

Brahmayya Bulletin

May 2015

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Editorial

The Ministry of Corporate Affairs (MCA), has amended various sections through the Companies (Amendment) Act, 2015 simplifying certain requirements. These are welcome changes and the Industry based on various representations is anticipating some more amendments to critical provisions. The much awaited Income Tax Return (ITR) Forms have also been simplified, which was a matter of concern as the Government had proposed to release them much earlier pursuant to various problems associated with the earlier issued ITR Forms. With the Central Processing Cell (CPC) of the Income Tax Department, being very proactive in clearing issues through its helpline, the circular on methodology in processing arrears and demands, emphasizing on the priorities of Assessing officers on their action points is well appreciated by the tax payers. Come June, the amendment to the Service Tax rate would also be effective and the Department has provided clarifications on the transition.

ICAI has also provided clarification on the much awaited format for Consolidated Auditor's Report. During the pendency of this guidance from ICAI, few auditors had already issued the Auditor's Report in the erstwhile format. Providing CARO Report on the Consolidated Financial Statements is new to the profession and there will certainly be deliberations on the modus operandi on reporting of various clauses – the ICAI, will hopefully come up with a detailed “Commentary” of “Guidance” on the CARO reporting on Consolidated Financial Statements. The guidance note issued by ICAI on Derivatives and CSR Activities, clarifies the recognition, measurement and disclosure principles.

The response to the “Brahmayya Bulletin”, from the readers has been overwhelming. Our sincere efforts to provide simple analysis and explanations to various important circulars, notifications, clarifications by the regulatory bodies will continue. Thank You!

“Continuous Expansion is the Key to Manifestation”



Ministry of Corporate Affairs



Companies (Amendment) Act, 2015 – Dated 25th May 2015

This Amendment Act, received the Presidential assent on 25th May 2015 and was published by the MCA. The following are the Key highlights:

SECTION OF AMENDMENT ACT	REMARKS	AMENDED, OMITTED OR INSERTED
2	Minimum Paid up capital requirement for Private Limited (Rs. 1 Lakh) and Public Limited Company (Rs. 5 Lakhs) Clause is removed	2(68) & 2(71)(b)
3	Common Seal requirement omitted	9
4	Requirement to file declaration by Director for companies having share capital, before commencement of business is removed	11
6	If company does not have common seal, Bills of exchange can be executed by authorization of two directors or by a director and the Company Secretary, appointed by the Company	22
7	If company does not have common seal, Share Certificates can be issued by authorization of two directors or by a director and the Company Secretary, appointed by the Company	46
8	Penal provision of minimum of Rs. 1 Crore and maximum Rs. 10 Crores for the company and every officer in default shall be punished with minimum of Rs. 25 Lakhs and maximum Rs. 2 Crores and imprisonment upto 7 years, in case of violation of Section 73 or Section 76.	76A



SECTION OF AMENDMENT ACT	REMARKS	AMENDED, OMITTED OR INSERTED
9	No person under Section 399 of the Companies Act (Inspection of documents with Registrar) is entitled to obtain copies of resolutions passed under Section 179 (Board Resolution)	117
10	No company will be allowed to declare dividend unless previous year losses/depreciation, not provided in previous year are set-off against the current year profits.	123
11	If dividend is not paid or not claimed for consecutive 7 year period then such shares should also be transferred in the name of Investor Education and Protection Fund.	124(6)
12	A statement providing details of frauds as reported by the auditor under Section 143 (12), other than those as reported to Central Government should also be enclosed along with financial statements by the management in Director's Report	134(3)(ca)
13	Auditor has to report to the Central Government for any fraud as above the prescribed limit. If any fraud is below the prescribed limits, reporting has to be done to audit committee/Board and it should be disclosed separately in Board Report.	143(12)
14	Audit committee is empowered to provide omnibus approval for related party transaction subject to the conditions as may be prescribed.	177
15	Exemption given in rules for giving loans to WOS and guarantee/ security provided for Subsidiary is incorporated in the section itself.	185
16	Only ordinary resolution is required to pass the related party transaction instead of special resolution. No shareholder approval is required if there are transaction between holding and wholly owned subsidiary whose accounts are consolidated	188



Company (Registration Office and Fees) Second Amendment Rules 2015 - Dated 25th May 2015

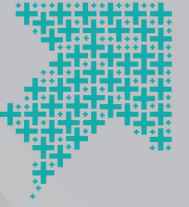
A proviso is inserted specifying that one is allowed to inspect/obtain the copies of resolution passed under Section 117 (3) (g) of the Companies Act, 2013.

Company (Incorporation) Second Amendment Rules, 2015

A proviso is inserted specifying that in case of pursuing any of the objects of the Company requires registration or approval from concerned sectoral regulators shall be obtained before pursuing such objects and a declaration to be submitted at the stage of Incorporation.

Commencement Notification of Companies (Amendment) Act, 2015

Section 1 to 12 and 15 to 23 of the Companies (Amendment) Act, 2015 comes into effect from 29th May 2015. Accordingly Section 13 relating to Fraud Reporting and Section 14 relating to Omnibus approval for related party transactions have not yet come to effect.



Central Board of Direct Taxes



Circular No.8/2015 – Dated 14th May 2015

CBDT vide its earlier instruction No.4 of 2014 dated 7th April 2014 prescribed Standard Operating Procedures for Verification and Correction of Demand Available or uploaded by Assessing Officers in the CPC Demand Portal by 30th April 2014. Currently, by virtue of the Circular No.8/2015, a facility has been made available to tax payers on the E-Filing website to provide online responses to such demands. Actions required in the website is detailed in this circular.

However, when the tax payer finds it difficult to access the website, the assessee may make necessary application to the AO along with the details as prescribed in this Circular.

The AO, in the following cases are required to take action on priority:

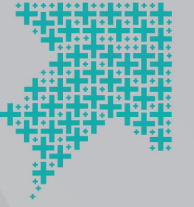
- Taxpayer has furnished information in response to notice u/s 245 of the Act
- Taxpayer has requested for reduction/removal of demand
- Information regarding demand reduction/removal is available in Department Records
- Details are already available in the system, such as additional TDS credits reported by Deductor in case of earlier TDS mismatch



Press Information Bureau (Ministry of Finance) – Dated 31st May 2015

Having considered the responses received from various stakeholders, corresponding to ITR 1, 2 and 4S for Assessment Year 2015-16 notified on 15th April 2015, these forms are proposed to be simplified in the following manner for the convenience of the taxpayers:

- Individuals having exempt income without any ceiling (other than agricultural income exceeding Rs. 5,000) can now file Form ITR 1 (Sahaj). Similar simplification is also proposed for individuals/HUF in respect of Form ITR 4S (Sugam).
- New Form ITR 2A is proposed which can be filed by an individual or HUF who does not have capital gains, income from business/profession or foreign asset/foreign income
- In lieu of foreign travel details, it is now proposed that only Passport Number, if available, would be required to be given in Forms ITR-2 and ITR-2A. Details of foreign trips or expenditure thereon are not required to be furnished.
- As regards bank account details in all these forms, only the IFS code, account number of all the current/savings account which are held at any time during the previous year will be required to be filled-up. The balance in accounts will not be required to be furnished. Details of dormant accounts which are not operational during the last three years are not required to be furnished.
- An individual who is not an Indian citizen and is in India on a business, employment or student visa (expatriate), would not mandatorily be required to report the foreign assets acquired by him during the previous years in which he was non-resident if no income is derived from such assets during the relevant previous year.



Central Board of Excise and Customs



Notification No.14/2015 – ST – Dated 19th May 2015

This Notification seeks to enforce certain provisions of the Finance Act, 2015, with effect from 1st June, 2015. The service tax rate has been increased from 12.36% to 14% and at such increased rate, education cess of 2% and Higher Education cess of 1% is done away with effect from 1st June 2015. In this context, the service tax charge is based on three broad parameters:

- Service Provided
- Payment Received
- Invoice raised.

If any of the two parameters are completed before 1st June 2015 then old rate of service tax will be applicable. If any two parameters are completed on or after 1st June 2015, then new rate of service tax will be applicable.

Notification No.15/2015 – ST – Dated 19th May 2015

Effective from June 1, 2015, consequent to the upward revision in Service tax rate, the composition rate to be revised proportionately under Rule 6(7), 6(7A), 6(7B) and 6(7C) of the Service Tax Rules, 1994 on specified services, namely Air Travel Agent, Life Insurance service, Money changing service provided by banks or authorized dealers and Service provided by lottery distributor and selling agent.



Notification No.16/2015 – ST – Dated 19th May 2015

Service tax would be levied on services by way of carrying out of intermediate production process of alcoholic liquor for human consumption on job work, consequent to imposition of Service tax on services by way of manufacture of alcoholic liquor for human consumption.

New Exemptions to services by way of right to admission to:
exhibition of cinematographic film, circus, dance, or theatrical performances including drama or ballet
recognized sporting events award functions, concerts, pageants, musical performances or any sporting events other than recognized sporting event, where the consideration for such admission is upto Rs. 500 per person.

Notification No.14/2015 – CENT (N.T) – Dated 19th May 2015

This Notification amends Rule 6(3) of the Cenvat Credit Rules, 2004 where Rate of amount of reversal of Credit is increased from 6 percent to 7 percent.

Notification No.15/2015 – CENT (N.T) – Dated 19th May 2015

As per Rule 5B of Cenvat Credit Rules, 2004, a service provider notified under sub-section (2) of section 68 of the Finance Act (service provider covered under reverse charge mechanism) and being unable to utilise the CENVAT credit availed on inputs and input services for payment of service tax on such output services, shall be allowed refund of such unutilised CENVAT credit subject to procedure, safeguards, conditions and limitations. This notification omits the clause referring to provider of supply of manpower for any purpose or security services. Accordingly, this service provider cannot be allowed to claim refund of unutilized CENVAT credit.



Institute of Chartered Accountants of India



Guidance Notes

The ICAI has issued detailed Guidance Note on Accounting for Expenditure on Corporate Social Responsibility Activities (dated 15th May 2015) and Accounting for Derivative Contracts (dated 12th May 2015). These aspects have been explained in detail as a separate article as part of “Our News” in the website.

Announcement on Auditor’s Report on Consolidated Financial Statements under the Companies Act, 2013

The ICAI has issued illustrative format for Auditor’s Report on Consolidated Financial Statements under the Companies Act, 2013. The Auditor while reporting on the consolidated financial statements (CFS) of a company under the Companies Act 2013 may draw guidance from the formats and suitably reword the same, as required, to meet the circumstances of audit of CFS.

The formats of an auditors’ report on CFS, covering some of the clauses of section 143(3) of the Companies Act, 2013 (and where the auditor does not have the responsibility for reporting on internal financial controls over financial reporting under section 143(3)(i) of the Companies Act, 2013), have been issued to provide a broad guidance on how such a report may be prepared.

In comparison to the erstwhile reporting format, the Auditor is required to provide the “Report on Other Legal and Regulatory Requirements” which includes reporting under Companies (Auditor’s Report) Order, 2015.



Foreign Exchange Management Act (FEMA)



Notification No. FEMA 341/2015 – Dated 26th May 2015

This Foreign Exchange Department of Reserve Bank of India (RBI) has issued this notification as per requirements of Foreign Exchange Management (Permissible Capital Account Transactions) (Third Amendment) Regulations, 2015, wherein, RBI in consultation with Central Government has increased the limit for drawl of Foreign exchange from USD 1,25,000 to USD 2,50,000 per year for Capital Account Transaction as specified in Schedule I. No amount of such withdrawal will be used for remittance directly or indirectly to countries notified as non-cooperative countries and territories by Financial Action Task Force.

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