

Brahmayya Bulletin

April 2015

Brahmayya&co.



Editorial

April! – One of the busiest month for the Chartered Accountant. Deepest minds review the deepest of insights to provide the stake holders with utmost comfort and assurance through the financial reporting practices. The professionals, both in the industry and practice have been yearning for clarity on certain interpretative aspects pertaining to Audit Reporting and requirements under the Companies Act, 2013. The professionals in the Industry have also been clarified on various aspects by the Ministry of Corporate Affairs.

With the start of the new financial year, we at Brahmayya&Co, as an endeavor to help our clients ensure excellence through our 8 decades of experience, bring to you, the “Brahmayya Bulletin”, a monthly newsletter, which provides simple analysis and explanations to various important circulars, notifications, clarifications by the regulatory bodies.

“Simplicity is the ultimate sophistication”

- Leonardo da Vinci.



Ministry of Corporate Affairs



General Circular No.6/2015 – Dated 9th April 2015

Section 186(7) of the Companies Act, 2013 specifies that no loan shall be given under this section at a rate of interest lower than the prevailing yield of one year, three year, five year or ten year Government Security closest to the tenor or the loan. Consequent to the requirements of this section, the Ministry has clarified that in cases where the effective yield (effective rate of return) on tax free bonds is greater than the prevailing yield of one year, three year, five year or ten year Government Security closest to the tenor or the loan, there is no violation of Section 186(7) of the Companies Act, 2013.

General Circular No.7/2015 – Dated 10th April 2015

By virtue of the provisions of Schedule XIII(Sixth proviso to Para (C) of Section II of Part II) of the Companies Act 1956, listed companies and their subsidiaries were allowed to pay managerial remuneration without approval of Central Government, in excess of the limits specified therein, if such managerial person:

- Does not have interest in the capital of the Company
- Is not related the promoters
- Possesses graduate level qualification with expert and specialized knowledge in the field of his profession.

Since similar provisions were not available in the Schedule V of the Companies Act, 2013, the Ministry has clarified that managerial person appointed in accordance with the provisions of Schedule XIII of the earlier Act may receive relevant remuneration for the period as approved by the Company in accordance with the provisions of the earlier Act even if the part of his/her tenure falls after 1st April 2014.

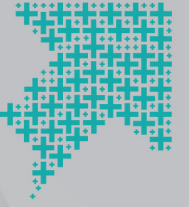


Companies (Auditor's Report) Order, 2015

In exercise of the powers conferred by the Section 143(11) of the Companies Act, 2013, the Central Government, after consultation with the ICAI has issued the Companies (Auditor's Report) Order, 2015 in regard to matters to be included in the Auditor's Report. This Order applies for the financial year commencing on or after 1st April 2014.

Applicability is depicted below :

TITLE	CARO 2003	CARO 2015
Applicability	Every Company including Foreign Company	Every Company including Foreign Company
Exceptions	<ul style="list-style-type: none">• Banking, Insurance Companies• Sec. 25 Companies• Private Companies:<ul style="list-style-type: none">- SC + Reserves < INR 50 Lakhs- Not accepted Public Deposits- Loans from Banks & FI < INR 25 lakhs- Turnover < INR 5 Crores at any time during the financial year	<ul style="list-style-type: none">• Banking, Insurance,• Sec. 8 Companies• Small & One Person Company• Private Companies:<ul style="list-style-type: none">- SC + Reserves < INR 50 Lakhs- Not accepted Public Deposits- Loans from Banks & FI < INR 25 lakhs- Turnover < INR 5 Crores at any time during the financial year• Small & One Person Company
Clauses	21	12



Central Board of Direct Taxes



Circular No.6/2015 – Dated 9th April 2015

As per the provisions of the Income Tax Act, 1961 the units of a Mutual Fund held for a period of more than 12 months qualify as a Long Term Capital Asset. The Amendment in Section 2(42A) of the Act changed the period of holding in case of unlisted shares and units of a mutual fund (other than equity oriented fund) for the qualification as long term capital asset to more than 36 months. As a result, gains arising out of any investment in the units of Fixed Maturity Plans (FMPs) made and sold/redeemed after 10.07.2014 would be taxed as short term capital gain if the unit was held for a period of 36 months or less.

To enable FMPs to qualify as long term capital asset, some AMC's administering the mutual funds have offered an extension to the duration of the FMP to a date beyond 36 months from the date of original investment by providing the investor an option to rollover of the FMPs in accordance with the SEBI regulations. SEBI has clarified that in case of roll over in accordance with the aforesaid regulation, the scheme remains the same and it does not constitute a different scheme.

Therefore, such rollovers does not constitute transfer under Section 2(47) of the Act and accordingly it is clarified that no capital gains will arise at the time of exercise of the option to continue in the same scheme. Capital gains will however arise at the time of redemption of units or opting out of the scheme, as the case may be.

Notification No.39/2015 – Dated 13th April 2015

CBDT notifies amendment to Rule 2BB specifying transport allowance exemption under Section 10 (14) of the Income Tax Act, 1961 w.e.f. 1st April 2015, thereby increasing transport allowance exemption to Rs.1,600 per month from Rs.800 per month and also doubles the exemption limit for blind or orthopedically handicapped employees from Rs.1,600 per month to Rs. 3200 per month.



Notification No.41/2015 – Dated 15th April 2015

CBDT has amended Rule 12 of Income-tax Rules, 1962 relating to return of income which shall be applicable for the Assessment Year 2015-16 vide CBDT has also notified new ITR-1, ITR-2 and ITR-4S for the Assessment Year 2015-16.

Person	Condition	Manner of Furnishing Return
	Audit under section 44 AB is mandatory	Electronically under Digital Signature
Individual & HUF	<p>Audit under section 44 AB is mandatory, and</p> <ul style="list-style-type: none">- The return is furnished in Form No. ITR-3 or Form No. ITR-4; or- The person being a Resident other than not ordinarily resident and has assets (including financial interest in any entity) located outside India; or signing authority in any account located outside India; or income from any source outside India.	<ul style="list-style-type: none">- Electronically under digital signature; or- Transmitting the data in the return electronically under electronic verification code; or- Transmitting the data in the return electronically and thereafter submitting the verification of the return in Form ITR-V.



Individual & HUF	<ul style="list-style-type: none">- Any relief, in respect of tax paid outside India, under section 90 or 90A or deduction of tax under section 91 is claimed;- Any report of audit referred to in proviso to sub-rule (2) is required to be furnished electronically; or- Total income assessable under the Act during the previous year of the person (other than the person, being an individual of the age of 80 years or more at any time during the previous year and furnishing the return in Form ITR-1 or ITR-2),-<ul style="list-style-type: none">(i) exceeds five lakh rupees; or(ii) any refund is claimed in the return of income;	
Company	In all cases	Electronically under Digital Signature



Individual & HUF	In any other case	<ul style="list-style-type: none">- Electronically under digital signature; or- Transmitting the data in the return electronically under electronic verification code; or- Transmitting the data in the return electronically and thereafter submitting the verification of the return in Form ITR-V; or- Paper form;
Company	In all cases	Electronically under Digital Signature
A person required to furnish the return in Form ITR-7	In case of a political party	Electronically under Digital Signature
	In any other case	<ul style="list-style-type: none">- Electronically under digital signature; or- Transmitting the data in the return electronically under electronic verification code; or- Transmitting the data in the return electronically and thereafter submitting the verification of the return in Form ITR-V.



Firm/LLP/ Any other person who is required to file return in Form ITR-5	Audit under section 44 AB is mandatory	Electronically under Digital Signature
	In any other case	<ul style="list-style-type: none">- Electronically under digital signature; or- Transmitting the data in the return electronically under electronic verification code; or- Transmitting the data in the return electronically and thereafter submitting the verification of the return in Form ITR-V.



Central Board of Excise and Customs



Notification No.12/2015 – Central Excise (N.T) - Dated 30th April 2015

Amendment to CENVAT Credit Rules, 2004 specifies that

- The credit of Education Cess and Secondary and Higher Education Cess paid on inputs or capital goods received in the factory of manufacture of final product on or after the 1st day of March, 2015 can be utilized for payment of the duty of excise leviable under the First Schedule to the Excise Tariff Act:
- The credit of balance fifty per cent Education Cess and Secondary and Higher Education Cess paid on capital goods received in the factory of manufacture of final product in the financial year 2014-15 can be utilized for payment of the duty of excise .
- The credit of Education Cess and Secondary and Higher Education Cess paid on input services received by the manufacturer of final product on or after the 1st day of March, 2015 can be utilized for payment of the duty of excise .

Circular No. 183 / 02 / 2015 - ST - Dated 10th April 2015

Finance Bill, 2015 specifies that the rate of Service Tax is being increased from 12% plus Education Cess' and 'Secondary and Higher Education Cess' to 14%. The 'Education Cess' and 'Secondary and Higher Education Cess' shall be subsumed in the revised rate of Service Tax. Thus, the effective increase in Service Tax rate will be from the existing rate of 12.36% (inclusive of cesses) to 14%, subsuming the cesses.

In this context, an amendment is being made in section 66B of the Finance Act, 1994. Further, it has been provided that levying Education Cess and Secondary and Higher Education Cess on taxable services shall cease to have effect from a date to be notified by the Government.



The new Service Tax rate shall come into effect from a date to be notified by the Central Government after the enactment of the Finance Bill, 2015. Till the time the revised rate comes into effect, the 'Education Cess' and 'Secondary and Higher Education Cess' will continue to be levied in Service Tax.



Institute of Chartered Accountants of India



Clarification on Auditor's Report in respect of financial statements before 1st April 2014

The MCA vide its General Circular No 07/2014, "Dissemination of Information With Regards to the Provisions of the Companies Act, 2013" as notified till date vis a vis Corresponding Provisions of the Companies Act, 1956, dated 1st April 2014 had provided information in respect of such sections of the Companies Act 1956 which will cease/continue to have effect after 1st April 2014.

MCA had also issued a General Circular No. 8/2014 on 4th April 2014 inter alia, mentioned that "..... it is hereby notified that the financial statements (and documents required to be attached thereto), auditor's report and Board's report in respect of financial years that commenced earlier than 1st April, 2014 shall be governed by the relevant provisions/ Schedules/ rules of the Companies Act, 1956 and that in respect of financial years commencing on or after 1st April, 2014, the provisions of the new Act shall apply.

Consequently, in case of companies whose financial years commenced before 31st March 2014 but would end on or before 31st March 2015, w.e.f. 1st April 2014, various documents, minutes and registers, etc., may not be maintained in accordance with the provisions of the Companies Act, 1956 for such part of the financial year that falls after 1st April 2014. The aforesaid situation is giving rise to practical difficulties for the statutory auditors while reporting in terms of certain provisions of Section 227 of the Companies Act, 1956, specifically relating to Section 274(1)(g) and certain clauses of Companies (Auditor's Report) Order, 2003. It is, therefore, suggested that in case of aforesaid situation, the statutory auditors should report on the relevant clauses only for that part of the financial year upto which the concerned provisions of the Companies Act 1956 were in force (i.e., upto 31st March 2014). Also, the statutory auditors should clearly bring out this fact in the relevant portions of their audit reports.



Illustrative disclosure

“Other Matters

The MCA had on 1st April, 2014, vide its General Circular No. 07/2014, Dissemination of Information with Regards to the Provisions of the Companies Act, 2013 as Notified Till date vis a vis Corresponding Provisions of the Companies Act, 1956, identified such sections of the Companies Act, 1956 that would cease/ continue to have effect from 1st April 2014.

Accordingly, in terms of the aforesaid Circular, our reporting in respect of section 227(3)(f) of the Companies Act, 1956, and clauses (iii), (v)(a) and (b), (vi), (viii), (xiv), (xviii) of the Companies (Auditor's Report) Order, 2003 (dealing with sections 49, 58A, 58AA, 209(1) (d) and 301 of the Companies Act, 1956) is only for the period beginning from _____ till 31st March 2014 since as per the aforementioned MCA Circular these sections have ceased to have effect from 01st April, 2014.



Guidance note on Reporting under CARO, 2015 and consequential amendment to the format of Auditor's Report

It is noted that the twelve reporting clauses given in paragraph 3 of CARO, 2015 are similar in their requirements to the corresponding clauses in paragraph 4 of the CARO, 2003. Further, the requirement to state reasons for unfavourable or qualified answers as given in paragraph 4 of the CARO, 2015 is also similar to that contained in paragraph 4 of the CARO, 2003. Accordingly, members are advised to continue to draw in principle guidance from the relevant paragraphs of the Statement on the Companies (Auditor's Report) Order, 2003, issued by the ICAI . While reporting on the requirements of CARO, 2015, a reference thereto also needs be added in the main audit report under the "Report on Legal and Other Regulatory Matters" paragraph as follows:

"Report on Other Legal and Regulatory Requirements

As required by the Companies (Auditor's Report) Order, 2015 ("the Order"), issued by the Central Government of India in terms of sub-section (11) of section 143 of the Companies Act, 2015, we give in the Annexure a statement on the matters specified in paragraphs 3 and 4 of the Order, to the extent applicable.

As required by Section 143 (3) of the Act, we report that:

.....
.....



Guidance note on Reporting under Section 143 (3) (f) of the Companies Act, 2013

Section 143 (3) (f) of the Act requires the Auditor to report the observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company. The words “observations” or “comments” as appearing in clause (f) of section 143(3) are construed to have the same meaning as referring to “emphasis of matter paragraphs, situations leading to modification in the auditor’s report. Therefore, only such “observations” or “comments” of the auditors on financial transactions or matters that have been made by the auditor in the auditor’s report which have an adverse effect on the functioning of the company are required to be reported under this clause.

The Act does not specify the meaning of the phrase ‘adverse effect on the functioning of the company’. This expression should be interpreted logically and harmoniously so that it does not change the basic objective and concept of audit, which is to examine the financial statements and express an opinion thereon. The auditor’s opinion, therefore, does not assure, for example, the future viability of the entity nor the efficiency or effectiveness with which management has conducted the affairs of the entity. Accordingly, the auditor should report the adverse effect on the functioning of the company only if it affects the financial statements. There is no change in the objective and scope of an audit of financial statements because of inclusion of Section 143 (3) (f) of the Act. The auditor should evaluate the subject matters leading to modification of the audit report or emphasis of matter in the auditor’s report to make judgement as to which of them has an adverse effect on the functioning of the company within the overall context of audit of financial statements. Conversely, such qualifications or adverse opinions or disclaimer of opinion or emphasis of matters of the auditor, which do not deal with matters that have adverse effect on the functioning of the company, need not be reported under this clause. If the auditor has any comments or observations on any of the matters stated in section 143(1) of the Act, the auditor should consider such comments or observations when reporting under this clause if they contain



future viability of the entity nor the efficiency or effectiveness with which management has conducted the affairs of the entity. Accordingly, the auditor should report the adverse effect on the functioning of the company only if it affects the financial statements. There is no change in the objective and scope of an audit of financial statements because of inclusion of Section 143 (3) (f) of the Act. The auditor should evaluate the subject matters leading to modification of the audit report or emphasis of matter in the auditor's report to make judgement as to which of them has an adverse effect on the functioning of the company within the overall context of audit of financial statements. Conversely, such qualifications or adverse opinions or disclaimer of opinion or emphasis of matters of the auditor, which do not deal with matters that have adverse effect on the functioning of the company, need not be reported under this clause. If the auditor has any comments or observations on any of the matters stated in section 143(1) of the Act, the auditor should consider such comments or observations when reporting under this clause if they contain matters that may have any adverse effect on the functioning of the company.

Emphasis of Matter which MAY have an adverse effect on the functioning of the company include situations where:

- The going concern assumption is appropriate but there are several factors leading to a material uncertainty that may cast a significant doubt about the Company's ability to continue as a going concern; or
- A material uncertainty regarding the outcome of a litigation wherein an unfavourable decision could result in a significant outflow of resources for the company, etc.

Emphasis of Matter which MAY NOT have an adverse effect on the functioning of the company include situations where:

- On managerial remuneration which is subject to the approval of the Central Government;
- Relating to accrual of a contractually receivable claim based on management estimate where the ultimate realisation



could be different from the amount accrued;

- On frauds that have been dealt with in the financial statements of the company and would not have any continuing effect on the financial statements

If any observations or comments is made by the auditor on the adequacy or operating effectiveness of internal financial controls over financial reporting under section 143(3)(i), contain such matters, which, in his opinion, may have any adverse effect on the functioning of the company, should also be reported under section 143(3)(f) even if such observation did not result in a modification to the audit opinion on the financial statements of the company. An example in this regard may be where an auditor reports that the company did not have an appropriate internal control system for inventory with regard to receipts, issue for production and physical verification.

Illustrative Disclosure

(f) The matter described in the Basis for Qualified Opinion paragraph above, in our opinion, may have an adverse effect on the functioning of the Company.

(f) The matter described in the Basis for Adverse Opinion paragraph above, in our opinion, may have an adverse effect on the functioning of the Company.

(f) The going concern matter described in sub-paragraph (b) under the Emphasis of Matters paragraph above, in our opinion, may have an adverse effect on the functioning of the Company.



(f) The matter described in the Basis for Disclaimer of Opinion paragraph above, in our opinion, may have an adverse effect on the functioning of the Company.

Guidance Note on Reporting under Section 143 (3) (h) of the Companies Act, 2013

Section 143 (3) (f) of the Act requires the Auditor to report report “any qualification, reservation or adverse remark” relating to the maintenance of accounts and other matters connected therewith.

Section 2(13) of the Act defines “books of account” to include records maintained in respect of—

- All sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;
- All sales and purchases of goods and services by the company;
- The assets and liabilities of the company; and
- The items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section

Section 143(3) (b) of the Act requires the auditor to, inter alia, state whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books.



Matters to be reported under Section 143 (3) (f) should be evaluated based on the financial statements prepared under the Act.

The words “qualification”, “adverse remark” and “reservation” should be considered to be similar to the terms “qualified opinion”, “adverse opinion” and “disclaimer of opinion”, respectively, referred to in SA 705 “Modifications to the Opinion in the Independent Auditor’s Report”. Accordingly, the auditor would need to report under this section, any matter that causes a qualification, adverse remark or disclaimer of opinion on the financial statements since such matters will or possibly will have an effect on the books of account maintained by the company. In case an Emphasis of matter Para is provided, reporting under Section 143 (3) (h) may not arise.

Books of Accounts – 143 (3) (b)	Opinion	Report under 143 (3) (h)
Maintained	Modified	YES
Maintained	Unmodified	NO
Not Maintained	Modified	YES
Not Maintained	Unmodified	YES



If material weakness in internal financial controls that is reported by the auditor under Section 143 (3) (i) resulted in a modification to the audit opinion on the financial statements, then such modification may be covered for reporting under Section 143(3) (h) of the Act.

Illustrative Disclosure

(h) The qualification relating to the maintenance of accounts and other matters connected therewith are as stated in the Basis for Qualified Opinion paragraph above

(h) The adverse remarks relating to the maintenance of accounts and other matters connected therewith are as stated in the Basis for Adverse Opinion paragraph above.

(h) The reservation relating to the maintenance of accounts and other matters connected therewith are as stated in the Basis for Disclaimer of Opinion paragraph above

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