days of passing of Resolution by Board of Directors / Shareholders for following matters:

- Disclosure of Interest by Directors
- Approval of financial statements / Directors' Report
- In cases of Special Resolutions (General Meeting of Shareholders)
- Issue of shares / debentures, borrow monies, invest funds of company, etc.

Regulatory [ROC& FEMA]

ACCEPTANCE OF DEPOSITS FROM PUBLIC BY PUBLIC COMPANIES (SECTION-76)

A public company (having a net worth of not less than one hundred crore rupees or turnover not less than five hundred crore rupees) may accept deposits from persons other than its members. The company shall make compliance of requirements of Section 73, this chapter and any rule made by the government for this purpose.

Following Condition apply for accepting deposits from members-

Credit rating to be obtained.

Charge on assets of the Company.

Other provisions of Chapter V (Section 74 & 75) to apply.

Limit of acceptance of deposits-

<u>From the members</u> shall not exceed 10% of the aggregate of paid up share capital and Free reserve of the Company.

<u>From the public</u> shall not exceed 25% of the aggregate of paid up share capital and Free reserve of the Company.

Prohibition of Acceptance of Deposits from public (Section-73) w.e.f. 1st April, 2014

Section 73 is applicable to all companies. Section 73 (2) of the Companies Act 2013 provides that a Company cannot accept any kind of deposit/ Unsecured loan from relative of the Director,

Company can accept deposit from Director during the tenure of his directorship.

Company can also accept deposits from its members, after passing of a resolution in general meeting after meeting conditions enumerated below:-

Following main Conditions are to be adhered for accepting deposits from members-

Company should issue a circular (Financial statement, credit rating obtained as may be prescribed ,details of No of depositors, detail of amount due towards deposits) to its members, Filing copy of circular with ROC within 30 days before the date of issue of circular, Maintain a liquid assets in form of deposits such deposits fall never 15%, Deposits repayment reserve account shall be used by the company, Deposits insurance, Certificate that company is not default in repayment of loan and other applicable condition.

Regulatory [ROC& FEMA]

Whether Section 73, 74 and 75 of new Companies Act 2013 applicable to Private Limited Companies or not.

Reply: Yes, Section 73, 74 and 75 are applicable to Private Ltd Cos.

2) If applicable then what will the position of old cash credits from Share holders / Director standing in the books of a/cs prior to the commencement of this Act i.e. last day up to which these loans have to be repaid and whether any intimation to ROC required.

Reply: As per provisions of section 185 of Companies Act 2013, no company shall either directly or indirectly advance any loan (including any loan represented by book debt) to any of it's directors or to any other person in whom the director is interested. Also, As per provisions of section 74(1) of Companies Act 2013, with respect to deposits (which includes any receipt of money by way of deposits or loan or in any other form by a company) outstanding as on 31st March 2014, the company has to repay such deposits within 1 year from date of commencement of Act i.e before 31st March 2015 and company has to file Form DPT-4 under Rule 20 of Companies (Acceptance of Deposit Rules 2014) with ROC within period of 3 months from such commencement i.e on or before 30thJune 2014. Also, as per provisions of section 74(2), the Tribunal can condone the delay in repayment of deposits subject to some conditions. Till the time, form DPT-4 is enabled in MCA site, form GNL-2 form can be used.

3) Treatment of share application money pending allotment, prior to the commencement of this act.

Reply: As per provisions of section 42(6) of Companies Act, 2013, once the company had received share application money, it shall allot its securities within 60 days from the date of receipt of the application money for such security and if company is not able to allot the securities, within 60 days, it shall repay the application money to the subscribers within 15 days from the date of completion of 60 days and if company fails to repay the share application money within aforesaid period, it shall be liable to repay that money with interest @ 12% pa from the expiry of 16th day.

Section 42(6) has been enforced wef 01/04/2014. Therefore, any share application money pending allotment prior to 01/04/2014 would have to be either allotted within 60 days i.e on or before 31st May 2014 by filing form PAS3 with ROC or in case it cannot be allotted before 31st May 2014, it should be refunded within next 15 days i.e on or before 15th June 2014. Also, the share application money has to be kept in a separate bank account and cannot be used for any other purpose.

Non Compliance of aforesaid provisions lead to huge penalty.

Direct & Indirect Tax

TRACES- NEW FEATURE INTRODUCED

CPC (TDS) has introduced a new feature on Traces for generating Transaction Based Report (TBR) wrt deductees reported in 27Q TDS statements. The report provides summary of transactions wrt NRI deductees not reporting their PANs.

FORM 49C (Income-tax reporting for Liaison Offices in India)

- Online utility for e-filing made available on Income-tax portal (due date for India Financial Year 2013-14, 30 May 2014)

INCOME TAX CASE LAWS

[Three Judge Bench of Apex Court in CIT v. Rai Bahadur Hardutroy Motilal Chamaria (supra)]

There is no provision in Income Tax Act which permits withdrawal of an appeal, once it is filed, and registered.

<u>Mumbai ITAT in case of Parle Biscuits Pvt. Ltd. [TS-127-ITAT-2014(Mum)-TP]</u> relying on ruling of Airtel, deletes interest on share application money treated as loan.

Uttarakhand High Court, in the case of Valley Hotels & Resorts vs. The Commissioner, Commercial Tax, Dehradun (TS-129-HC2014 (UTT)-VAT)] held that VAT not leviable on 40% of the restaurant bill, which is subject to service tax.

Bombay High Court, in case of <u>Set Satellite (Singapore)</u> Pte Ltd [TS-250-HC-2014(BOM)] held that Payment by Set Satellite (Singapore) to GCC Singapore, for cricket telecast rights is not liable to Indian TDS even though license territory also involves India since the payment is entirely in connection with broadcasting operations in Singapore; HC notes that no connection with marketing activities in India; Absent economic link between payment and Indian operations.

<u>SC in case of Punjab Stainless Steel Industries [TS-256-SC-2014]</u>upholds Delhi HC ruling that proceeds generated from scrap sales should not be included in 'total turnover' for Sec 80HHC deduction purpose; "Turnover" would ordinarily mean only amount of sale proceeds received in respect of goods in which assessee is dealing in, scrap proceeds cannot be included in 'turnover'.

Direct & Indirect Tax

Gujrat High Court in case of Sadguru Construction Co. vs. Union of India (2014-TIOL-630-HC-AHM-ST)] held that service Tax paid after March 1, 2013 but before enactment of VCES on May 10, 2013 – Should be considered as paid under VCES.

<u>Delhi High Court (Delhi HC)</u>, in respect of the writ petition filed in the case of <u>Centrica India Offshore Private Limited (Indian Entity) held that</u>

Overseas entities, through the seconded employees, have provided technical services to Indian entity, especially since the expression Fees for Technical Services (FTS)/Fees for Included Services (FIS) includes provision of services of personnel.

Points to note:

Also, as per the DTAAs, Service PE is not constituted when the amount paid to the overseas entities fall within the meaning of FTS/FIS. However, surprisingly in present case the court has held the payments to overseas entities be taxed as FTS/FIS and also seconded employees constitute a Service PE of the overseas entity.

TRANSFER PRICING CASE LAWS

Leighton India Contractors Private Limited [TS-137-ITAT-2014(Mum)-TP]

Mumbai Tribunal Grants substantial stay on share valuation TP adjustment, schedules hearing on priority.

Pentair Water India Pvt. Ltd. [TS-141-ITAT-2014(PAN)-TP]

ITAT : Allows notional value inclusion of services to other units in division profitability.

Symphony Services Pune Pvt. Ltd. [TS-139-ITAT-2014(PUN)-TP]

ITAT: Allows comparable exclusion carrying KPO services with assessee carrying software development

Atos India Pvt. Ltd. [TS-138-ITAT-2014(Mum)-TP]

ITAT : Atos India gets conditional stay on strength of possible working capital adjustment

ABOUT US & WHERE WE ASSIST

We are a consulting and outsourcing CA firm engaged in providing consulting services to Indian and multinational clients. The firm has been founded by Mr. Anil Agrawal, FCA who is alumni of Ernst & Young and have more than 10 years of experience in the fields of Auditing, Taxation and Regulatory matters.

We have dedicated team of Chartered Accountants, Semi qualified and adequate support staff who are competent people with sharp insight and unique skill set.

Our Current area of operation are NCR region comprising of DELHI, GURGAON, MANESAR, NOIDA, GREATER NOIDA & FARIDABAD

Accounting and Auditing (Assurance services)

Implementation of Indian GAAP & AS Conversion of financial statement from Indian GAAP to IFRS/ US GAAP

Assurance services

Taxation services

Domestic Tax
Interpretation and
Advisory
International Tax
Interpretation and
advisory
Transfer pricing
Indirect Tax Advisory
NRI/Expatriate Tax

Regulatory services

FEMA and RBI
regulations
Advisory on Entry
strategy and exit routes
for foreign companies
Liasioning with
ROC/RBI
Tax returns

Company law services

Transaction Advisory services

Merger and Acquisition Business Restructuring Financial/legal/Commer cial Due Diligence Valuation Services Corporate Financing

⊠ CONTACT US



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