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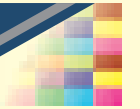
Direct Taxes Professionals' Association Journal

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India - Land
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Compliances



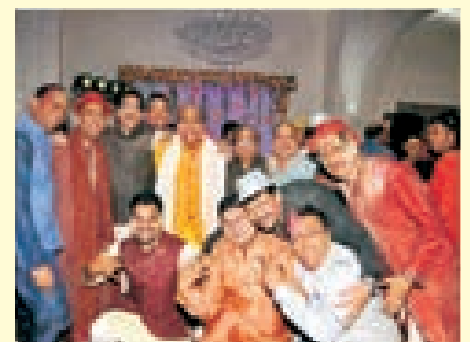
Inter CA Study Circle Cricket Tournament at Space Circle on 3rd February 2019



Day Night Cricket Match with IRS Association at NKDA Cricket Ground, New Town on 16th February 2019

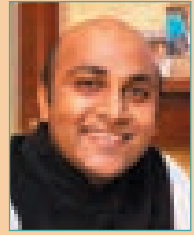


Holi Get Together organised jointly with EIRC and other Study Circles at Panache Banquet on 19th March 2019





EDITORIAL



Dear DTPAians,

With immense delight and happiness, we present you with the Issue of DTPA Journal for the month of June 2019.

On behalf of the Journal Editorial Board, I would like to extend warm wishes to the readers of the Journal. As we know that in this era of changing rules and introduction of new schemes and laws, it is necessary to keep yourselves in pace with it. In this Journal we have tried to bring up many such topics which will bring clarity on such matters. The contribution which we have received from many experienced people have helped us in fulfilling the objective on the subject matter. Article received on NRI Taxation has brought so much clarity regarding the taxation compliances of NRIs. Similarly Integration of Accounting system with GST, FAQs on delayed payment to MSMEs, SEBI proposal on Right Issue process, Analysis of Telangana High Court Judgement on GST Interest, GST liability on sales of second hand Asset and Investing with patience have brought into light many such matters which seek clarification in the present scenario.

Knowledge has been the most powerful tool since time immemorial. Here I would like to highlight a famous saying by one of the most prominent monk in Buddhism, Dalai Lama, “**Share your knowledge, It's a way to achieve immortality**”. Under shadow of this quote, I would request all the Members to share their observations and feedback on the above matters which will help us to improve the construction and contents of the Journal and will also serve as a tool for continued learning. We welcome contributions from all the Members, who intend to share their knowledge and experience with us for publication in the Journal. We have also requested our IT Committee to upload the copy of Journal on our website and to share on Facebook, so that you all can share the same with your colleagues.

We wish to encourage more contributions / suggestion / feedback from the Members to ensure a continued success of our Journal.

Thank you. We hope you will find this Issue informative.

CA Niraj Harodia

Chairman

DTPA Journal and Other Publication

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26th June, 2019

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DISCLAIMER

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FROM THE DESK OF THE PRESIDENT



My Dear Professional colleagues, With a landslide victory in the elections by the existing government and Shri Narendra Modi continuing as the Prime Minister for second consecutive term, what's in store for Indian economy? The country's growth is currently facing strong headwinds and the first thing that needs to be done is to bring in reforms to ensure economic stability and growth.

The Union Budget will be presented by Smt. Nirmala Sitharaman, Hon'ble Finance Minister on 5th of July, 2019. Many representations have been sent from all over the country. **DTPA has also sent a Pre-Budget Memorandum on Direct and Indirect Taxes containing issues and suggestions to the Finance Ministry, CBDT and CBIC.**

The first quarter of this year has seen lot many changes in various laws. **On the Income Tax front, CBDT has notified Income Tax Returns for Asst. Year 2019-20 whereby additional disclosure requirements have been included.** Some of the major disclosures are reporting about number of days spent outside India while declaring residential status by individuals, details of any immovable property sold including buyer's details, details of unlisted equity shares held and transferred during the year. So the Return filing process has become more detailed and cumbersome.

On the GST front, there have been radical changes in Real Estate Sector. GST on construction services have been reduced to effective rates of 1 and 5 percent on affordable and non-affordable housing without any Input Tax Credit benefit. Denial of credit even after reduction in rate could lead to increase in property prices. Time will tell whether this new regime will be beneficial for the end consumers?

The Due Date for filing of Annual Return and Reconciliation Statement, i.e. GSTR 9 and 9C was extended till 30th June 2019. However the non-preparedness of tax payers coupled with portal issues has left professionals grappling with the unending pile of work, and it is anticipated that either this date will be extended or the late fee for delayed filing will be waived. Any extension of the Due Date for filing of Annual Return leads to extended period of retention of Books of Accounts by the tax payer also.

The compliance burden for Companies has never gone down since past few years, and is ever increasing with additional compliances such as INC-22A, one time and Annual Return in DPT-3, MSME-1, KYC, reporting about Significant Beneficial Ownership and so on. **It is high time that a single Annual Compliance Form be issued by Ministry of Corporate Affairs, which contains all particulars required to be reported by a Company so that the burden of filing multiple forms is eased.**

On the Association front, we have been regularly organising Study Circle Meetings, Workshops and Group Discussions on pertinent topics with an endeavor to keep our Members abreast of regular changes in various laws. Apart from the regular Study Circle Meetings, we conducted a Full Day Conference at Hotel Lalit Great Eastern with Bombay Chartered Accountants' Society as knowledge partner. An interactive session was organized on GST on Real Estate Transactions with Mr. Khalid Anwar, Jt. Secretary (Finance), Govt. of West Bengal and CA Rajendra Kumar P., Vice-Chairman Indirect Tax Committee, ICAI. We organized a Full Day Information Technology Conference jointly with EIRC of ICAI where eminent speakers from all over the country deliberated on the current trends on technology required in our profession.

Our Association has sent representation on practical issues related to CPC and E-assessment to CBDT and Pr. CCIT, West Bengal and Sikkim, and the same has also been communicated by them to Pr. DGIT Systems (CBDT). We have also sent representation on issues related to GST on Real Estate to the Jt. Secy. (Finance), West Bengal, few of which have already been addressed in the recently issued Notifications and Clarifications.

Shri Biswanath Jha has been appointed as the Principal Chief Commissioner of Income Tax, West Bengal & Sikkim. Team DTPA met and welcomed him on behalf of the Association. We plan to hold an interactive session with him very soon.

We felicitated the President & Vice-President of ICAI on behalf of our Study Circle at EIRC premises, and also felicitated the Central & Regional Council Members of EIRC Eastern Region at DTPA Conference Hall.

Amidst all these compliance burdens and managing our professional work, we also need to take care of our health and relieve ourselves by networking and enjoying fellowship programmes. Keeping this in mind, we also organised and participated in the Holi Get Together and Treasure Hunt event jointly with EIRC of ICAI and other Study Circles. We also organised a Pranic Healing and Meditation session on the eve of Yoga Day. The International trip to Bali and Singapore was very memorable and many Members joined the same with their families.

I would like to end with a quote by one of the greatest thinkers – Albert Einstein.

Learn from yesterday, live for today, hope for tomorrow. The important thing is not to stop questioning.

I am grateful to Shri P. R. Kothari, Advisor, Journal Sub-Committee, Shri Niraj Harodia, Chairman, Journal Sub-Committee, Shri Ashish Rustagi, Co-Chairman, Journal Sub-Committee and Ms. Aditi Jhunjhunwala, Member, Journal Sub-Committee for publishing this Journal.

I welcome your thoughts, suggestions and your opinions. Request you to provide your suggestions and share your grievances, if any to president@dtpa.org

Lets DREAM MORE – LEARN MORE – DO MORE

With Warm Regards

CA VIKASH PARAKH
PRESIDENT - DTPA
26th June, 2019



Information Technology Conference organised jointly with EIRC of ICAI on 27th April 2019



New Year Get Together with IT Officials at SHISHA on 17th January 2019





GST Liability on Sale of Second-hand Asset

CA Venugopal Gella

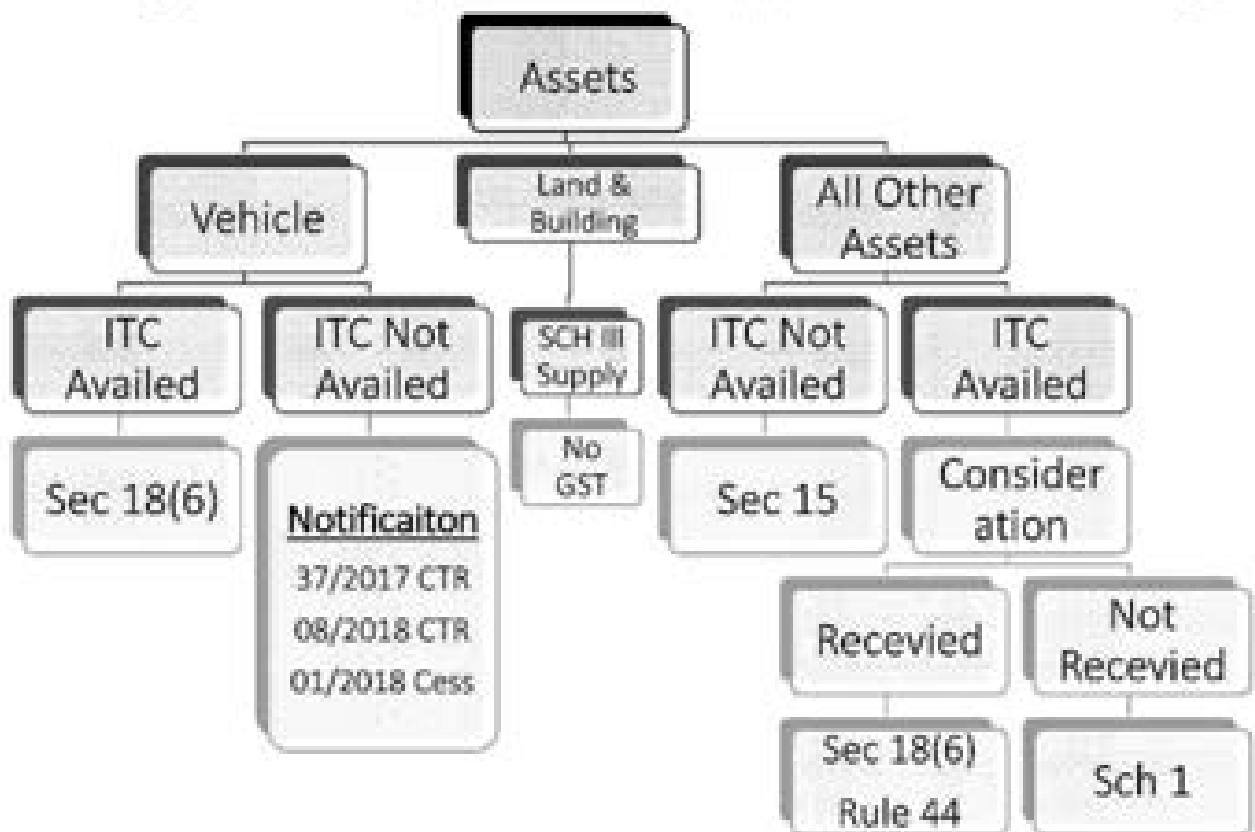
GST Audit is around the corner. One aspect the GST Auditor to consider in finalizing GSTR9C is Sale of Asset. Reason for Sale of Asset having such a prominence in GST Audit is, the value of this transaction is not very evident as a part of the Turnover in the Financials. What gets recognized in the financials is only Profit / Loss on Sale of Asset.

- When the Asset is sold for loss, the Credit Side of Profit and Loss Account doesn't even give an

indication about existence of this Transaction.

- When sold for a profit, what gets recognized is the net gain in P&L Account.
- To assess GST Liability, the total Transaction Value and Taxes needs to be considered.

This article gives the different Types of Asset sale and applicable Tax treatments accordingly.



Taxation on Sale of an Asset other than Land and Building or a Vehicle where Input Tax Credit is availed:

A. When Sold for Consideration

- 1) ITC on Assets : Any asset purchased and put to use for Business purpose and providing Taxable supply, is entitled for availment of Input tax credit, subject to Sec 17(5)

- 2) Life of an Asset which is capitalized is expected to last and used in GST for 5 years. Even though the life is computed for 5 years, GST can be availed in the month in which it is purchased. However, when there is sale of these used assets GST needs to be paid as per the provisions of Sec 18(6) read with Rule 44.
- 3) As per section 18(6) read with Rule 44 of CGST

Rules 2017 : If a registered person supplies the capital goods or plant and machinery on which input tax credit has been taken Then he should pay an amount equal to

Input taken on such capital goods reduced by the such percentage as prescribe in Rule 40(2) (i.e. 5% for every quarter or part there from the date of issue of invoice for a capital goods). Reverse ITC

Or

Tax payable on transaction value of such capital goods or plant and machinery determine under section 15 (Value of Taxable Supply). Report in GSTR 1

Whichever is higher.

Note:

1. Amount should be calculated separately for IGST and CGST
2. Where the amount so on which tax is payable is more than the tax determined on the transaction value of the capital goods, the amount on which taxes are payable shall form a part of the output tax liability and the same shall be furnished in FORM GSTR-1.
3. **Taxability on Supply of Refractory Bricks, Moulds and Dies, Jigs and Fixtures** : In case where refractory bricks, moulds and dies, jigs and fixtures are supplied as a scrap, Rule 44 and Rule 40(2) **will not apply**, and the tax will be payable on the transaction value of such goods as determined under section 15.

B. When Sold for no Consideration

Schedule 1 of the CGST Act, mentions those *ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION*. The first entry to Schedule 1 is "*Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.*"

Since the assets is transferred without consideration, the Value can be determined as per Sec 15, and the same has to be dealt as per **Valuation Rules**.

The following is the sum and substance of the valuation rules is as under :

- (a) be the open market value of such supply;
- (b) if a it is disposed by way of barter then value of such asset
- (c) if the value of supply is not determinable under clause (a) or clause (b), be the value of supply of goods or services or both of like kind

and quality;

(d) if the value is not determinable under clause (a) or clause (b) or clause (c), then value of the asset to be deemed as 110% of the cost of the Asset.

Taxation on Sale of an Asset where Input Tax Credit is NOT availed :

1) Sold for a Consideration

Tax liability= Consideration received as per Sec 15 *
Rate of tax as per 1/2017 Central Tax (Rate)

2) Sold for No Consideration

As per Sec 7 of the CGST Act, Supply includes

- (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
- (b) import of services for a consideration whether or not in the course or furtherance of business and
- (c) the activities specified in Schedule I, made or agreed to be made without a consideration;

Schedule 1 includes "*permanent transfer or disposal of business assets for consideration, on which input tax credit was availed on such assets*". From the above we can infer that if the sale of asset is for No consideration then the same would not be considered as a supply under GST.

Taxation on Sale of Vehicle where Input Tax Credit is NOT availed:

1) Notification 37/2017- Central Tax (Rate) 13th Oct 2017

Sale of motor vehicle by a registered person

Taxes payable shall be only 65% of the computed tax as per the Rate Notified under **Heading 87** of Notification 01/2017 – Central Tax (Rate). Conditions are to be satisfied for 65% scheme are :

- a. The supplier of Motor Vehicle is a registered person.
- b. The Motor Vehicle was **purchased prior to 1st July 2017** and has **not availed** input tax credit of central excise duty, Value Added Tax or any other taxes paid on such vehicles.

This notification shall be in force only until 1st July 2020.

2) Notification 8/2018- Central Tax (Rate) dated 25th January 2018.

Subsequent to 37/2017 the following scheme of taxation was notified

Background: Consider a case where a private limited company buys a car for the use of the directors. As per

Section 17(5) of the CGST Act, no input tax credit can be availed on such a purchase. Thus, there is a loss of credit which adds to the cost of the company. After a few years, when the car is sold, the question arises should there be a GST Liability for this transaction since Input tax credit was not taken.

There came up another doubt, since the vehicle is being sold and if the tax needs to be paid, original GST paid should be allowed for Input tax credit. To put rest to these questions, CBIC has issued Notification 8/2018-Central Tax (Rate) dated 25th January, 2018. This is applicable to supplier making **sale of second-hand (i.e. old and used) vehicle**. The tax to be paid is on the margin value.

a) What does Old and Used mean?

Once a vehicle is bought, even if it is sold the immediate next day, it becomes 'old and used'. There is no relevance to the distributors/dealers of brands of vehicles as their sales are not considered second-hand.

b) What does Margin value refer to?

A. In case of depreciated asset under section 32 of

the Income-Tax Act, 1961,

Margin value = Sale value of the second-hand vehicle (-) depreciated value of vehicle on the date of supply.

B. In any other case,

Margin value = selling price - purchase price

c) What if Margin Value is Negative?

Where the margin of such supply is negative, it shall be *considered as Zero, hence GST is applicable only when*, margin value positive i.e. there is profit on sale of vehicle.

d) Can Notification be applicable for all vehicles Sold?

The notification shall apply only if the supplier has not availed input tax credit as per CGST Act, or CENVAT credit as per CENVAT Credit Rules or input tax credit of VAT or any other taxes paid on such goods. If the input tax credit or the like is availed on the purchase, then this notification shall not apply on the sale of vehicle.

e) What are Rates of Taxes

Sl.No	Vehicle Type	Engine Capacity (cc)	Length (mm)	Rate of Tax
1.	LPG or CNG	> 1200	> 4000	18%
2.	Diesel	> 1500	> 4000	18%
3.	SUV / MUV	> 1500	> 4000	18%
4.	All other Vehicle	NA	NA	12%

3) Notification 01/2018- Compensation Cess (Rate) dated 25th January 2018.

Along with the change in the rate of tax on the sale of old/used vehicle on which Input tax credit has not been availed, the rate of compensation cess also has been made to NIL.

Summarizing the tax rates applicable for Sale of second-hand assets

a. Assets other than Vehicles and Land & Building

Consideration	ITC Availed	Valuation	Rate
Yes	Yes	Input taken on such capital goods reduced by 5% for every quarter or part there from the date of issue of invoice for a capital goods. or Tax payable on transaction value of such capital goods or plant and machinery determine under section 15 (Value of Taxable Supply). Whichever is higher	Rate as per Notification 01/2017
Yes	No	Consideration received	Rate as per Notification 01/2017
No	Yes	Value as per Section 15 i.e. value of like goods	Rate as per Notification 01/2017
No	No	-	Not a Supply under GST

b. Sale of Motor Vehicles

Date of sale	Date of Purchase	Consideration	ITC Availed	Criteria	Valuation	Rate
1st July 2017 to 12th Oct 2017	Prior to 1st July 2017	Yes	Yes	NA	Sale consideration	Rate of new vehicle - Notification 01/2017-CT(Rate)
1st July 2017 to 12th Oct 2017	Prior to 1st July 2017	Yes	No	NA	Sale consideration	Rate of new vehicle - Notification 01/2017-CT(Rate)
13th Oct 2017 to 24th Jan 2018	Prior to 1st July 2017	Yes	Yes	Supplier-Registered	Sale consideration	Rate of new vehicle - Notification 01/2017-CT(Rate)
13th Oct 2017 to 24th Jan 2018	Prior to 1st July 2017	Yes	No	Supplier-Registered	Sale consideration	65% of the rate of new vehicle -Notification 01/2017- CT(Rate)
25th Jan 2018 onwards	NA	Yes	Yes	NA	Sale consideration	Rate of new vehicle - Notification 01/2017-CT(Rate)
25th Jan 2018 onwards	NA	Yes	No	NA	Margin of Supply	GST rate -Notification 08/2018- CT(Rate)
1st July 2017 onwards	NA	No	Yes	NA	Value as per Sec 15- Value of like goods	Rate of new vehicle - Notification 01/2017-CT(Rate)
1st July 2017 onwards	NA	No	No	NA	-	Not taxable, as it is not a Supply





Integration of Accounting Systems with Goods and Services Tax Law

CA Subhas Saraf

ABSTRACT

Goods and Services Tax (GST) is framed to alter the way businesses are conducted in India by steering in an entirely technology-driven Indirect Tax System. Under the GST regime, it is essential for businesses to precisely maintain accounts and records for substantiation to the GST Authority.

Every taxpayer is required to self-assess the tax payable and furnish a return for specified tax periods. The stated compliances are verified by the department through scrutiny of returns, audit and/or investigation. This articulates the importance of documentary evidences to be maintained by the taxpayer as mandated under the Act.

We hereby, in this article are discussing the details that an assessee has to maintain through Chapter VIII (Accounts and Records covering Sections 35 & 36) of The Central Goods and Service Tax Act, 2017 read with Chapter VII (Accounts and Records covering Rules 56 to 58) of the Central Goods and Service Tax Rules, 2017.

Accounting records are the principal source of transactions and information used to prepare, verify and/or audit the financial statements. They also include specifics to prove asset ownership, creation of liabilities and proof of all the financial transactions. The onset of GST in India demands for further compliances with respect to maintenance of accounts by any registered person.

The maintenance of accounting records under GST must be in agreement with Sections 35 and 36 of the Central Goods and Services Tax Act, 2017. This requires every registered person to keep and maintain various accounts and records at his principal place of business, which includes details of production or manufacture of goods, inward and outward supply of goods and services or both, stock of goods, input tax credit availed and output tax payable and paid.

Further, Rule 56(1) of the Central Goods and Services Tax Rules, 2017 mandates maintenance of records in relation to goods or services imported or exported and supplies on which tax is to be paid on Reverse Charge basis. The relevant documents shall include all invoices, bill of supply, delivery challans, credit and debit notes, and receipt as well as refund vouchers.

The accounts of stock purchased and supplied, and documents with respect to payment of tax are to be maintained by taxpayers, other than person paying tax

under Section 10 of the Act (Rule 56(2) and 56(4)). Each volume of the books of accounts maintained manually should be serially numbered.

The Act along with the Rules also clarify the account keeping required to be done by an agent, a manufacturer, as well as a registered person executing works contract.

Section 35(2) of the Act states that "Every owner or operator of warehouse or godown or any other place used for storage of goods and every transporter, irrespective of whether he is a registered person or not, shall maintain records of the consigner, consignee and other relevant details of the goods in such manner as may be prescribed."

The owner or operator of godown shall store the goods in a way that it can be identified both item wise and owner wise as specified in Rule 58.

The Commissioner may notify for maintenance of additional documents or permit lesser compliance for a specified class of taxable persons, if thought fit.

The accounts maintained by every registered person under Section 35 shall be retained until the completion of **seventy-two months** from the due date of furnishing of annual return for the year pertaining to the accounts and records, as required under Section 36 of the Act. For any UDIN Related issues please visit udin.icai.in

BRIEF OVERVIEW OF LEGAL PROVISIONS

SL No.	SECTIONS / RULES	PARTICULARS	REQUIREMENTS
1	Sec. 35(1) / Rule 56(1), 56(7), 56(8), 56(9) & 56(15)	Manner of maintenance of record and what type records to be maintained.	<p>The manner of maintenance of accounts and records should be either manually or electronically.</p> <p>The following records to be maintained by every registered person (under section 35)</p> <ul style="list-style-type: none"> <input type="checkbox"/> Production or Manufacture of goods; <input type="checkbox"/> inward and outward supply of goods or services or both; <input type="checkbox"/> Stock of Goods; <input type="checkbox"/> Input tax credit availed; <input type="checkbox"/> Output tax payable and paid; <input type="checkbox"/> Goods or Services imported or exported; <input type="checkbox"/> Supplies attracting payment of tax on Reverse charge <p>along with relevant documents, including invoices, bills of supply, delivery challans, credit notes, debit notes, receipt vouchers, payment vouchers and refund vouchers.</p> <p>All the accounts and records of every registered person is to be kept at the Principle (registered) place of business as mentioned in the registration certificate.</p> <p>Any entry in registers, accounts and documents shall not be erased, effaced or overwritten, and all incorrect entries, otherwise than those of clerical nature, shall be scored out under attestation and thereafter the correct entry shall be recorded and where the registers and other documents are maintained electronically, a log of every entry edited or deleted shall be maintained.</p> <p>Each volume of books of account maintained manually by the registered person shall be serially numbered.</p> <p>The records under the provisions of this Chapter may be maintained in electronic form and the record so maintained shall be authenticated by means of a digital signature.</p>
2	Rule 56(2)	Accounting of stock of goods	<p>Every registered person other than a person paying tax under composition scheme, shall maintain the accounts of stock in respect of goods received and supplied by him.</p> <p>Such accounts shall contain particulars of the Opening Balance, Receipt, Supply, Goods lost or stolen, destroyed, written off or disposed of by way of gift or free sample and the balance of stock including raw materials, finished goods, scrap and wastage thereof.</p>
3	Rule 56(3)	Accounting of Advance	<p>Every registered person shall keep and maintain the separate accounts of Advance Receipt, Advance Paid, and Advance Adjustment made thereto.</p>
4	Rule 56(4)	Accounting of Tax	<p>Every registered person other than a person paying tax under Section 10 (Composition scheme), shall keep and maintain an account, containing the details of tax payable (including tax payable in</p>

			accordance with the provisions of sub-section (3) and sub-section (4) of section 9) [Reverse Charge], tax collected and paid, input tax, input tax credit claimed, together with a register of tax invoice, credit notes, debit notes, delivery challan issued or received during any tax period.
5	Rule 56(5)	Details of supplier, recipient and godowns	<p>Every registered person shall keep the particulars of:</p> <ol style="list-style-type: none"> Name and Complete addresses of the suppliers from whom taxable value of goods or services have been received; Name and Complete addresses of the person to whom goods or services have been supplied, where required under the provisions of this chapter; The Complete address of the premises where goods are stored including goods stored in transit along with the particulars of stock stored therein.
6	Sec. 35(6) / Rule 56(6)	Storage without proper documents	<p>Subject to provisions of section 17(5)(h), where the registered person fails to account for the goods or services or both in accordance with the provisions of sub-section (1), the proper officer shall determine the amount of tax payable on the goods or services or both that are not accounted for, as if such goods or services or both had been supplied by such person and the provisions of section 73 or section 74, as the case may be, shall, <i>mutatis mutandis</i>, apply for determination of such tax.</p> <p>If any taxable goods are found to be stored at any place(s) other than those declared under Rule 56(5) without the cover of any valid documents, the proper officer shall determine the amount of tax payable on such goods as if such goods have been supplied by the registered person.</p>
7	Rule 56(10) & 56 (18)	Presumption regarding & production of books of accounts	<p>Unless proved otherwise, if any documents, registers or any books of accounts belonging to a registered person are found at any premises other than those mentioned in the certificate of registration, they shall be presumed to be maintained by the said registered person.</p> <p>Every registered person shall, on demand, produce the books of accounts which he is required to maintain under any law for the time being in force.</p>
8	Rule 56(11)	Maintenance of accounts by an agent	<p>Every agent shall maintain accounts depicting the, -</p> <ol style="list-style-type: none"> particulars of authorisation received by him from each principal to receive or supply goods or services on behalf of such principal separately; particulars including description, value and quantity (wherever applicable) of goods or services received on behalf of every principal; particulars including description, value and quantity (wherever applicable) of goods or services supplied on behalf of every principal; details of accounts furnished to every principal; and tax paid on receipts or on supply of goods or services effected on behalf of every principal.

9	Rule 56(12)	Maintenance of accounts by a manufacturer	Every registered person manufacturing goods shall maintain monthly production accounts showing quantitative details of raw materials or services used in the manufacture and quantitative details of goods so manufactured including the waste and by products thereof.
10	Rule 56(13)	Maintenance of accounts by a supplier of service	Every registered person supplying services shall maintain the accounts showing quantitative details of goods used in the provision of services, details of input services utilised and the services supplied.
11	Rule 56(14)	Maintenance of accounts by a works contractor	Every registered person executing works contract shall keep separate accounts for works contract showing – (a) the names and addresses of the persons on whose behalf the works contract is executed; (b) description, value and quantity (wherever applicable) of goods or services received for the execution of works contract; (c) description, value and quantity (wherever applicable) of goods or services utilized in the execution of works contract; (d) the details of payment received in respect of each works contract; and (e) the names and addresses of suppliers from whom he received goods or services.
12	Rule 56(17)	Maintenance of records by a carrier	Any person having custody over the goods in the capacity of a carrier or a clearing and forwarding agent for delivery or dispatch thereof to a recipient on behalf of any registered person shall maintain true and correct records in respect of such goods handled by him on behalf of such registered person and shall produce the details thereof as and when required by the proper officer.
13	Sec. 35(2) / Rule 58	Maintenance of records by owner or operator of godown or warehouse and transporters	Every owner or operator of warehouse or godown or any other place for storage of goods and every transporter, irrespective of whether he is a registered person or not, shall maintain records of the consigner, consignee and other relevant details of the goods in such manner as may be prescribed.
14	Sec. 35(3) & 35(4)	Additional maintenance of or exemption from maintaining accounts	The Commissioner may notify for maintenance of additional accounts or documents or permit lesser compliance for a specified class of taxable persons, if thought fit.
15	Sec 35(5)	Audit of accounts	Every registered person whose turnover during a financial year exceeds the prescribed limit [Rs. 2 crores as mentioned in Rule 80(3)] shall get his accounts audited by a chartered accountant or a copy of the audited annual accounts, the reconciliation statement under sub-section (2) of section 44 and such other documents in such form and manner as may be prescribed.
16	Sec. 36 / Rule 56(16)	Period of Retention of Accounts	Every registered person must keep and maintain the accounts books and records for at least 72 months (6 years) from the due date of furnishing of annual return for the year pertaining to such accounts and records.

			And shall, where such accounts and documents are maintained manually, be kept at every related place of business mentioned in the certificate of registration and shall be accessible at every related place of business where such accounts and documents are maintained digitally.
17	Accounts / Ledgers	How many ledgers are to be maintained? Whether State-wise accounts are required?	The following Minimum Ledgers are required each for (CGST,SGST, IGST&Cess) (a) Liability ledger separately for Tax payable under both Forward charge and Reverse charge each (b) Credit Ledger separately for Input Tax Credit (c) Cash Ledger separately for payments and debit against liability (d) Interest & Late Fee As per GST Law, registration in each State is deemed as distinct person and returns are to be filed separately. So, State wise accounting is a must for future reconciliation and workings.

ADAPTING TO RETURNS UNDER GOODS AND SERVICES TAX LAW

GST Returns demand complete transaction wise information of supplies recorded. The accounting system of organizations filing GST Returns should record and report their transactions and maintain corresponding documents with cross references which will ensure tracking of the same easily. The concept of **supply** under GST is very different from the traditional concept which surfaces as a major accounting challenge for book keeping personnel in the organization. In these lines, it is crucial for accounting software to generate reports which comply with the new taxation process.

In view of the above background, certain challenges which require attention are discussed below-

1. In traditional book keeping, any differences or errors in invoices were overwritten on the invoice and recomputed. This practice will have to be eliminated and the system of issuing debit notes and credit notes has to be introduced and followed strictly.
2. Filing of GSTR-1 requires HSN and SAC codes of the goods or services supplied by the assessee. Also, HSN and SAC codes of inward supplies have to be reported in the Annual Return by the assessee. Therefore, the overall discipline in accounting, classifying and reporting these codes will have to be adhered to for which creation and updation of product master and service master with the respective HSN / SAC codes is necessary.

3. The accounting software of the taxpayer should prompt an alert to determine the Place of Supply and Location of Supplier so that errors related to the classification of inter-state and intra-state supplies are minimized.
4. GST Returns demand reference to the original transaction ID to be mentioned while reporting adjustment of advances. Hence, it is advisable to maintain linkages between advance received vouchers with adjustments of the same so that correlation between both is easily identified.
5. GST Audit form requires reconciliation to be made between the books of accounts and the returns filed.

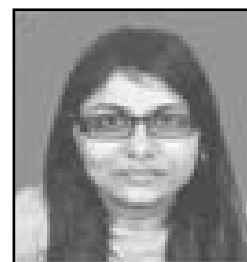
In this context, one must exercise utmost caution to attend to all such transactions with a view to ensure that the financial statements are correctly prepared and that the returns filed comply with all the statutory provisions as required under the Goods and Services Tax law.

As per the above discussion made, we can conclude that accounting not only helps an enterprise to conduct its day to day activities smoothly but also helps in its future growth. As Goods & Service Tax has extensive accounting and record keeping requirements, it is very obvious that there should be proper and skilled accounting team to handle the accounts and records under Goods & Service Tax law, their transitional compliances and book-keeping. In case the taxpayer does not maintain the books and records as mandated under the Goods and Services tax law, the proper officer may take appropriate actions, as it may deem fit.



GST Interest - Analysis of Telangana High Court Judgement

CA Ankit Kanodia & CA Akansha Tulsian



In today's scenario it is important to do all the compliances on time as late filing of return or late payment of tax can lead to payment of heavy Interest & Penalty. Interest is the time value of money. Non-compliances may involve huge. It is the compensation recovered from taxpayer who has withheld payment of tax as and when it was due.

Recently, a writ petition was filed by **Megha Engineering & Infrastructures Ltd. Writ Petition No.44517 of 2018 before the Telangana High Court** at Hyderabad challenging a notice issued by the local GST authorities seeking interest on delayed payment of interest. In the current case, the petitioner was unable to discharge the tax liability within the due date due to financial crunch. The extent of delay was only of a few days in case of specific month. On account of delay, the GST authorities issued a notice demanding interest on late payment of tax. The petitioner duly discharge the interest on the GST Liability on that part which is paid through cash relying on the two decision- (i) Recommendation made on 31st GST Council meeting that interest under section 50(1) is paid on net tax liability; (ii) State of Gujarat v. Dashmesh Hydraulic Machinery [2015] 80 VST 532; State of Gujarat v Nishi Communication [Tax Appeal No. 60 of 2015]

The Hon'ble High Court has ruled out that GST interest liability is not only confined to the net tax liability but the total Gross tax liability which includes that portion of liability which was liable to be set-off against ITC.

The court has point out 3 aspects to clarify that interest should be calculated on Gross tax liability and not on net tax liability.

1. Procedure for filing of returns and payment of tax:

Under section 39, a detailed procedure is stipulated for the filing of the monthly returns.

- ✓ Every registered person should furnish for every Calendar Month or part thereof, a return, electronically, of inward and outward supplies of goods or services, ITC availed, tax payable, tax paid etc., on or before the 20th day of the succeeding calendar month;
- ✓ ii) The Commissioner is empowered to extend, by notification, for reasons to be recorded in writing, the time limit for furnishing

the returns, for such Class of registered persons;

- ✓ Every registered person, who is required to furnish a return, should pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return;
- ✓ iv) If a registered person discovers any omission or incorrect particulars in the return already filed by him, he shall rectify such omission or incorrect particulars in the return to be furnished.

2. Claim of ITC

Section 16 deals with the eligibility and conditions for taking ITC.

Under Section 16 (1), every registered person shall be entitled to take credit of input tax charged on any supply of goods or services, which are used or intended to be used in the course of his business. The amount should be credited to the electronic credit ledger of such a person.

Sub-section (2) of Section 16 lays down four conditions subject to which a registered person will be entitled to the credit of any input tax. These conditions are:

- i) he should be in possession of a tax invoice or debit note issued by a supplier registered under the Act;
- (ii) he should have received the goods or services;
- (iii) the tax charged in respect of such supply should have been actually paid to the Government, either in cash or through utilisation of ITC; and
- (iv) he should have filed the return under Section 39

Section 49 of the Act, which deal with the payment of tax, also speaks about the manner in which ITC shall be credited. Sub-section 2 of section 49 stipulates that the ITC as self- assessed in the return of a registered person should be credited to his Electronic credit ledger in accordance with sec 41. The amount available in the electronic credit ledger may be used by virtue of Sub-Section 4 of sec 49, for making any payment towards output tax under the Act.

The Hon'ble HC further speaks out that as per section 41, a person gets credited with the Input tax, in his electronic Credit Ledger, only upon his filing of the return on self -assessment basis. It is only after a credit

becomes available in the electronic credit ledger that the utilisation of the same for payment of self-assessed output tax arises.

Thus, the scheme makes it clear that-(i) the entitlement to take credit comes first; (ii) the actual entry of credit in the electronic credit ledger comes next; (iii) the actual payment from out of the credit comes last. There is no doubt about the fact that even if the INPUT TAX CREDIT available in the electronic credit ledger, there is a necessity to make payment. It is statutorily prescribed that payment of the self-assessed output tax can be made through cash or through utilisation of electronic credit ledger.

3. Wording of Section 50

As per section 50 of the CGST Act, Every person who is liable to pay tax in accordance with the provision of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen percent, as may be notified by the Government on the recommendation of the council.

The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.

A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cent., as may be notified by the Government on the recommendations of the Council.”

It is clear from the provision cited supra, tax include the whole tax liability whether it is paid through cash or through utilisation of input tax in the electronic credit ledger. Further, the input tax credit provisionally available in the electronic credit ledger is neither available to the government treasury nor available with the taxpayer. The Liability to pay interest arises automatically, when a person liable to pay tax, fails to pay tax to the Government within the due date. In fact, the liability to pay interest under Section 50 (1) arises even without any assessment, as the person is required to pay such interest “*on his own*”. Therefore, it is clear that the interest is a compensatory, automatic levy,

which applies the moment there is delay in filing of GSTR-3B Return.

Thus, as per the above HC ruling, ITC was available for utilization only once when the return under section 39 has been filed. Based on the above analysis, the Court concluded that until the GSTR-3B return is filed as self-assessed, no entitlement to ITC and no actual entry of ITC in the electronic credit ledger takes place. It was held that tax paid on inputs becomes ITC only when the claim is made in the returns filed as self-assessed. Further, against the arguments made by the petitioner, the Court noted that although the GST Council had made some announcements, no amendment has been made to the GST law itself. Section 50 cannot be interpreted in light of the proposed amendments. Further, the Court distinguished the Gujarat High Court decisions relied upon by the petitioner on the ground that these decisions were rendered under the erstwhile VAT regime which contained specific provisions with respect to interest on delayed payment.

Our Analysis

Under the GST Regime, all compliances like the registration of dealers, input tax credit filing of returns, payment of duties, issue of notice, all happen only online. The GST-Portal is designed in such a manner that unless the entire tax liability is charged by the assessee, the system will not accept the return in GSTR-3B. As a result, even if an assessee is entitled to set off, to the extent of 95% by utilizing the ITC, the return cannot be filed unless the remaining 5% is also paid.

Based on the current system, it is not possible to file GSTR-3B monthly returns unless all GST liabilities for that month have been discharged. Hence, in case an assessee does not have sufficient funds to discharge GST dues, such assessee will not be able to file GSTR-3B monthly returns. Further, the GST portal does not even permit partial payment of tax.

Thus, as per the existing provision, there is clear liability of Interest unless the ITC is actually credited in the Electronic credit ledger.

However, the Delhi High Court has recently issued notice to the Centre in a similar matter for interest liability on the gross amount and an interim protection has been given.

The final outcome of various court decisions will pave the path for the CBIC to clarify the actual position and bring an end to unnecessary litigation.



GST Notifications February 2019 to May 2019

Notification No. 08/2019 – Central Tax, Dated 08th February 2019

By this notification the Government of India in the Ministry of Finance is amending the notification No. 66/2018 central tax dated 29th November, 2018.

The figure and letters “the 31st day of January, 2019” shall be substituted by “the 28th day of February, 2019”.

By this notification the due date of Filing GSTR-07 for TCS u/s 51 is extended to 28th February, 2019.

Notification No. 09/2019 – Central Tax, Dated 20th February 2019

By this notification the Commissioner, on the recommendations of the Council extends the date of filling the return in FORM GSTR-3B of the said rules for the month of January, 2019 electronically through the common portal, on or before the 22nd February, 2019.

Provided also that the return in FORM GSTR-3B of the said rules for the month of January, 2019 for registered

persons whose principal place of business is in the State of Jammu and Kashmir shall be furnished electronically through the common portal, on or before the 28th February, 2019.”.

Notification No. 10/2019 – Central Tax, Dated 7th March 2019

The government vide this notification, on the recommendation of the council exempts the following category of persons from obtaining registration under the said act,

Any person, who is engaged in exclusive supply of goods and whose aggregate turnover in the financial year does not exceed forty lakh rupees, except, -

- a. persons required to take compulsory registration under section 24 of the said Act;
- b. persons engaged in making supplies of the goods, the description of which is specified in the Table below:

Sl. No	Tariff item, sub-heading, heading or Chapter	Description
1	2105 00 00	Ice cream and other edible ice, whether or not containing cocoa
2	2106 90 20	Pan masala
3	24	All goods, i.e. Tobacco and manufactured tobacco substitutes

c. persons engaged in making intra-State supplies in the States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura, Uttarakhand; and

d. persons exercising option under the provisions of sub-section (3) of section 25, or such registered persons who intend to continue with their registration under the said Act.

This notification shall come into force on the 1st day of April, 2019.

Notification No. 11/2019 – Central Tax, Dated 7th March 2019

The Central Government, on the recommendations of the Council, vide this notification, notifies the registered persons having aggregate turnover of up to 1.5 crore rupees in the preceding financial year or the current financial year, as the class of registered persons, who shall furnish the details of outward supply of goods or

services or both in FORM GSTR-1 under the Central Goods and Services Tax Rules, 2017, effected during the quarter April – June, 2019 till the time period 31st July, 2019.

The time limit for furnishing the details or return, as the case may be, under sub-section (2) of section 38 and sub-section (1) of section 39 of the said Act, for the months of July, 2017 to June, 2019 shall be subsequently notified in the Official Gazette.

Notification No. 12/2019 – Central Tax, Dated 7th March 2019

Vide this notification the Commissioner, on the recommendations of the Council, hereby extends the time limit for furnishing the details of outward supplies in FORM GSTR-1 under the Central Goods and Services Tax Rules, 2017, by such class of registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or the current financial year, for each of the months from April, 2019 to

June, 2019 till the eleventh day of the month succeeding such month.

The time limit for furnishing the details or return, as the case may be, under sub-section (2) of section 38 and sub-section (1) of section 39 of the said Act, for the months of July, 2017 to June, 2019 shall be subsequently notified in the Official Gazette.

Notification No. 13/2019 – Central Tax, Dated 7th March 2019

The Commissioner, on the recommendations of the Council, vide this notification specifies that the return in FORM GSTR-3B of the said rules for each of the months from April, 2019 to June, 2019, shall be furnished electronically through the common portal, on or before the twentieth day of the month succeeding such month.

Payment of taxes for discharge of tax liability as per FORM GSTR-3B.– Every registered person furnishing the return in FORM GSTR-3B of the said rules shall, subject to the provisions of section 49 of the said Act, discharge his liability towards tax, interest, penalty, fees or any other amount payable under the said Act by debiting the electronic cash ledger or electronic credit ledger, as the case may be, not later than the last date, as specified in the first paragraph, on which he is required to furnish the said return.

Notification No. 14/2019 – Central Tax, Dated 7th March 2019

In exercise of the powers conferred under the proviso to sub-section (1) of section 10 of the CGST Act, 2017, and in supersession of the notification no 8/2017- Central Tax, dated the 27th June, 2017, except as things done or omitted to be done before such supersession, the Central Government, on the recommendations of the Council, hereby specifies that an eligible registered person, whose aggregate turnover in the preceding financial year did not exceed one crore and fifty lakh rupees, may opt to pay, in lieu of the tax payable by him under sub-section (1) of section 9 of the said Act, an amount of tax as prescribed under rule 7 of the CGST Rules, 2017:

Provided that the said aggregate turnover in the preceding financial year shall be seventy five lakh rupees in the case of an eligible registered person, registered under section 25 of the said Act, in any of the following States, namely: Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Uttarakhand.

Provided further that the registered person shall not be eligible to opt for composition levy under sub-section (1) of section 10 of the said Act if such person is a manufacturer of the goods, the description of which is specified in the Table below:

Sl. No	Tariff item, sub-heading, heading or Chapter	Description
1	2105 00 00	Ice cream and other edible ice, whether or not containing cocoa
2	2106 90 20	Pan masala
3	24	All goods, i.e. Tobacco and manufactured tobacco substitutes

This notification shall come into force on the 1st day of April, 2019.

Notification No. 15/2019 – Central Tax, Dated 28th March 2019

Vide this notification the Commissioner, on the recommendations of the Council, hereby extends the time limit for furnishing the declaration in FORM GST ITC-04 of the said rules, in respect of goods dispatched to a job worker or received from a job worker, during the period from July, 2017 to March, 2019 till the 30th day of June, 2019.

Notification No. 16/2019 – Central Tax, Dated 29th March 2019

In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely:-

1. (1) These rules may be called the Central Goods and

Services Tax (Second Amendment) Rules, 2019.

(2) Save as otherwise provided in these rules, they shall come into force on the date of their publication in the official gazette.

2. In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), in rule 41, in sub-rule (1), after the proviso, the following explanation shall be inserted, namely: -

“Explanation: - For the purpose of this sub-rule, it is hereby clarified that the “value of assets” means the value of the entire assets of the business, whether or not input tax credit has been availed thereon.”.

3. With effect from 1st April, 2019, in Rule 42 of the said rules,-

(a) in sub rule (1),-

a. in clause (f), the following Explanation shall be inserted, namely:- “Explanation: For the purpose of this clause, it is hereby clarified that in case of supply of services covered by clause (b) of paragraph 5 of

Schedule II of the said Act, value of T4 shall be zero during the construction phase because inputs and input services will be commonly used for construction of apartments booked on or before the date of issuance of completion certificate or first occupation of the project, whichever is earlier, and those which are not booked by the said date.”

b. in clause (g), after the letter and figure “FORM GSTR-2”, the words, letters and figure “and at summary level in FORM GSTR-3B” shall be inserted;

c. in clause (h),-

i. for the brackets and letter “(g)”, the brackets and letter “(f)” shall be substituted;

d. in clause (i),-

i. before the proviso, the following proviso shall be inserted, namely:- “Provided that in case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the Act, the value of „E/F” for a tax period shall be calculated for each project separately, taking value of E and F as under:-

E= aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but are identified by the promoter to be sold after issue of completion certificate or first occupation, whichever is earlier;

F= aggregate carpet area of the apartments in the project;

ii. in the proviso, for the word “Provided”, the words “Provided further” shall be substituted;

e. for the clause (l), the following clause shall be substituted, namely:-

“(l) the amount „C3,, „D1” and „D2” shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in FORM GSTR-3B or through FORM GST DRC-03;”;

f. in the clause (m), for the words “added to the output tax liability of the registered person”, the words, letters and figures “reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03” shall be substituted;

(b) in sub rule (2), for the words “The input tax credit”, the words, figures and bracket “Except in case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the Act, the input tax credit” shall be substituted;

(c) in the clause (a) of sub-rule (2), for the words “added to the output tax liability of the registered person”, the words, letters and figures “reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03” shall be substituted;

(d) after sub rule (2), the following sub rules shall be inserted, namely:- “(3) In case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the Act, the input tax determined under sub-rule (1) shall be calculated finally, for each ongoing project or project which commences on or after 1st April, 2019, which did not undergo or did not require transition of input tax credit consequent to change of rates of tax on 1st April, 2019 in accordance with notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017, published vide GSR No. 690(E) dated the 28th June, 2017, as amended for the entire period from the commencement of the project or 1st July, 2017, whichever is later, to the completion or first occupation of the project, whichever is earlier, before the due date for furnishing of the return for the month of September following the end of financial year in which the completion certificate is issued or first occupation takes place of the project, in the manner prescribed in the said sub-rule, with the modification that value of E/F shall be calculated taking value of E and F as under:

(a) where the aggregate of the amounts calculated finally in respect of „D1” and „D2” exceeds the aggregate of the amounts determined under sub-rule (1) in respect of „D1” and „D2”, such excess shall be reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03 in the month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation of the project takes place and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment; or

(b) where the aggregate of the amounts determined under sub-rule (1) in respect of "D1" and "D2" exceeds the aggregate of the amounts calculated finally in respect of "D1" and "D2", such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project.

(4) In case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the Act, the input tax determined under sub-rule (1) shall be calculated finally, for commercial portion in each project, other than residential real estate project (RREP), which underwent transition of input tax credit consequent to change of rates of tax on the 1st April, 2019 in accordance with notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017, published vide GSR No. 690(E) dated the 28th June, 2017, as amended for the entire period from the commencement of the project or 1st July, 2017,

whichever is later, to the completion or first occupation of the project, whichever is earlier, before the due date for furnishing of the return for the month of September following the end of financial year in which the completion certificate is issued or first occupation takes place of the project, in the following manner

- (a) The aggregate amount of common credit on commercial portion in the project (C3aggregate_comm) shall be calculated as mentioned in the circular
- (b) The amount of final eligible common credit on commercial portion in the project (C3final_comm) shall be calculated as mentioned in the circular
- (c) where, C3aggregate_comm exceeds C3final_comm, such excess shall be reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03 in the month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment;
- (d) where, C3final_comm exceeds C3aggregate_comm, such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project.

(5) Input tax determined under sub-rule (1) shall not be required to be calculated finally on completion or first occupation of an RREP which underwent transition of input tax credit consequent to change of rates of tax on 1st April, 2019 in accordance with notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017, published vide GSR No. 690(E) dated the 28th June, 2017, as amended.

(6) Where any input or input service are used for more than one project, input tax credit with respect to such input or input service shall be assigned to each project on a reasonable basis and credit reversal pertaining to each project shall be carried out as per sub-rule (3)."

4. With effect from 1st April, 2019, in rule 43 of the said rules,-

(i) in sub rule (1),-

(a) in clause (a), after the words, letters and figures "FORM GSTR-2", the words, letters and figure "and FORM GSTR-3B" shall be inserted;

(b) in clause (b), after the letters and figure "FORM GSTR-2", the words, letters and figures "and FORM

GSTR-3B" shall be inserted;

(c) after clause (b), the following explanation shall be inserted, namely: -

"Explanation: For the purpose of this clause, it is hereby clarified that in case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the said Act, the amount of input tax in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero rated supplies, shall be zero during the construction phase because capital goods will be commonly used for construction of apartments booked on or before the date of issuance of completion certificate or first occupation of the project, whichever is earlier, and those which are not booked by the said date.";

(d) in clause (g),-

(A) after the letter and words "„F" is the total turnover", the words "in the State" shall be inserted;

(B) Before the proviso the following proviso shall be inserted, namely,- "Provided that in case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the Act, the value of „E/F" for a tax period shall be calculated for each project separately, taking value of E and F as mentioned

(C) in the proviso, for the word "Provided", the words "Provided further" shall be substituted;

(e) after clause (h), the following clause shall be inserted, namely,-

"(i) The amount T_e shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in FORM GSTR-3B.";

(ii) for sub rule (2) the following sub rules shall be substituted, namely:- "(2) In case of supply of services covered by clause (b) of paragraph 5 of schedule II of the Act, the amount of common credit attributable towards exempted supplies (T_{final}) shall be calculated finally for the entire period from the commencement of the project or 1 st July, 2017, whichever is later, to the completion or first occupation of the project, whichever is earlier, for each project separately, before the due date for furnishing of the return for the month of September following the end of financial year in which the completion certificate is issued or first occupation takes place of the project, as mentioned

(a) where value of T_{final} exceeds the aggregate of amounts of T_e determined for each tax period under sub-rule (1), such excess shall be reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03 in the month not later than the month of September following the end of

the financial year in which the completion certificate is issued or first occupation takes place of the project and the said person shall be liable to pay interest on the said excess amount at the rate specified in subsection (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment; or

(b) where aggregate of amounts of Te determined for each tax period under sub-rule (1) exceeds Tefinal, such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project

(3) The amount Tefinal and Tcfinal shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax.

(4) Where any capital goods are used for more than one project, input tax credit with respect to such capital goods shall be assigned to each project on a reasonable basis and credit reversal pertaining to each project shall be carried out as per sub-rule (2).

(5) Where any capital goods used for the project have their useful life remaining on the completion of the project, input tax credit attributable to the remaining life shall be availed in the project in which the capital goods is further used;”;

(iii) the Explanation shall be numbered as “Explanation 1” thereof and after Explanation 1 as so numbered the following Explanation shall be inserted, namely:-
“Explanation 2: For the purposes of rule 42 and this rule,-

(i) the term “apartment” shall have the same meaning as assigned to it in clause (e) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(ii) the term “project” shall mean a real estate project or a residential real estate project;

(iii) the term “Real Estate Project (REP)” shall have the same meaning as assigned to it in in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(iv) the term “Residential Real Estate Project (RREP)” shall mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent. of the total carpet area of all the apartments in the REP;

(v) the term “promoter” shall have the same meaning as assigned to it in in clause (zk) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(vi) “Residential apartment” shall mean an apartment intended for residential use as declared to the Real Estate Regulatory Authority or to competent authority;

(vii) “Commercial apartment” shall mean an apartment other than a residential apartment;

(viii) the term “competent authority” as mentioned in definition of “residential apartment”, means the local authority or any authority created or established under any law for the time being in force by the Central Government or State Government or Union Territory Government, which exercises authority over land under its jurisdiction, and has powers to give permission for development of such immovable property;

(ix) the term “Real Estate Regulatory Authority” shall mean the Authority established under sub- section (1) of section 20 (1) of the Real Estate (Regulation and Development) Act, 2016 (No. 16 of 2016) by the Central Government or State Government;

(x) the term “carpet area” shall have the same meaning assigned to it in in clause (k) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(xi) “an apartment booked on or before the date of issuance of completion certificate or first occupation of the project” shall mean an apartment which meets all the following three conditions, namely-

a. part of supply of construction of the apartment service has time of supply on or before the said date; and

b. consideration equal to at least one installment has been credited to the bank account of the registered person on or before the said date; and

c. an allotment letter or sale agreement or any other similar document evidencing booking of the apartment has been issued on or before the said date

(xii) The term “ongoing project” shall have the same meaning as assigned to it in notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017, published vide GSR No. 690(E) dated the 28th June, 2017, as amended;

(xiii) The term “project which commences on or after 1 st April, 2019” shall have the same meaning as assigned to it in notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017, published vide GSR No. 690(E) dated the 28th June, 2017, as amended;”.

5. In the said rules, after rule 88, the following rule shall

be inserted, namely: - "Rule 88A. Order of utilization of input tax credit.- Input tax credit on account of integrated tax shall first be utilised towards payment of integrated tax, and the amount remaining, if any, may be utilised towards the payment of central tax and State tax or Union territory tax, as the case may be, in any order

Provided that the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully."

6. With effect from 1st April, 2019, in the said rules, for rule 100, the following rule shall be substituted, namely:—

"100. Assessment in certain cases.- (1) The order of assessment made under sub-section (1) of section 62 shall be issued in FORM GST ASMT-13 and a summary thereof shall be uploaded electronically in FORM GST DRC-07.

(2) The proper officer shall issue a notice to a taxable person in accordance with the provisions of section 63 in FORM GST ASMT-14 containing the grounds on which the assessment is proposed to be made on best judgment basis and shall also serve a summary thereof electronically in FORM GST DRC-01, and after allowing a time of fifteen days to such person to furnish his reply, if any, pass an order in FORM GST ASMT-15 and summary thereof shall be uploaded electronically in FORM GST DRC-07.

(3) The order of assessment under sub-section (1) of section 64 shall be issued in FORM GST ASMT-16 and a summary of the order shall be uploaded electronically in FORM GST DRC-07.

(4) The person referred to in sub-section (2) of section 64 may file an application for withdrawal of the assessment order in FORM GSTASMT-17.

(5) The order of withdrawal or, as the case may be, rejection of the application under sub-section (2) of section 64 shall be issued in FORM GST ASMT-18." 7. With effect from 1st April, 2019, in the said rules, for rule 142, the following rule shall be substituted, namely:—

"142. Notice and order for demand of amounts payable under the Act.- (1) The proper officer shall serve, along with the

- (a) notice issued under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, a summary thereof electronically in FORM GST DRC-01,
- (b) statement under sub-section (3) of section 73 or sub-section (3) of section 74, a summary thereof

electronically in FORM GST DRC-02, specifying therein the details of the amount payable.

(2) Where, before the service of notice or statement, the person chargeable with tax makes payment of the tax and interest in accordance with the provisions of sub-section (5) of section 73 or, as the case may be, tax, interest and penalty in accordance with the provisions of sub-section (5) of section 74, or where any person makes payment of tax, interest, penalty or any other amount due in accordance with the provisions of the Act he shall inform the proper officer of such payment in FORM GST DRC-03 and the proper officer shall issue an acknowledgement, accepting the payment made by the said person in FORM GST DRC-04.

(3) Where the person chargeable with tax makes payment of tax and interest under subsection (8) of section 73 or, as the case may be, tax, interest and penalty under sub-section (8) of section 74 within thirty days of the service of a notice under sub-rule (1), or where the person concerned makes payment of the amount referred to in sub-section (1) of section 129 within fourteen days of detention or seizure of the goods and conveyance, he shall intimate the proper officer of such payment in FORM GST DRC-03 and the proper officer shall issue an order in FORM GST DRC-05 concluding the proceedings in respect of the said notice.

(4) The representation referred to in sub-section (9) of section 73 or sub-section (9) of section 74 or sub-section (3) of section 76 or the reply to any notice issued under any section whose summary has been uploaded electronically in FORM GST DRC-01 under sub-rule (1) shall be furnished in FORM GST DRC-06.

(5) A summary of the order issued under section 52 or section 62 or section 63 or section 64 or section 73 or section 74 or section 75 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 shall be uploaded electronically in FORM GST DRC-07, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax.

(6) The order referred to in sub-rule (5) shall be treated as the notice for recovery.

(7) Where a rectification of the order has been passed in accordance with the provisions of section 161 or where an order uploaded on the system has been withdrawn, a summary of the rectification order or of the withdrawal order shall be uploaded electronically by the proper officer in FORM GST DRC-08."

8. With effect from 1st April, 2019, in the said rules, for FORM GST DRC-01, the FORM given in notification.

Notification No. 17/2019 – Central Tax, Dated 10th April 2019

Vide this notification the Commissioner, on the recommendations of the Council, hereby extends the date of providing details of outward supply of goods or services or both in FORM GSTR-1 of the Central Goods and Services Tax Rules, 2017 for the month of March 2019 till 13th April 2019.

Notification No. 18/2019 – Central Tax, Dated 10th April 2019

Vide this notification the Commissioner, on the recommendations of the Council, hereby extends the time limit for furnishing the return by a registered person required to deduct tax at source under the provisions of section 51 of the said Act in FORM GSTR-7 of the Central Goods and Services Tax Rules, 2017 under sub-section (3) of section 39 of the said Act read with rule 66 of the Central Goods and Services Tax Rules, 2017 for the month of March, 2019 till 12th April, 2019.

Notification No. 19/2019 – Central Tax, Dated 22nd April 2019

By this notification the Commissioner, on the recommendations of the Council extends the date of filling the return in FORM GSTR-3B of the said rules for the month of March, 2019 electronically through the common portal, on or before 23rd April, 2019.

This notification shall come into force with effect from the 20th day of April, 2019.

Notification No. 20/2019 – Central Tax, Dated 23rd April 2019

In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely:-

1. (1) These rules may be called the Central Goods and Services Tax (Third Amendment) Rules, 2019.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017 in rule 23, in sub-rule (1), after the first proviso, the following provisos shall be inserted, namely:-

“Provided further that all returns due for the period from the date of the order of cancellation of registration till the date of the order of revocation of cancellation of

registration shall be furnished by the said person within a period of thirty days from the date of order of revocation of cancellation of registration:

Provided also that where the registration has been cancelled with retrospective effect, the registered person shall furnish all returns relating to period from the effective date of cancellation of registration till the date of order of revocation of cancellation of registration within a period of thirty days from the date of order of revocation of cancellation of registration.”

3. In the said rules, in rule 62,-

a) in the marginal heading, for the words “Form and manner of submission of quarterly return by the composition supplier”, the words “Form and manner of submission of statement and return” shall be substituted;

b) in sub-rule (1), -

(i) for the portion beginning with the words and figures “paying tax under section 10” and ending with letters and figures “FORM GSTR-4”, the following shall be substituted, namely:-

“paying tax under section 10 or paying tax by availing the benefit of notification of the Government of India, Ministry of Finance, Department of Revenue No. 02/2019– Central Tax (Rate), dated the 7th March, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i) vide number G.S.R.189 (E), dated the 7th March, 2019 shall-

(i) furnish a statement, every quarter or, as the case may be, part thereof, containing the details of payment of self-assessed tax in FORM GST CMP08, till the 18th day of the month succeeding such quarter; and

(ii) furnish a return for every financial year or, as the case may be, part thereof in FORM GSTR-4, till the thirtieth day of April following the end of such financial year;”;

(ii) the proviso shall be omitted;

c) in sub-rule (2), for the portion beginning with the words “return under” and ending with the words “other amount”, the following shall be substituted, namely:- “statement under sub-rule (1) shall discharge his liability towards tax or interest”;

d) in sub-rule (4),-

(i) after the words and figures “opted to pay tax under section 10” the words, letters, figures and brackets “or by availing the benefit of

“The best things in life are free, but sooner or later the government will find a way to tax them.”

— anonymous

notification of the Government of India, Ministry of Finance, Department of Revenue No. 02/2019– Central Tax (Rate), dated the 7th March, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.189 (E), dated the 7th March, 2019” shall be inserted;

(ii) in the Explanation,-

(A) after the words “not be eligible to avail”, the word “of” shall be omitted;

(B) after the words “opting for the composition scheme”, the words, letters, figures and brackets “or opting for paying tax by availing the benefit of notification of the Government of India, Ministry of Finance, Department of Revenue No. 02/2019– Central Tax (Rate), dated the 7th March, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i) vide number G.S.R.189 (E), dated the 7th March, 2019” shall be inserted;

e) in sub-rule (5), for the words, figures and letters “the details relating to the period prior to his opting for payment of tax under section 9 in FORM GSTR- 4 till the due date of furnishing the return for the quarter ending September of the succeeding financial year or furnishing of annual return of the preceding financial year, whichever is earlier”, the words, letters and figures “a statement in FORM GST CMP-08 for the period for which he has paid tax under the composition scheme till the 18th day of the month succeeding the quarter in which the date of withdrawal falls and furnish a return in FORM GSTR-4 for the said period till the thirtieth day of April following the end of the financial year during which such withdrawal falls” shall be substituted;

f) after sub-rule (5), the following sub-rule shall be inserted, namely:- “(6) A registered person who ceases to avail the benefit of notification of the Government of India, Ministry of Finance, Department of Revenue No. 02/2019– Central Tax (Rate), dated the 7th March, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.189 (E) , dated the 7th March, 2019, shall, where required, furnish a statement in FORM GST CMP-08 for the period for which he has paid tax by availing the benefit under the said notification till the 18th day of the month succeeding the quarter in which the date of cessation takes place and furnish a return in FORM GSTR - 4 for the said period till the thirtieth day of April following the end of the financial year during which such cessation happens.”.

4. In the said rules, after FORM GST CMP-07, the form given in the circular shall be inserted.

Notification No. 21/2019 – Central Tax, Dated 23rd April 2019

The Central Government, on the recommendations of the Council, hereby notifies the registered persons paying tax under the provisions of section 10 of the said Act or by availing the benefit of notification No. 02/2019– Central Tax (Rate), dated the 7th March, 2019, shall follow the special procedure as mentioned below for furnishing of return and payment of tax.

1. The said persons shall furnish a statement, every quarter containing the details of payment of self-assessed tax in FORM GST CMP-08 of the Central Goods and Services Tax Rules, 2017, till the 18th day of the month succeeding such quarter.
2. The said persons shall furnish a return for every financial year in FORM GSTR-4 of the Central Goods and Services Tax Rules, 2017, on or before the 30th day of April following the end of such financial year.

Notification No. 22/2019 – Central Tax, Dated 23rd April 2019

Vide this notification, the Central Government appoints the 21st day of June, 2019, as the date from which the provisions of the Central Goods and Services Tax (Fourteenth) Amendment Rules, 2018 rule 12 of [notification No. 74/2018–Central Tax, dated the 31st December, 2018] shall come into force.

Notification No. 23/2019 – Central Tax, Dated 11th May 2019

Vide this notification the Commissioner, on the recommendations of the Council, hereby extends the date for filling details of outward supply of goods or services or both in FORM GSTR-1 of the Central Goods and Services Tax Rules, 2017 for the month of April, 2019 for registered persons whose principal place of business is in the districts of Angul, Balasore, Bhadrak , Cuttack , Dhenkanal , Ganjam, Jagatsinghpur, Jajpur, Kendrapara, Keonjhar, Khordha, Mayurbhanj, Nayagarh and Puri in the State of Odisha electronically through the common portal, on or before the 10th June, 2019.”.

Notification No. 24/2019 – Central Tax, Dated 11th May 2019

Vide this notification the Commissioner, on the recommendations of the Council, hereby extends the date for filling return in FORM GSTR-3B of the said rules for the month of April, 2019 for registered persons whose principal place of business is in the districts of Angul, Balasore, Bhadrak , Cuttack , Dhenkanal , Ganjam, Jagatsinghpur, Jajpur, Kendrapara, Keonjhar, Khordha, Mayurbhanj, Nayagarh and Puri in the State of Odisha electro

Notification No. 3/2019- Central Tax Rate, dated 29th March 2019

Discusses the rate , conditions and modalities of Both Options

Option 1: New Projects or ongoing projects opting for new scheme

Mandatory Conditions

1. Output liability must be paid in Cash and not via Input tax credit
2. No Input tax credit should be taken except as per calculations discussion below (Annexure 1 for REP & Annexure II for RREP)
3. Amount computed as per Annexure1 / II shall be debited to ITC Ledger as on 1st April, 2019
4. Where Landowner is Registered transfer TDR/FSI to Developer-

Two Important things:-

1. Developer will have to pay tax under Reverse Charge mechanism on services of TDR/FSI provided by Landowner.
 2. Construction services provided by developer to Registered Landowner would be available as ITC to Landowner if he further sells apartments and receives consideration prior to OC from prospective customers
5. **80%** of Input & Input services (other than FSI/TDR) in a financial year must be done from registered assesses. The restriction is not on purchase of capital goods. Any service / goods paid under reverse charge shall be deemed to be from registered supplier only.
- **Any shortfall from 80%** – the promoter will be liable to pay tax on reverse charge @ 18%. Further cement is to be fully sourced from registered persons otherwise liable to reverse charge at the outset without considering 80%

limit. tax on cement received from unregistered person shall be paid in the month in which cement is received.

- The promoter shall maintain project wise account of inward supplies from registered and unregistered supplier and calculate tax payments on the shortfall at the end of the financial year and shall submit the same in the prescribed form electronically on the common portal by end of the quarter following the financial year. The tax liability on the shortfall of inward supplies from unregistered person so determined shall be added to his output tax liability in the month not later than the month of June following the end of the financial year.
- Input Tax Credit not availed shall be reported every month by reporting the same as ineligible credit in GSTR-3B [Row No. 4 (D)(2)].

Option 2: Ongoing projects opting to continue in old scheme

Mandatory Condition

1. Registered person shall exercise one time option in the Form at Annexure IV to pay central tax on construction of apartments in a project at the rates as specified by the 10th of May, 2019;
 - Where the option is not exercised in Form at annexure IV by the 10th of May, 2019, option to pay tax at the rates as applicable to option 1 above, as the case may be, shall be deemed to have been exercised;
 - Invoices for supply of the service can be issued during the period from 1st April 2019 to 10th May 2019 before exercising the option, but such invoices shall be in accordance with the option to be exercised.;

<i>New Projects on or after 01.04.2019/ Ongoing projects opting for new rates</i>			
S.No	Category	Eff.GST Rate	Condition
1.	Commercial Projects	12%	With ITC
2.	Residential Projects <ul style="list-style-type: none"> • Non-Affordable • Affordable 	5% 1%	No ITC
3.	Mixed Projects (Commercial or residential apartments) Commercial Apartment <15% (RREP) <ul style="list-style-type: none"> • Commercial • Non-Affordable Residential • Affordable Residential 	5% 5% 1%	No ITC
4.	Mixed Projects (Commercial or residential apartments) Commercial Apartment >15% (RREP) <ul style="list-style-type: none"> • Commercial • Non-Affordable Residential • Affordable Residential 	12% 5% 1%	Proportionate ITC

<i>Ongoing projects (option exercised for old rates)</i>			
S.No	Category	Eff.GST Rate	Condition
1.	Commercial Projects	12%	With ITC
2.	Residential Projects <ul style="list-style-type: none"> • Non-Affordable • Affordable 	12% 8%	With ITC
3.	Mixed Projects (Commercial or residential apartments) Commercial Apartment <15% (RREP) <ul style="list-style-type: none"> • Commercial • Non-Affordable Residential • Affordable Residential 	12% 12% 8%	With ITC
4.	Mixed Projects (Commercial or residential apartments) Commercial Apartment >15% (RREP) <ul style="list-style-type: none"> • Commercial • Non-Affordable Residential • Affordable Residential 	12% 12% 8%	With ITC

Notification No. 4/2019- Central Tax Rate, dated 29th March 2019

Taxability of Development rights and leasehold rights

S.No	Category	Taxability	Conditions
1	Residential Projects	Exemption	With Conditions
2	Mixed Projects (Commercial and residential apartments)	Proportionate Exemption	With Conditions

This notification basically exempts Transfer of Development Rights, FSI, Long term Upfront Lease premium of 30yrs or more etc

- In cases where the entire consideration is received after CC then exemption will not be available So, on the un booked apartment on the date of CC, builder is liable to pay under reverse charge

GST Payable on TDR = Total GST on FSI/TDR x (Carpet area of unbooked apartment before OC / Total Carpet area of apartments in the project)

Tax payable above cannot exceed 1% / 5% of value of unbooked apartments

The liability to pay central tax on the said portion of the development rights or FSI, or both, calculated as above, **shall arise on the date of completion or first occupation of the project, as the case may be, whichever is earlier.**

- Value shall be deemed to be equal to the value of similar apartment charged by the promoter from the independent buyers nearest to the date of issue of CC.

Notification No. 5/2019- Central Tax Rate, dated 29th March 2019

Supplies covered under RCM

S.No	Category of supply	Supplier	RCM Liability
1	Services supplied by any person by way of TDR or FSI for construction of a project by a promoter	Any Person	Promoter
2	Long term lease of land (30 years or more) by any person against consideration in the form of upfront amount		

This notification simply casts the reverse charge mechanism on Builder / Developer in case of TDR / FSI / Upfront Long term lease premium of 30yrs or more.

Notification No. 6/2019- Central Tax Rate, dated 29th March 2019

Time of Supply in case of TDR

The Liability casted on the Builder Promoter to pay under reverse charge on TDR/FSI / Upfront Long Term lease premium has been made to arise on the **date of issuance of completion certificate for the project, where required, by the competent authority or on its first occupation, whichever is earlier.**

Notification No. 7/2019- Central Tax Rate, dated 29th March 2019

Treatment of short purchases

Reverse Charge Compliance on the Developer Promoter shall be on Three of these Items in 1% / 5% regime:-

1. Any Supply received from Unregistered Suppliers such that in a FY shortfall is below 80% would be Builder's Liability to Pay under Reverse Charge.
2. Cement falling in chapter heading 2523 in the first schedule to the Customs Tariff Act, 1975 (51 of 1975) which constitute the shortfall from the minimum value of goods or services or both required to be purchased by a promoter for construction of project, in a financial year
3. Capital goods falling under any chapter in the first schedule to the Customs Tariff Act, 1975 (51 of 1975) – All the capital goods have been brought in reverse charge irrespective of ceiling or any prescribed limit.

Notification No. 8/2019- Central Tax Rate, dated 29th March 2019

Rate of GST on purchases made from unregistered dealer

This Notification has prescribed the rate of Reverse Charge @ 18% for all cases of Reverse charge liability except cement and capital Goods.

Notification No. 9/2019- Central Tax Rate, dated 29th March 2019

the Central Government, on the recommendations of the Council, hereby makes the following amendments

in the notification No.02/2019- Central Tax (Rate), dated the 7th March, 2019

In the said notification, -

- (i) in the Table, in column 3, after clause 7, the following clause shall be inserted, namely: -
 "8. Where any registered person who has availed of input tax credit opts to pay tax under this notification, he shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods as if the supply made under this notification attracts the provisions of section 18(4) of the said Act and the rules made there-under and after payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse.";
- (ii) in paragraph 3, in the Explanation, after clause (ii), the following clause shall be inserted, namely: -
- (iii) "the Central Goods and Services Tax Rules, 2017, as applicable to a person paying tax under section 10 of the said Act shall, mutatis mutandis, apply to a person paying tax under this notification."

2. This notification shall come into force on the 1st day of April, 2019.

Notification No. 10/2019- Central Tax Rate, dated 15th May 2019

the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification No.11/2017- Central Tax (Rate), dated the 28th June, 2017

In the said notification, -

- i. in the Table, against serial number 3, in items (ie) and (if), in the entries in column (5), for the figures and letters "10th", wherever they occur, the figures and letters "20th" shall be substituted;
- ii. in Annexure IV, for the figures and letters "10th", at both the places where they occur, the figures and letters "20th" shall be substituted.





Recent Developments in Direct Tax

CA Ramesh Kumar Patodia

<u>Sl. No.</u>	<u>Particulars /Citation</u>	<u>Details</u>
1.	CBDT CIRCULAR NO. 11/2019 [F.NO.225/45/2019-ITA.II], DATED 19-6-2019	The CBDT has issued Circular No. 11/2019 dated 19th June 2019 in which it has provided important clarification regarding the non-allowability of set-off of losses against the deemed income under section 115BBE of the Income-tax Act, 1961 prior to assessment-year 2017-18. The Board is of the view that since the term 'or set off of any loss' was specifically inserted only <i>vide</i> the Finance Act 2016, w.e.f. 1-4-2017, an assessee is entitled to claim set-off of loss against income determined under section 115BBE of the Act till the assessment year 2016-17.
2.	CBDT Circular No 12/2019, Dated 19.06.2019	The CBDT has issued Circular No. 12/2019 dated 19th June 2019 in which it has systematically set out the important issues to be kept under consideration by AOs while making assessment of firms. The recommendations are based on the report of the C&AG. The CBDT has desired that these issues should be considered in order to improve the quality of assessments being framed in these cases and also to reduce the scope for committing errors.
3.	CBDT, ITB-Assessment Instruction No. 11 dated 18.06.2019	The Directorate of Income Tax (System) has issued an important directive dated 18th June 2019 in which it has detailed the circumstances in which issue of paper refunds becomes necessary. With a view to expedite the refund process, a modification in the approval process for issue of paper refunds and Manual Order upload functionality In ITBA assessment module has been implemented. The safeguards required to be taken while issuing paper refunds have also been specified.
4.	CBDT, F.No 285/08/2014-IT(Inv.V)/147 dated 14.06.2019	The CBDT has issued detailed guidelines for compounding of offences under the Direct Tax Laws. These guidelines are applicable to all applications received for compounding received on or after 17.06.2019. The application received before 17.06.2019 shall continue to be dealt with in accordance with the guidelines dated 23.12.2014
5.	Radhika Roy V. Deputy Commissioner of Income Tax, Circle -18(1), New Delhi (2019) 106 Taxmann.com 210 (Delhi – Trib) dated 14.06.2019	The assessee's purchase of shares of NDTV Ltd at Rs 4 per share from RRPR Holdings Pvt Ltd when the market price of the share was Rs 140 is a benefit taxable u/s 56 (2)(vii). The argument that as it is a transaction between closely related parties, there is no motive of tax evasion & s. 56 (2) does not apply is not

		<p>acceptable. The assessee has failed to explain by credible evidence any reason of buying shares of the company at Rs. 4 per share when the quoted price was Rs. 140 & so the assessee cannot say that there was no motive of tax evasion. Even otherwise, s. 56 (2) deems such differences/receipts as income</p> <p>Where an individual or after 1st day of October 2009, receives any property other than immovable property for a consideration, which is less than the aggregate fair market value of the property by an amount exceeding INR 50,000/- , the aggregate of fair market value of such property as exceeds such consideration is chargeable to tax under the head income from other sources. The impugned asset that has been transferred in this transaction in shares, which is covered under the definition of property as per clause (d) of the second proviso to the above section. Further fair market value of such transaction is also required to be determined under section 11 UA of the income tax rules according to which the fair market value in respect of a court in shares are the quoted price on the recognized stock exchange. Therefore the impugned transaction satisfied all the ingredients of the provisions of section 56 (2) (vii) of the act.</p>
6.	CBDT CIRCULAR F.NO. 275/38/2017-IT-(B), DATED 4-6-2019	The CBDT in view of the revision of formats has extended the due date of filing of TDS statement in form 24Q for the financial year 2018-19 from 31 st May, 2019 to 30 th June,2019 and also extends the due date for issue of TDS certificate in Form 16 for the financial year 2018-19 from 15 th June to 10 th July,2019.
7.	CIRCULAR NO. 10 [F.NO.197/55/2018-ITA-I], DATED 22-5-2019	<p>The CBDT for the purpose of condoning the delay in filing Form No.10B for years prior to assessment year 2018-19 hereby directs that;</p> <p>(i) The delay in filing of Form No. 10B for AY 2016 17 and AY 2017-18, in all such cases where the Audit Report for the previous year has been obtained before the filing of return of income and has been furnished subsequent to the filing of the return of income but before the date specified under section 139 of the Act is condoned.</p> <p>(ii) In all other cases of belated applications in filing Form No. 10B for years prior to AY 2018-19, the Commissioners of Income-tax are authorized to admit such applications for condonation of delay under section 119(2)(b) of the Act. The Commissioners will while entertaining such belated applications in filing Form No. 10B shall satisfy themselves that the assessee was prevented by reasonable cause from filing such application within the stipulated time. Further, all such applications shall be disposed off by 30-9-2019.</p>
8.	CBDT Instruction No F. No 173/193/2019-ITA-I dated 23.04.2019	The CBDT has clarified with regard to the time allowed for filing of return of income subsequent to the insertion of clause (ba) in sub-section 1 of section 12A of the Income Tax Act, 1961. Thus after clarification trust registered u/s 12AA of the Act to avail the benefit of exemption u/s 11 shall inter-alia file its return of income within time allowed u/s 139 of the Act.

9.	Principal Commissioner of Income Tax Vs Nokia India Pvt Ltd (2019) 104 taxmann.com 156 (SC) dated 08.04.2019	The Apex Court in the case of Principal CIT vs Nokia India Pvt Ltd allowed the appeal of the department by remanding the matter back to Delhi High court to decide on the four questions of law which were framed by the Supreme Court in relation to reopening of the Assessment of Nokia India Pvt Ltd for AY 2009-10, which in the opinion of the High Court did not involve any question of law.
10.	Principal Commissioner of Income Tax vs Ashok Apparels Pvt Ltd (2019) 106 taxmann.com 63(Bombay) 08.04.2019	The Hon'ble Bombay High Court held that where revenue failed to establish that interest free funds were utilized for making exempt investment, no disallowance under section 14A could have been made.
11.	PCIT Vs Aditya Birla Telecom Ltd (2019) 105 taxmann.com 206 (Bombay HC) 26.03.2019	The Hon'ble Bombay High Court held that Merely because the investment was considerably large and several corporate structures were either created or came into play in routing the investment in the assessee through a Mauritius entity would not be sufficient to brand the transaction as colourable device. The assessee cannot be asked to prove the source of source
12.	South Yarra Holdings v Income Tax officer, 16(1)(1)(4), Mumbai (2019) 104 taxmann.com 216 (Bombay HC) dated 01.03.2019	Where after expiry of four years from end of relevant year, Assessing Officer initiated reassessment proceedings on basis of information received from Investigation wing that 'N' Ltd. was a penny stock listed in BSE which used to facilitate introduction of unaccounted income of members in form of share capital and, assessee was one of those beneficiaries, in view of fact that there was no company by name of 'N' Ltd. which was in existence at relevant time period, impugned reassessment proceedings deserved to be quashed
13	North Eastern Electric Power Corporation vs Principal Commissioner of Income Tax & Anr (2019) 104 taxmann.com 268 (Meghalaya) Dated 18.03.2019	In this case copy of reasons for reopening the assessments were not furnished to the assessee. The Hon'ble High Court held that there has been a breach of the principles of natural justice and also the procedure required to be adopted for passing assessment orders on reassessment and demand orders, have not been followed. Therefore, it is an exceptional case for invoking power under Article 226 of the Constitution of India.
14	PCIT Vs Yes Bank Ltd (2019) 104 taxmann.com 252 dated 15.03.2018	The apex court in the case of PCIT Vs Yes Bank Ltd allowed the appeal of the department by remanding the matter to high court to decide the issue regarding applicability of deduction u/s 35D of income tax act to the bank on account of being industrial undertaking as claimed by the bank
15	Jagdish C. Dhabalia vs. ITO (Bombay High Court) (2019) 104 taxmann.com 208(Bombay HC) dated 12.03.2019	S. 50C Capital Gains: The assessee cannot avoid the impact of s. 50C by claiming that his s. 54EC investment is large enough to cover the deemed consideration based on stamp duty valuation. Such interpretation renders s. 50C redundant

<p>16</p>	<p>Aakash Lavlesh Leisure Pvt Ltd vs Income Tax Officer. (2019) 103 taxmann.com 248 (SC) dated 22.02.2019</p>	<p>The High Court refused to accept the explanation given by the appellant and rejected the Notice of Motion. The main reason given in the affidavit was that Ex-Chairman and Shareholder of the appellant/company Late Shri Inder Bhan Bhasin, who was looking after the affairs of the appellant, was suffering from health ailment due to which he was hospitalized, who subsequently died on 08.05.2017. The explanation given by the appellant was not accepted by the High Court. However on appeal the Hon'ble Apex Court observed that " We are of the view that sufficient cause was shown for condonation of delay in filing the appeals which ought to have been accepted by the High Court. We, thus, set aside the order of the High Court dated 05.07.2018, condone the delay in filing the appeals"</p>
<p>17</p>	<p>Ankita A. Choksey vs. ITO 2019 (1) TMI 862- Bombay High Court dated 10.01.2019</p>	<p>S. 147 Reopening of S. 143(1) Intimations: The mere fact that the return is processed u/s 143(1) does not give the AO a carte blanche to issue a reopening notice. The basic condition precedent of 'reason to believe' applies even to s. 143(1) intimations. If the assessee claims the facts recorded in the reasons are not correct, the order on objection must deal with them. Otherwise an adverse inference can be drawn against the Revenue</p>





NRI Taxation : The Key Noticeable

CA Ayush Goel

A) Introduction

For an Individual, having status under Income Tax Act as Non-Resident Indian (Commonly referred as 'NRI'), the income which is earned or accrued or deemed to accrue in India is taxable in India.

Example:-

Salary received in India or salary for service provided in India, income from a house property situated in India, capital gains on transfer of asset situated in India, income from fixed deposits or interest on savings bank account, Rent paid to a NRI, income from business controlled or set up in India etc

These incomes are taxable for an NRI. Income which is earned outside India is not taxable in India.

Interest earned on an NRE account and FCNR account is tax-free.

B) Requirement of Filing of Return in India

NRI or not, any individual whose income exceeds Rs.2,50,000 is required to file an income tax return in India.

Let us understand by way of a Case Study:-

Mr. X lives and works in UK and is a NRI. He has earned income in India by way of Interest Income and was subject to TDS @ 30% amounting to Rs. 30,000/- . Is he required to file his return of Income?

The total interest earned (Assuming the same is from NRO account) adds up to Rs 1,00,000 is Mr. X's only income. For FY 2018-19, the minimum income which is exempt from tax is Rs 2.5 lakhs. His total income in India is less than the minimum exempt amount, and therefore he does not have to pay any tax on it. In fact, since no tax is payable by him, he must claim a refund of the TDS deducted on her interest income.

A refund can only be claimed by filing an income tax return for that financial year and the last date for filing of Return is 31st July 2019

C) Special Provisions related to NRI under Chapter XIIA

Section 115C

- i. "Non-resident Indian" means an individual, being a citizen of India or a person of Indian origin who is not a "resident". A person shall be deemed to be of Indian origin if he, or either of his parents or any of his grand-parents, was born in undivided India.
- ii. "Investment Income" means any income

derived (other than dividends referred to in section 115-O) from a foreign exchange asset.

iii. "Foreign Exchange Asset" means any specified asset which the assessee has acquired or purchased with, or subscribed to, in convertible foreign exchange.

iv. "Specified asset" means any of the following assets, namely :—

shares in an Indian company;

debentures or deposits with an Indian company, not being a private company;

any security of the Central Government;

Other notified assets (no such asset has yet been notified).

Section 115D & Section 115E – Computation of Income

The above rates are subject to applicable surcharge and education cess & provisions of Sec. 206AA (Higher TDS for non-quoting of PAN)

Section 115F– Exemption of long-term capital gains

Particulars	Investment Income	LTCCG
Deduction for expenses	Not allowed	As per normal provision
Chapter VI-A deduction	Not allowed	Not allowed
Tax Rate	20%	10%

Capital gain arise from transfer of foreign exchange asset, is exempt from tax if the following conditions are fulfilled:

- i. The asset transferred must be a long-term capital asset;
- ii. Net consideration must be invested in certain specified assets;
- iii. Investment to be made within 6 months of transfer;
- iv. If only a portion of the net consideration is reinvested, then proportionate exemption is allowed;
- v. New asset must be held for at least three years.

Section 115G – Option not to file income tax return

NRI need not file an income tax return if –

- i. his total income consists only of investment

income or income by way of long-term capital gains or both; and

- ii. TDS has been deducted from such income as per the provision of Income-tax Act.

Section 115H – Continuation of benefit after NRI becomes resident

Chapter XIIA shall continue to apply to investment income even after NRI becomes a resident, if he furnishes a declaration along with return of income to that effect. The benefit shall continue to apply to him in relation to such income until the transfer or conversion into money of such asset. This benefit does not apply to dividend income from shares; however, this doesn't have any impact, since dividend (with DDT) is exempt.

Section 115I – NRI may opt out of Chapter XIIA

A non-resident Indian may elect not to be governed by the provisions of Chapter XIIA for any assessment year by furnishing a written declaration to Assessing Officer with his return of income. If he does so, his total income for that assessment year shall be computed and tax on such total income shall be charged in accordance with the other provisions of this Act.

D) Deductions for NRIs

Similar to residents, NRIs are also entitled to claim various deductions and exemptions from their total income. These have been discussed here:

Deductions under Section 80C

Most of the deductions under Section 80 are also available to NRIs. For FY 2018-19, a maximum deduction of up to Rs 1.5 lakhs is allowed under Section 80C from gross total income for an individual.

Life insurance premium payment

Children's tuition fee payment

Principal repayments on loan for the purchase of a house property

Unit-linked insurance plan (ULIPS)

Investments in ELSS

Deductions not allowed u/s 80C

Investment in PPF is not allowed (NRIs are not

allowed to open new PPF accounts, however, PPF accounts which are opened while they are a resident are allowed to be maintained)

Investments in NSCs

Post office 5-year deposit scheme

Senior citizen savings scheme

Deduction under Section 80D

NRIs are allowed to claim a deduction for premium paid for health insurance. This deduction is available up to Rs 30,000 (increased to Rs 50,000 effective 1 April 2018) for senior citizens and up to Rs 25,000 in other cases for insurance of self, spouse, and dependent children. Additionally, an NRI can also claim a deduction for insurance of parents (father or mother or both) up to Rs30,000 (raised to Rs 50,000 effective 1 April 2018) if their parents are senior citizens, and Rs 25,000 if the parents are not senior citizens. Beginning FY 2012-13, within the existing limit a deduction of up to Rs 5,000 for preventive health check-ups are also available.

Deduction under Section 80E

Under this Section, NRIs can claim a deduction of interest paid on an education loan. This loan may have been taken for higher education for the NRI, or NRI's spouse or children or for a student for whom the NRI is a legal guardian. There is no limit on the amount which can be claimed as a deduction under this Section. The deduction is available for a maximum of 8 years or till the interest is paid, whichever is earlier. The deduction is not available on the principal repayment of the loan.

Deduction under Section 80G

NRIs are allowed to claim a deduction for donations for social causes under Section 80G. Here are all the donations which are eligible under Section 80G.

Deduction under Section 80TTA

Non-resident Indians can claim a deduction on income from interest on savings bank account up to a maximum of Rs 10,000 like resident Indians. This is allowed on deposits in savings account (not time deposits) with a bank, co-operative society or post office.





Investing with patience is the key to success

CA Rajesh Kumar Agrawal

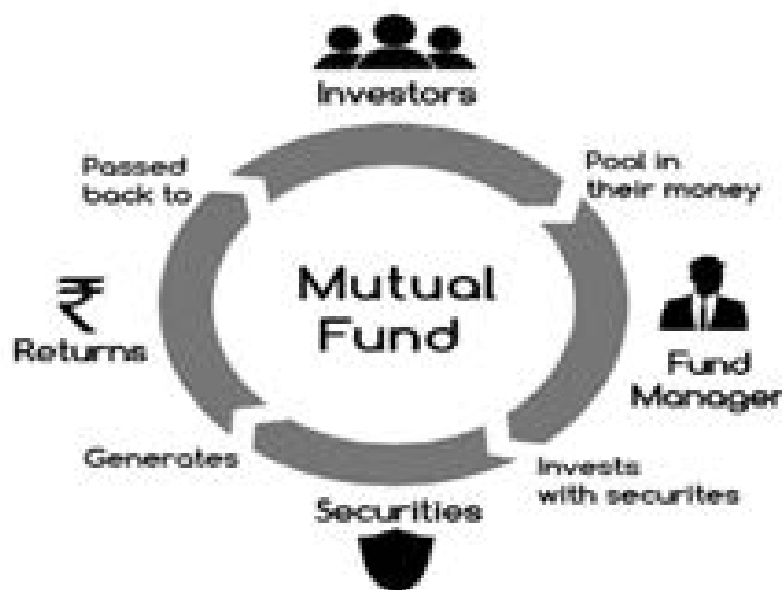
The Indian mutual fund industry is one of the fastest growing sectors in the Indian capital and financial markets. The mutual fund industry in India has seen dramatic improvements in quantity as well as quality of product and service offerings in recent years. Mutual funds assets under management grew by 96% between the end of 1997 and June 2003 and as a result it rose from 8% of GDP to 15%. The industry has grown in size and manages total assets of more than \$30351 million. Of the various sectors, the private sector accounts for nearly 91% of the resources mobilized showing their overwhelming dominance in the market. Individuals constitute 98.04% of the total number of investors and contribute US \$12062 million, which is 55.16% of the net assets under management.

All MFs are allowed to apply for firm allotment in public issues. SEBI regulates the functioning of mutual funds, and it requires that all MFs should be established as trusts under the Indian Trusts Act. The actual fund management activity shall be conducted from a

separate asset management company (AMC). The minimum net worth of an AMC or its affiliate must be Rs. 50 million to act as a manager in any other fund. MFs can be penalized for defaults including non-registration and failure to observe rules set by their AMCs. MFs dealing exclusively with money market instruments have to be registered with RBI. All other schemes floated by MFs are required to be registered with SEBI.

A Mutual Fund is a trust that pools the savings of a number of investors who share a common financial goal. The money thus collected is then invested in capital market instruments such as shares, debentures and other securities. The income earned through these investments and the capital appreciations realized are shared by its unit holders in proportion to the number of units owned by them. Thus a Mutual Fund is the most suitable investment for the common man as it offers an opportunity to invest in a diversified, professionally managed basket of securities at a relatively low cost.

The flow chart below describes broadly the working of a mutual fund



Types of Mutual Funds Schemes in India

Wide variety of Mutual Fund Schemes exists to cater to the needs such as financial position, risk tolerance and return expectations etc. The table below gives an overview into the existing types of schemes in the Industry.

TYPES OF MUTUAL FUND SCHEMES:-

By Structure:

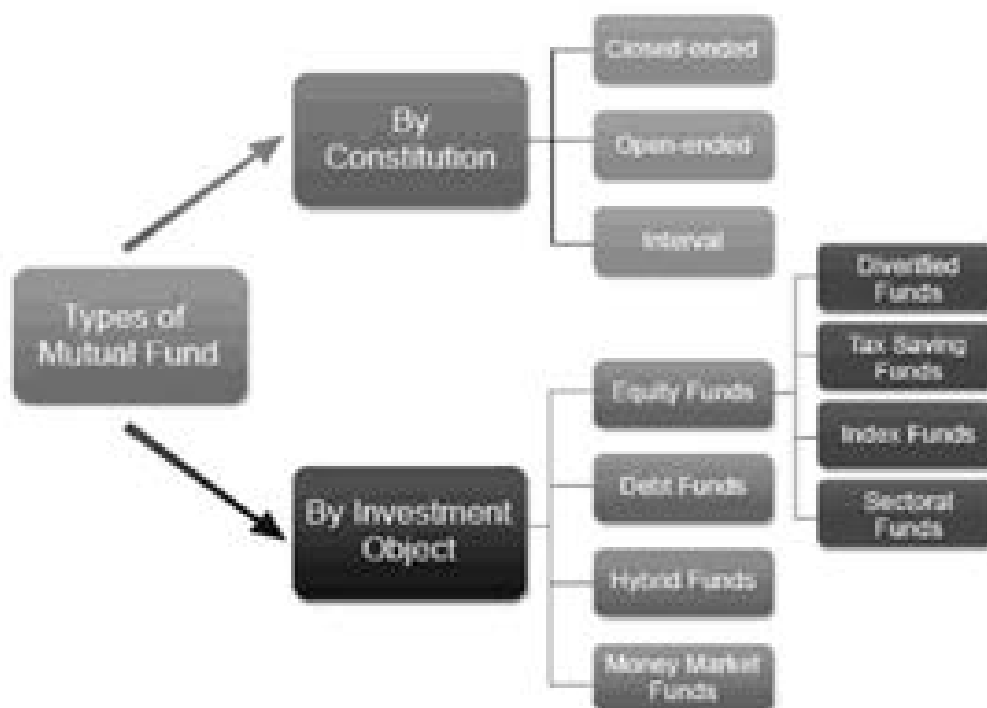
- Open - Ended Schemes
- Close - Ended Schemes
- Interval Schemes

By Investment Objective

- Growth Schemes
- Income Schemes
- Balanced Schemes
- Money Market Schemes

Other Schemes

- Tax Saving Schemes
- Special Schemes
- Index Schemes
- Sector Specific Schemes



Question 1:- How to invest in mutual fund?

If you are planning to invest in mutual funds, SIPs are the best way to invest. You can contact your financial advisor and analyze the best funds to invest in according to your desired goals. The first thing you need to do before starting an SIP is fulfilling the Know Your Customer (KYC) requirement. KYC is a must to invest in mutual funds. You will have to submit an identity proof, address proof and a photograph. You should also confirm your physical existence through an In-Person Verification or (IPV). Your financial advisor can help you with all the necessary requirements for your investments in mutual fund.

Next you need to chose/select the right fund and fill up the form with the necessary details and start your investment.

As soon as your first investment starts, you will receive

a folio number which is the best reference to your investments status. Through the folio number, you can keep an eye on your investments and also ask your financial advisor to assist you on the same.

Question 2:- What factor to be considered before investing in Mutual Fund?

Some of the most important factors include:- 1. Investment objective and style

There's an objective that every mutual fund, without exceptions, follow. This helps them to determine and invest in various asset classes that would help meet the objectives. Check if the fund's objective and yours align so that your goals are also fulfilled. Choosing a fund with similar objective makes your investment reach its goal faster and better.

As for the style, you can choose from large cap, mid cap, small or micro-cap, multi-cap and flexi cap funds.

These are market capitalizations through which you can structure your portfolio better. You must also assess the fund's management style to know how well it would be able to handle your money.

2. Fund performance

The performance needs to be considered because it gives you an idea of how it has handled money in the past over a period of time. Ensure that you measure the performance over a significantly long period so that you know the pattern and can make a good judgment. You may want to look into what kind of risks the fund has exposed you to over a period of time. Also, check if there was any clogging of risk-adjusted returns. Review the various portfolio that was held by them and how often was it churned. This should give you the entire snapshot of the fund's performance.

4. Experience of the fund manager

This plays a significant role in generating returns. How? A **fund manager** has to keep moving the capital in the direction where the market seems promising. This requires expertise and experience. Besides their tenure also help you determine how reliable they are. The fund performance is largely impacted by the fund manager's expertise and tenure and thus, it becomes crucial to be sure who you are entrusting your hard-earned money to.

5. Expense ratio

This is usually considered when you invest in an equity fund. The higher the expense ratio, the more it affects you directly. It comprises of the brokerage fees and other costs that the mutual fund houses charge from investors. Hence, you need to see if the charges are not over the top. However, there are funds that charge high but make it up by offering a higher NAV or better returns. So consider these also while checking the expense ratio.

6. Exit load

Exit load is another cost that you directly incur. It is a fraction of the NAV that you receive and thus, leaves a hole in your investment value. So, the lower exit load a fund offers, the better is it for you. Having said that, it only comes into play if you wish to sell your units. It is always beneficial that you stay invested for a long term to reap good returns from any mutual fund. Investing is not something that you can do as a side job. You need to be active and alert if you wish to make money even in mutual funds.

Question 3:- Why should you invest in mutual funds?

Reasons why mutual funds should definitely be a part of your wealth building portfolio:-

1. Higher returns

Isn't this what all of us seek from our investments? Mutual funds provide the right avenue for investing in a variety of market-linked instruments, which have time and again delivered superior returns compared to other

traditional investment options. Debt funds have consistently beaten Fixed Deposit (FD) returns, and with bank interest rates going south, they present a good investment choice for investors with lower risk appetites. For the more adventurous investors, equities (shares) present a great investment avenue, for higher, inflation-beating returns. And investing in equities through mutual funds is an excellent way to enjoy the higher returns, but with much lesser risk, thanks to rupee-cost averaging, portfolio diversification and many other factors. Data reveals that equity funds have delivered around 11-15% returns over the last 10 years. With inflation averaging at 4-6%, you could get a head start on your savings, by identifying and investing in the right mutual funds today.

2. Professionally managed

Mutual funds are professionally managed by fund managers, whose every day job is to track the markets and manage investments. Fund managers identify the winning stocks to buy, when to buy them, and more importantly, when to sell them. They spend hours analyzing the performance of companies, and if they fit the fund they manage. What's more, all mutual funds are governed by SEBI, the industry body, and are highly secure and transparent. So, while earning is your job, investing it wisely and delivering high returns is the fund manager's job. You can rest assured, knowing that when you invest in the right mutual fund, he/she is likely to manage your funds far better than you.

3. Disciplined investing

Habits are hard to break. Which is why we are advised to inculcate good habits. And what better habit could there be, than investing for your secure future? When you start a Systematic Investment Plan (SIP) in a mutual fund, you are committing to invest a certain amount on the same day of the month, consistently for a certain number of months/ years. Such a commitment instils in you the discipline to take a productive action towards your future. It becomes a fixed component of your monthly spend, around which all other expenses have to be factored. Your disposable income will be that which is left, after your mandatory expenses and investments are done. This way, you ensure that nothing comes in the way of your goals - neither a fancy dinner nor a shopping trip.

4. Less/ No lock-in

Almost all your traditional investing instruments come with long lock-in periods, which make it hard for you to get your money out, in times of emergencies. Mutual funds, on the other hand, broadly come with less, if not no, lock-in periods. Most funds do not have a lock-in period and give you the flexibility to redeem your money when you need it. Even tax-saving Equity Linked Savings Schemes (ELSS) come with a short lock-in of only 3 years. So you are saved the hassle of fixed, long lock-in periods, as seen in other investment options.

Having said that, experts recommend that a fund should not be redeemed until the goal for which it was started is fulfilled, as the longer you stay invested, better are your chances for higher returns.

5. The fund with your name on it

Within the world of mutual funds there is a wide variety of investment choices to pick from - equity funds, debt funds, liquid funds, tax-saving funds etc. So, depending upon your profile, goal and preference, there are various funds that are ideal for you. Unlike a PPF or an NSC, where the rules are already laid down for you, here you can choose what type of fund you want, how long you want to stay invested, how much you want to invest, and much more. Just like how a tailor-made outfit is often a better fit for you than a ready-made garment, a personalized mutual fund portfolio with the right advisor is the best fit for your goals.

6. Diversification

We've all heard the adage "Don't put all your eggs in one basket". This is the premise of diversification. It means spreading your investments across asset classes and stocks, to reduce your risk. With mutual funds, you get the advantage of default diversification, as your fund manager invests across a variety of stocks. Sudden changes in one stock, are likely to be balanced out by the performance of other stocks in the fund. It is an ideal way to get a taste of the equity markets, but with lesser risk. Of course, it is important to not invest all your money in one mutual fund, and further lessen your risk by diversifying across different types of mutual funds. Consult your financial advisor on how to balance your portfolio by selecting the right mutual funds.

7. Convenience

And finally, investing in mutual funds is now a piece of cake. The whole process is offered online by many players in the industry. Starting a SIP or making an investment can be done in a matter of few clicks. Even tracking the performance of your investments can be done easily online. You can set up a bank mandate for monthly investments and set your SIPs on auto-pilot mode, so that you are even saved the hassle of manually investing every month. The SIP amount is automatically debited every month from your account. In short, mutual funds today, provide the right ground for investing with the least effort, and with the potential for maximum returns.

Question 4:- Investors should consider the following factors before investing in mutual fund?

Step 1: Understand your Profile - There are multiple investment products with different risk and return. When it comes to investing, the first step should be to know personal risk profile. An investor should first understand his or her risk profile for investing. Generally higher the age and financial obligations lower the risk profile. **However, one can learn risk profiling through various free online tools.** Knowing the risk profile

helps in knowing the products one should not invest in. The below helps to understand the basic categories of profiles and meaning-Risk Profile Investment Style.

Conservative: The primary objective of this class of investors is to protect the capital from loss. Conservative Investors want a stable growth over large returns but without taking any risk on capital. Generally investors in Higher age bracket or with high financial obligations fall into this category.

Moderate: These kinds of investors look for capital growth along with decent protection of capital. Investors who lie in this class can tolerate some fluctuations in the short term in the value of their investments in the anticipation of higher returns, in the long term.

Moderately aggressive: The primary objective of this class of investors is capital growth with calculated risk in the capital. Moderately aggressive Investors are able to accept fluctuations if long-term expected result is positive and can deliver return higher than fixed deposits.

Conservative Aggressive: These investors can take high risk for supernatural returns. These investors can meet their financial obligations in spite of losses in their investments.

Step 2: Know your financial goals - Every individual has certain financial goals in life. Some goals are mandatory like retirement expenses, House purchase, kid's education etc. whereas other can be aspirational one like buying a luxury car, overseas vacation etc. Each Goal has some value and one has the choice to invest a lump sum amount or open regular savings account for meeting the goal. List down all the financial goals of life. Knowing the amount of money required to meet those goals. Defining how much money should one invest today to achieve those goals.

Step 3: SIP or Lump Sum - Knowing the value of goals, one can know how much money one is required to save for meeting those goals. Suppose one needs Rs 50 lacs after 25 years for kid's marriage, one has to invest Rs 5.80 lacs with expected return of 9%. However, one can start investing in SIP with just Rs 5000 investment per month for 25 years and meet the goal. Depending on the financial capability one can take this decision.

Step 4: Choose the Category of Funds - There are multiple kinds of funds- equity funds, balanced funds, Income funds, Sectoral funds etc. Each fund is not right for each investor. Now, you have already identified the risk appetite and goal preference, the next important step is to choose the right product. General product selection acceptance is- Risk Profile, Fund Mix & Conservative Mix of Debt Funds, Gilt Funds, Fixed

Maturity Plans, Moderate Mix of Balanced Funds, Debt Funds, Moderately aggressive Mix of Diversified Equity funds, Balanced Funds and Some bit of mid-cap equity funds, Conservative Mix of mid-cap equity funds, sectoral funds & diversified equity. However, it is advised not to follow above bifurcation as thumb rule.

The following steps will lead to selection of right type of product:

Right Mutual fund Scheme - There is 100s of equity funds in India. Once you know that you have to invest in equity funds, now the next step is to identify the right scheme in it. One can take help of advisor for the same or make an effort to do it on his own.

Expense Ratio - The Expense ratio is declared as a percentage of basic overall business expenses of mutual fund company (Known as Asset management company- AMC) necessary to keep the fund operational , over the total investment of mutual fund (Known as asset under management- AUM). It tells how much charges customer pays to the mutual fund company to get the money managed by them. This expense ratio changes for each mutual fund company. It varies for varied mutual fund categories.

Historical Performance - Historical performance aids in anticipating the future performance of the fund and hence is looked in during the selection process. The schemes usually with a track record of consistent out-performance vis-a-vis their benchmarks (usually BSE SENSEX and NSE NIFTY indices in case of Equity Funds), are considered to be good for future too.

Mutual fund Scheme Age - Markets have lots of cycles- Bull or bear or stagnant. Funds that perform in all cycles are generally better than others. But cycles come generally in 5-8 year period of time. So it is advised that schemes with 5-8 years of history are generally better than others.

The size of the mutual fund corpus - Investors generally invest in the schemes which are good in all aspects- Performance, Ratios, Fundamentals, etc. So one easiest way to judge a mutual fund is to know its corpus and compared with the competition. In case it is on the high side, it can denote that investors trust the particular fund and one can invest. One can easily track the past return from Mutual fund Company's website or newspapers. However, it is advised to check all above 4 things before investing in mutual funds.

Step 5: Sleep - If you have invested in mutual funds with a proper plan, you should not track them on a

regular basis. Mutual funds should be brought for long-term investing and not for timing the market. Therefore, one should forget about the mutual funds investment and not worry about them in the near future after bringing them.

Step 6: Monitor - It is advisable that one should try to monitor MF account once in every six months. It is said so because by doing so one can know about the status of the funds accumulated through mutual fund and how much more time will be needed to accumulate enough funds to meet the desired goals.

Indian Mutual Fund industry's Average Assets Under Management (AAUM) stood at Rs. 24.58 Lakh Crore (INR 24.58 Trillion):-

Average Assets Under Management (AAUM) of Indian Mutual Fund Industry for the month of March 2019 stood at Rs 24,58,016 crore.

Assets Under Management (AUM) as on March 31, 2019 stood at Rs. 23,79,584 crore.

The AUM of the Indian MF Industry has grown from Rs. 4.17 trillion as on 31st March, 2009 to Rs. 23.80 trillion as on 31st March, 2019, more than 5 ½ fold increase in a span of 10 years!!

The MF Industry's AUM has grown from Rs.8.25 trillion as on 31st March, 2014 to Rs.23.80 trillion as on 31st March, 2019, about 3 fold increase in a span of 5 years!!

The Industry's AUM had crossed the milestone of **Rs. 10 Trillion** (Rs.10 Lakh Crore) for the first time in May 2014 and in a short span of about three years, the AUM size had increased more than two folds and crossed Rs. 20 trillion (Rs.20 Lakh Crore) for the first time in August 2017. The Industry AUM stood at Rs.23.80 Trillion (Rs. 23.80 Lakh Crore) as on 31st March, 2019.

The total number of accounts (or folios as per mutual fund parlance) as on March 31, 2019 stood at 8.25 crore (82.5 million), while the number of folios under Equity, ELSS and Balanced schemes, wherein the maximum investment is from retail segment stood at 6.93 crore (69.3 million).

Conclusion:

There has been a tremendous growth in the mutual fund industry in India, attracting large investments not only from the domestic investments but also from the foreign investors. Increasing number of Asset based Management Companies providing opportunity to the investors in the form of safety, hedging and arbitrage. With the growing middle-class household families with limited risk bearing capacity, it provides better returns than any other long-term securities. India's high rate of savings and a rapid-liberalizing economy is expected to elevate the mutual fund sector to new hikes.

Capital Market access - Advantages for SME

Small and Medium Enterprises (SMEs) are important factors in economic growth and transformation, creating positive value for the economy, contributing towards sustainable and balanced economic growth, employment and social stability. They are the silent drivers of economy. And yet despite their importance, SMEs in emerging markets frequently suffer from insufficient access to financing, preventing these businesses from expanding their production and making a larger social and economic impact.

Their access to finance is limited to the entrepreneurs own funds and bank finances. They lack their ability to access funds is on account of lack of collateral security, stringent lending criteria and short repayment terms. The lack of capital to the SME's substantially diminishes the growth potential of these small and medium enterprises and, consequentially, has a profound negative impact on employment, the development of economy, and tax revenues that are essential to a country's development. A vibrant SME Sector is also a key element in job creation, on the job training, poverty reduction, wealth creation, sustainable economic growth, and stability. To overcome inaccessibility of Funding requirements, capital markets realised the need for a separate exchange for SME segment. Ensuring adequate investor protection and at the same time establishing an effective regulatory framework which would enable SMEs to access finance from the capital markets was a major challenge due to the risky nature of investing in SMEs.

Taking into consideration the above challenges the Exchanges launched their SME platform in 2012. NSE named its SME platform as EMERGE to facilitate the smaller growing corporates to raise funds through IPO and list on the Exchange and later migrate to the main board of the NSE.

This platform provides a listing opportunity to the SMEs

with minimum compliances and cost compared to the main board. The requirement of track record, cost, corporate governance norms, reporting requirements and time frame for listing are quite relaxed for an SME, making listing on an SME platform comparatively easier.

NSE has specified the following criteria:

- The company should have a track record of at least 3 years.
- The company should have positive cash accruals (earnings before depreciation and tax) from operations for at least 2 financial years, preceding the application, and
- Its net-worth should be positive.

SME listing provides multiple benefits to the companies such as higher visibility, enhanced liquidity and better borrowing terms with banks. Listing raises a company's public profile with customers, suppliers, investors, financial institutions and the media. The SME listing also benefits its investors, both existing and proposed, by providing an exit route to private equity investors as well as liquidity to the ESOP holding employees. Listing pre-supposes good corporate governance, which results in sustainability and helps generate an independent valuation of the company.

Once listed, these companies are well equipped to exploit other avenues of raising capital such as rights issue, preferential issues, qualified institutions placements (QIP) and other international fund raising instruments, such as FCCBs, ADRs and GDRs etc. Banks and financial institutions also prefer to extend finance to listed companies as against unlisted ones.

Benefits accrue at the time of listing as the companies prepare themselves for this event and also throughout the life of the company. Regulatory supervision and

governance controls in the form of routine compliances become a part of the company's day-to-day existence. Timely disclosure of material information not only leads to improved governance but also protects investors' interest.

The Financial assistance empowers a company to overcome the impediments to its growth and lead to its production of higher value-added products or services for both domestic and international consumers, while accelerating the development of its surrounding community. SME investment leverages promising businesses to catalyse socioeconomic growth and entrepreneurship in local communities and markets.

Spurred by investor interest, SMEs raised nearly Rs. 1000 crore through IPOs in financial year ended March 2019. Geographically, Gujarat dominated the IPO space, followed by Maharashtra, Madhya Pradesh, Delhi, Rajasthan, These companies represent diverse industry base such as media and entertainment, manufacturing, textiles, engineering, finance, chemicals, agriculture, food processing and construction. West Bengal also witnessed listings last year in diversified sector.

The total number of listings on the NSE Emerge platform is at 198 as on June, 2019. Total funds raised on the platform till date is approx. Rs. 3103 crs with market capitalisation of approximately Rs. 11,252 crs.





CA Roshan Kumar Bajaj

Ministry of Commerce and Industry amends Special Economic Zones Rules, 2006



CS Adesh Jain

1.0 Synopsis of the previous release

In our last two releases, we had discussed the International Financial Services Centres Authority Bill, 2019 which was approved by the Union Cabinet for setting up of a unified authority for regulating all financial services in International Financial Services Centres (IFSCs) in the country. We had outlined the features, functions and powers of the Authority which could control all financial services in International Financial Services Centres (IFSCs) in India.

2.0 Coverage in the current release

In the current release, we shall discuss the recent amendments made by the Ministry of Commerce and Industry ("Ministry") in the Special Economic Zones Rules, 2006 ("Principal Rules"). The amended rules may be called the Special Economic Zones (2nd Amendment) Rules, 2019 ("Amendment Rules"), which is effective 7th March, 2019.

3.0 Key highlights of the Amendment Rules:

3.1 Establishment of Special Economic Zone (SEZ):

The proposal for establishment of SEZ, in specific cases, shall be subject to recommendations of National Security Clearance.

3.2 Establishment and operations of SEZ Units:

The proposal for establishment of SEZ unit to meet the prescribed value addition apart from Net Foreign Exchange Earning (NFE) criteria in specific cases.

The delay in filing application for renewal of Letter of Approval (LoA) after the expiry of the two month period will be examined on merits and circumstances of the case, and the request for renewal of LoA will now be dealt by the Development Commissioner instead of the Approval Committee.

The criteria for renewal of LoA is amended, namely-

- (i) Export performance of the Unit in the last block i.e. five years from the date of commencement of production or service activity.

- (ii) Employment generated.
- (iii) Instance of violation of applicable statutes related to the functioning of the Unit.
- (iv) Cases of default, if any, of statutory payments.
- (v) Undertaking of any activity not sanctioned or approved by the Development Commissioner.
- (vi) The decision of the Development Commissioner or Approval Committee in this regard shall be final and binding on the Unit except in cases where the Unit prefers an appeal before the Board of Approval, in accordance with rule 55.

3.3 Relating to employees in SEZ:

The provisions of the amended Rules will apply to employees of Information Technology and Information Technology enabled Services Special Economic Zone units and Information Technology and Information Technology enabled Services units registered as Other Service Provider with Department of Telecommunications, who are temporarily in-capacitated, travelling and offsite employees of Special Economic Zones were permitted to work from home or from a place outside the Special Economic Zone.

However, the provision is applicable subject to the fulfilment of the following conditions:

- (a) A regular employee of the Special Economic Zone unit, who has been issued identity card will be authorised by the Special Economic Zone unit to undertake the work pertaining to that unit.
- (b) The work to be performed by the employee permitted to work from home will be as per the services approved for the Special Economic Zone unit, and the work is related to a project of the Special Economic Zone unit.
- (c) For the purpose of work from home, Special Economic Zone unit must provide laptop or desktop and secured connectivity (for e.g. Virtual Private network, Virtual Desktop Infrastructure) to establish a connection between the employee and work related to the project of the Special Economic Zone unit.

(d) The Special Economic Zone unit must ensure export revenue of the resultant products or services to be accounted for by the Special Economic Zone unit to which the employee is tagged and at no given point shall work from home involve the export of services from outside the Special Economic Zone unit.

(e) Once the employee ceases to be part of the project of such Special Economic Zone unit, the employee must be untagged from the respective Special Economic Zone unit and the unit shall surrender the I-Card to Specified Officer.

As per the Principal Rules, temporarily incapacitated, travelling and off site employees of all Special Economic Zone units undertaking sub-contracting for export on behalf of a Domestic Tariff Area exporter were permitted to work from home or from a place outside the Special Economic Zone.

3.4 Computation of Net Foreign Exchange (NFE):

In the recent amendment, the value of exports will exclude any supply of capital goods which includes those in unassembled or disassembled condition as well as plants, accessories, dies, tools and such other goods which are used for installation purposes till the stage of production for the computation of NFE.

The supplies of services in Domestic Tariff Area against foreign exchange or Indian Rupees

(considered as paid in foreign exchange by Reserve Bank of India) to be counted towards NFE.

NFE computation requirement to consider only the value of exports and supplies of goods manufactured in SEZ and not the traded goods removed.

NFE computation requirement is not to consider supply of goods to Domestic Tariff Area against payment in foreign exchange from the Exchange Earners Foreign Currency account of the Domestic Tariff Area buyer or Free Foreign Exchange received from overseas. This point has been excluded from the calculation of the value of export.

3.5 Miscellaneous:

The revised format for Annual Performance Report (called as Form-I) for units has been prescribed.

4.0 Conclusion

The proposed amendments in SEZ Rules, 2006 is to attain the objectives of trade facilitation, ease of doing business and regular compliances to smoothen the process of achieving goals of the units. Further, in addition of above, this amendments have also brought employment opportunities for temporarily in-capacitated persons subject to fulfilment of certain conditions as already mentioned above.



FAQs on delayed payment to MSMEs

Team Vinod Kothari & Company

Introduction

The Micro, Small and Medium Enterprise (MSME) Sector is the pillar of economic growth in our country. It is often termed as the engine of growth for India, since it plays a prominent role in the development of the country. Despite the important role played by them in the economic structure of the country, they continue to face constraints in procuring adequate finance,

thereby impacting their working capital and term loan needs.

To resolve the problem of liquidity and to provide the MSME sector with adequate finance, the government has initiated to strengthen the legislative framework for delayed payment to the MSMEs and has aimed to provide security to the MSMEs against the unwarranted delays.

Notifications/Orders

Issued by	Content of the Notification
1. Notification dated November 2, 2018¹	
Ministry of MSME	All companies who purchase goods or avail services from Micro and Small enterprises and whose payment to such suppliers have exceeded 45 days shall submit a half yearly return to the Ministry of Corporate Affairs (MCA) stating the outstanding amount and the reasons for delay.
2. Specified Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order, 2019 dated January 22, 2019²	
Ministry of Corporate Affairs (MCA)	Specified Companies are required to report the outstanding dues to the Micro and Small enterprises in Form MSME I .

Notifications/Orders

The aforementioned notifications issued by the Government has raised several questions among the companies. Keeping in mind the need of the hour, we

have listed down the probable questions that one can have with respect to reporting the outstanding dues with potential answers to such questions.

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Applicability

1. What is the definition of MSME?

The Government of India had enacted the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006 in terms of which the definition of MSMEs is as under:

	Manufacturing Sector	Service Sector
	Investment in plant & machinery	Investment in equipment
Micro	Does not exceed Rs. 25 lakhs	Does not exceed Rs. 10 lakhs
Small	More than Rs. 25 lakhs but does not exceed Rs. 5 crores	More than Rs. 10 lakhs but does not exceed Rs. 2 crores
Medium	More than Rs. 5 crores but does not exceed Rs. 10 crores.	More than Rs. 2 crores but does not exceed Rs. 5 crores.

2. Has the proposed definition of MSME been imposed?

The basis of classifying MSMEs is proposed to change from 'investment in plant and machinery/equipment' to 'annual turnover'³.

Micro	•A unit where annual turnover does not exceed Rs. 5 crore;
Small	•A unit where annual turnover is more than Rs. 5 crores but does not exceed Rs. 75 crores;
Medium	•A unit where annual turnover is more than Rs. 75 crores but does not exceed Rs. 250 crores;

The revised definition⁴ of MSMEs as mentioned below has not been notified yet.

3. Are all Micro, Small and Medium Enterprises covered under the notification?

Only Micro and Small enterprises are covered under the aforesaid notifications. Medium

enterprises have been kept outside the purview of this notification.

4. Can only registered suppliers avail the benefit under this notification?

Section 2(n) of the MSMED Act, 2006 defines supplier as:

“supplier” means a micro or small enterprise, which has filed a memorandum with the authority referred to in sub-section (1) of section 8, and includes,—

(i) the National Small Industries Corporation, being a company, registered under the Companies Act, 1956 (1 of 1956);

(ii) the Small Industries Development Corporation of a State or a Union territory, by whatever name called, being a company registered under the Companies Act, 1956 (1 of 1956);

(iii) any company, co-operative society, trust or a body, by whatever name called, registered or constituted under any law for the time being in force and engaged in selling goods produced by micro or small enterprises and rendering services which are provided by such enterprises;

The aforesaid definition indicates that it has two parts. The first limb defines a supplier to mean a Micro or Small enterprise which has filed a memorandum with the authority referred to in sub-section (1) of Section 8 of the Act.

The second limb intends to include National Small Industries Corporation, Small Industries Development Corporation of a State or a Union territory and such company, co-operative society, trust or a body engaged in selling goods produced by Micro or Small enterprises and rendering services which are provided by such enterprises. Such entities are not required to be registered under the Act.

Therefore, to avail the benefit under the notification, a Micro or Small enterprise supplier must be registered under the MSMED Act, 2006. Apart from such Micro or Small enterprises, an entity engaged in selling goods produced by Micro or Small enterprises or rendering services provided by such enterprises are also included within the definition of suppliers irrespective of the fact that they have registered themselves under the Act or not. Delhi high court gave this judgement in the matter of **M/S Ramky Infrastructure Pvt. Ltd. Vs Micro and Small Facilitation Council and Anr. W.P (C) 5004/2017**

5. Which companies are covered under the notification?

The filing requirement is applicable on ‘Specified Companies’ who satisfy **both these conditions:**

1. purchase goods or avail services from Micro and Small enterprises

and

2. whose payment cycle, while dealing with MSMEs, exceeds forty-five days from the date of acceptance or the date of deemed acceptance.

Further, the classification of Specified Companies is to be done every half year to ensure submission of half yearly return to the Ministry of Corporate

Affairs (MCA) stating the outstanding amount and the reasons for delay.

6. What is meant by day of acceptance or the day of deemed acceptance?

Section 2 of the MSMED Act, 2006, defines **the day of acceptance** as:

(a) **the day of the actual delivery** of goods or the rendering of services; or

(b) where any objection is made in writing by the buyer regarding acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, the day on which such objection is removed by the supplier;

Further, **the day of deemed acceptance** means-

where no objection is made in writing by the buyer regarding acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, the day of the actual delivery of goods or the rendering of services.

Reporting requirements

7. What is the initial reporting requirement?

The initial reporting requirement is to report all outstanding dues as on January 22, 2019 (date of MCA notification) by every specified company in Form MSME-1. The reporting is to be done within 30 days from the date of deployment of the form in MCA21 portal.

8. What shall be the cut-off date for determining the first time reporting applicability?

For the purpose of initial reporting, the Specified Company is required to report the outstanding dues to Micro and Small enterprises for a period exceeding 45 days as on the date of the notification i.e., as on January 22, 2019.

9. What are outstanding dues?

The Specified Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order, 2019 issued by MCA does not define the term ‘outstanding dues’. However, from the intent of the notifications, it can be inferred that dues outstanding to Micro and Small enterprises for a period exceeding 45 days will be regarded as outstanding dues.

10. Do the term outstanding dues include principal as well as interest amount?

The term “all outstanding dues” in our view, shall include both the components principal as well as interest, if any, as per terms of engagement between the MSME and the Company.

11. Is the period of 45 days exclusive of credit period provided to the Company?

The MCA notification states the requirement of reporting is for all those payments which “exceed

forty-five days from the date of acceptance or the date of deemed acceptance of the goods or services" only and not any sort of free credit period provided for the goods or services supplied to the company.

Further, the proviso to section 15 of the MSMED Act, 2006 states:

"Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance."

Therefore, in any event the agreed credit period cannot be more than 45 days. Hence, the due date shall be calculated from the date of acceptance or deemed acceptance and not the expiry of credit period. Accordingly, the payment (including credit period, if any) to a Micro and Small enterprise has to be made within 45 days of acceptance / deemed acceptance. If not made, the reporting has to be done on a half yearly basis as per the MCA circular within 30 days of end of each half-year.

12. Is the e-form MSME I, available on the MCA portal?

MCA released the e-Form on 1st May 2019.

13. What is the half yearly reporting requirement?

For the period	Reporting date
April to September	31st October
October to March	30th April

14. Whether companies will be required to file MSME-1 as an initial requirement and as well as half year ending 31st March, 2019?

Yes.

Please note that the e-form has been made available on 1st May, 2019 and for the purpose of initial reporting, the companies are required to report the outstanding dues to MSME for a period exceeding 45 days as on the date of the notification i.e., as on January 22, 2019. Unlike, e-Form DPT-3 no extension of reporting period has been notified by Ministry. Therefore, initial reporting shall be up to 22nd January, 2019.

If we consider first half year to commence from April 1, 2019 there shall be a reporting gap for the period (January 22, 2019 to March 31, 2019).

Accordingly, in our view, the half yearly return i.e. from October to March shall apply for this financial year.

15. If yes, what will be the period of reporting of first half year? What will be required to be reported?

The period of reporting will be from October 1, 2018

till March 31, 2019.

Every specified company shall report details of amounts paid after a period of 45 days to MSMEs during the half year, irrespective of whether there are any outstanding or not as on March 31, 2019.

If the Company had been a specified company during the half year, it shall file the return.

16. Are any type of entities exempted from the applicability of the notification?

No. The notification applies to all specified companies.

17. Is there any requirement of NIL reporting?

There is no requirement of filing a NIL return by any company. Therefore, in the following scenarios, the companies are not required to file the return:

- If any company does not have any MSME supplier; or
- If the outstanding dues does not exceed 45 days at any time during the period of half year.

18. If the Specified Company has settled its outstanding due before the reporting date, then do they have to file Form MSME I for the half year?

The answer to this question lies in the intent of the notification, which requires reporting of all delays beyond a period of 45 days. Hence, even in case a default has been made good, the fact that there was a default at any point of time during the half year, must be reported. The Specified Company may report the reason for delay in the form, stating that they have repaid all the dues outstanding to the Micro or Small enterprises.

In case a company has outstanding dues to MSMEs for a period exceeding 45 days at any point during the half year October, 2018 to March, 2019 and it has settled the dues as on March 31, 2019 the Specified Company will still be required to file the Form.

Examples:

H1 – April to September; H2 – October to March

1-Oct-18 : Opening balance of MSME outstanding Invoices

- Invoice accounted in H1 but Paid within due date in H2 – not to be included if paid within 45 days.

- Invoice accounted in H1 but Paid after due date in H2 – to be included if paid after 45 days.

- Invoice accounted in H1 Already Due in H1 but Paid in H2 - to be included if paid after 45 days

31-Mar-19 : Closing balance of MSME outstanding Invoices

- Invoice accounted in H2 is outstanding but not due on 31st Mar, 19 but Paid within due date in FY 19-20 – if outstanding for less than 45 days as on March 31, 2019, not to be included in MSME 1, will be included in next half yearly return if paid after a delay of 45 days.

- Invoice accounted in H2 is outstanding but not due on 31st March, 19 but Paid after due date in FY 19-20.- if outstanding for less than 45 days as on March 31, 2019, not to be included, will be included

in next half yearly return if paid after delay of 45 days.

- Invoice accounted in H2 is outstanding and overdue on 31st March, 19 but paid in FY 19-20. if outstanding for less than 45 days as on March 31, 2019, not to be included, will be included in next half yearly return if paid after delay of 45 days.

19. Is there any limit of reporting of suppliers in e-Form MSME-1?

Yes. The e-Form allows companies to provide details of only 99 suppliers and fresh form is to be filed for entries in excess of 99. This again will be an operational difficulty for the companies.

The image shows a portion of the MSME-1 form. It includes a text field for '(c) Email id of the company'. Below it is section 3, 'Initial return of outstanding dues to Micro or Small Enterprises Suppliers'. Field (a) is 'Total outstanding amount due as on date of notification of this order'. Field (b) is 'Particulars of the name of supplier', which includes a table with columns for 'Financial Year' (From and To) and 'Reasons for Delay in amount of payments due'. A large watermark is overlaid on the form.

20. If the entry can be made only for 99 invoices/ transactions, what should be reported in (a) i.e. total outstanding amount?

Field 3 (a) in relation to total outstanding amount due as on date of notification of this order and Field 4 (a) in relation to total outstanding amount shall reflect the aggregate amount in respect of all invoices/ transactions from all suppliers and will not be restricted to 99.

21. What will be required to be reported in Financial Year from and to?

The financial year to which the invoice relates shall be specified. For eg. If the date of invoice is February 1, 2018 then Financial Year shall be from April 1, 2017 to March 31, 2018.

22. If the invoice has already been paid, although after a delay of more than 45 days, what should be specified in Reasons for Delay?

The reasons for delay shall specify that 'As on the date of filing the form, the amount has been paid

after a delay, on account of [state the reason].

Penal provisions

23. What are the penal provisions under MSME Act?

Section 27 of MSME Act provides for penalty for contravention of Section 8, Section 22 and Section 26.

Section 8 relates to registration of MSME. Section 22 provides the requirement of the buyer to specify the principal and interest due in the annual statement of accounts. Section 26 (2) provides for furnishing of information to the officers/ employees appointed by Central Government or State Government.

Violation of Section 8 or Section 26 (2) of MSME Act shall be punishable with Fine as under:

- In case of the first conviction: Fine which may extend to Rs. 1000;
- In case of second or subsequent conviction: Fine of Rs. 1000 to Rs. 10,000.

Violation of Section 22 of MSME Act shall be punishable with Fine which shall not be less than Rs. 1000.

24. What are the penal provisions in case of non-filing of or filing wrongful information in Form MSME 1 under Companies Act, 2013?

The Specified Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order, 2019 has been provided pursuant to Section 405 of Companies Act, 2013, reproduced hereunder:

Power of Central Government to Direct Companies to Furnish Information or Statistics.

405. (1) The Central Government may, by order, require companies generally, or any class of companies, or any company, to furnish such information or statistics with regard to their or its constitution or working, and within such time, as may be specified in the order.

(2) Every order under sub-section (1) shall be published in the Official Gazette and may be addressed to companies generally or to any class of companies, in such manner, as the Central Government may think fit and the date of such publication shall be deemed to be the date on which requirement for information or statistics is made on such companies or class of companies, as the case may be.

(3) For the purpose of satisfying itself that any information or statistics furnished by a company or companies in pursuance of any order under sub-

section (1) is correct and complete, the Central Government may by order require such company or companies to produce such records or documents in its possession or allow inspection thereof by such officer or furnish such further information as that Government may consider necessary.

(4) If any company fails to comply with an order made under sub-section (1) or subsection (3), or knowingly furnishes any information or statistics which is incorrect or incomplete in any material respect, the company shall be punishable with fine which may extend to twenty-five thousand rupees and every officer of the company who is in default, shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to three lakh rupees, or with both.

Accordingly, the penal provisions are as under:

On the Company: Fine which may extend to Rs. 25,000.
On every officer in default:

- Imprisonment for a term which may extend to six months; **or**
- with fine which shall not be less than twenty-five thousand rupees but which may extend to three lakh rupees; **or**
- with both

The offence is a compoundable offence under Section 441 of Act, 2013.

(Footnotes)

¹<http://egazette.nic.in/WriteReadData/2018/191730.pdf>

²http://www.mca.gov.in/Ministry/pdf/MSMESpecifiedCompanies_22012019.pdf

³<http://www.prsindia.org/billtrack/the-micro-small-and-medium-enterprises-development-amendment-bill-2018-5289/>

⁴<http://pib.nic.in/newsite/PrintRelease.aspx?relid=176353>





SEBI proposes to streamline the Rights Issue process

CS Kanakprabha Jethani

Background

In spite of the existing mechanism of the fast track route for rights issue, SEBI is further exploring ways to make the rights issue process more efficient by cutting down significantly on the timelines. In this regard, SEBI has released its discussion paper on Review of Rights Issue Process on May 21, 2019 for seeking comments of public and market intermediaries on the same. This discussion paper evaluates means to:

- reduce time between announcement of terms of the issue and issue closing there by reducing price risks, and
- make the application and allotment process more efficient by using the banking and depository infrastructure and provide issuers with an efficient mechanism for raising funds, and to streamline the process, reduce post issue timeline for rights issues and methodologies associated with rights issue fund raising process

This article provides a snapshot of the amendments to

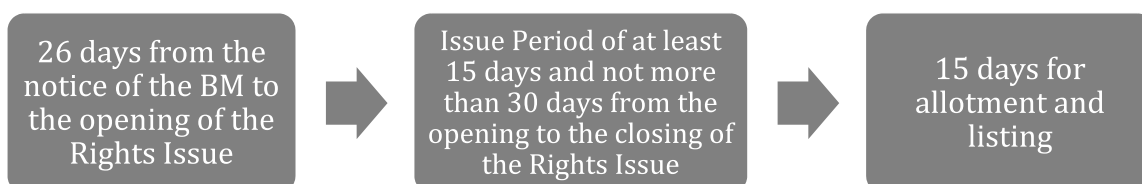
the process of rights issue proposed by SEBI in the direction of reducing the time period involved in rights issue along with increasing efficiency and reducing costs of compliance.

Reasons for proposing amendments to the existing structure

The current rights issue process prescribed by SEBI, through the fast track route, typically takes about 55-58 days from the time the Company decides to launch the rights issue till the listing of the shares on the Stock Exchange(s). This timeline (excluding the period taken for completing the letter of offer and any statutory and regulatory approvals) has three broad components:

Considering the timeline, the Discussion Paper states :

“Issuers perceive a higher exposure to price risk due to current rights issue process while investors expect allotment and listing timelines to be shortened. The current process of trading of rights entitlement, which is settled physically with low liquidity, is also needed to be addressed.”



Current rights issue procedure has certain technicalities which result in repetition or futile compliances. Also, with dematerialisation of all securities to be traded being compulsory, trading of rights entitlement physically lags behind the time.

Comparative analysis of existing provisions and proposed amendments

1. Regulation 42 of SEBI (LODR) Regulations 2015:

Existing provision – Issuer is required to give 7 clear working days' notice for fixing a record date.

Proposed amendment – Issuer shall be required to give 3 clear working days' notice for fixing record date.

Rationale – Regulation 73(1) of SEBI (ICDR) Regulations, 2009 requires that issue price has to be determined before determining the record date.

The time gap between determination of issue price and record date is huge and results in fluctuation of price of shares.

Impact – By reducing the time-gap the price fluctuation risk can be reduced.

2. Regulation 84 of SEBI (ICDR) Regulations 2009:

Existing provision – Issuer to publish an advertisement in newspaper confirming completion of dispatch of the letter of offer and composite application forms to shareholders of the company, at least 3 days before the date of

opening the issue.

Proposed amendment –Removal of requirement of publishing advertisement. Instead information can be communicated to shareholders through intimation to stock exchange and e-mail to shareholders.

Rationale –All material information is communicated to shareholders/ investors through stock exchange announcements. Requirement of publication in newspaper merely adds to the cost of issue.

Impact –Reduction in cost involved in the issue and at the same time ensuring that information is disseminated to the shareholders.

3. Process of rights issue:

Current process:

Rights Entitlement is intimated to shareholders through Composite Application Form (CAF)

which takes about 7 days.

Shareholders use CAF to apply for shares or renounce their entitlement or both(split forms are required to be printed in case shareholder intends to do both).

Renouncee applies for the shares through physical form and payment for the same is made through bank (which takes almost 13-15 days till allotment).

Proposed process :

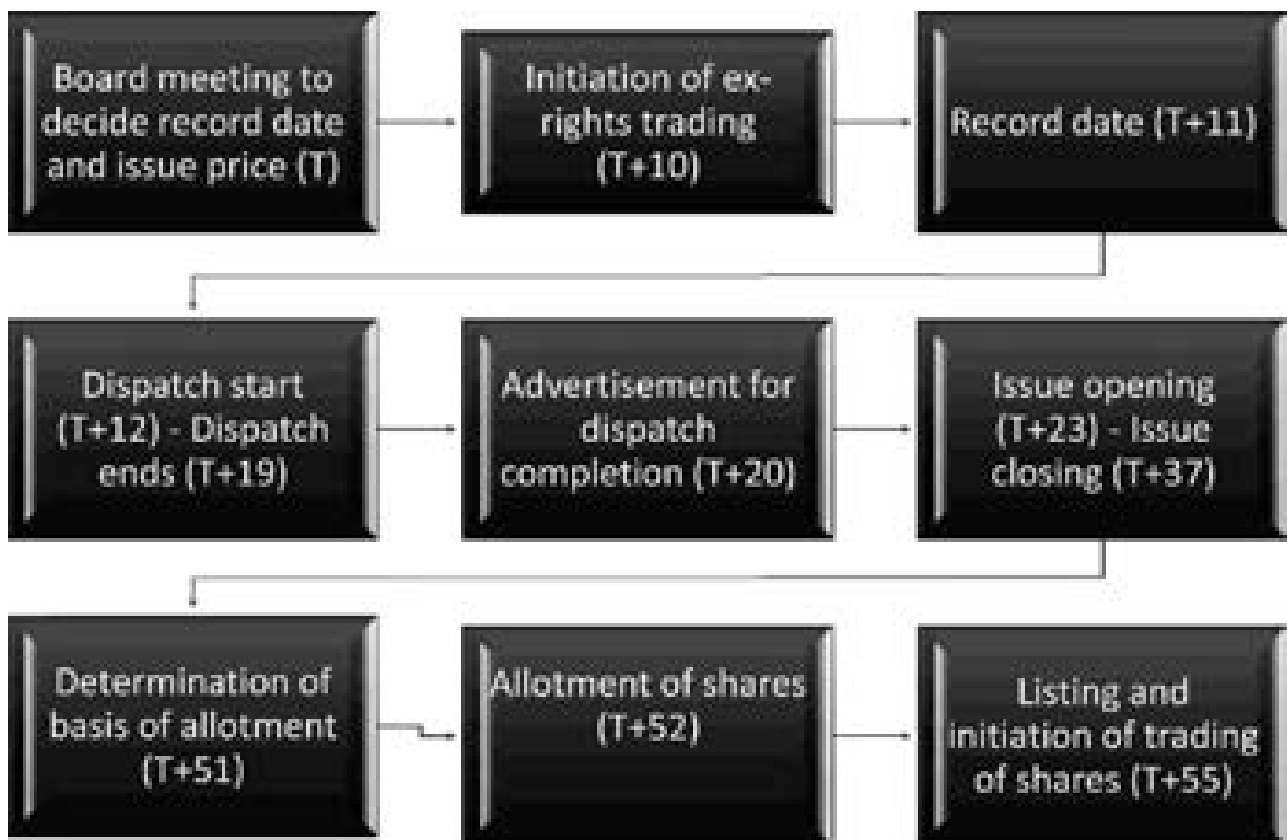
Rights entitlement shall be credited to demat account of the shareholder.

Shareholders can apply or renounce the entitlement through dematerialised RE/ online application and payment shall be made through ASBA mode.

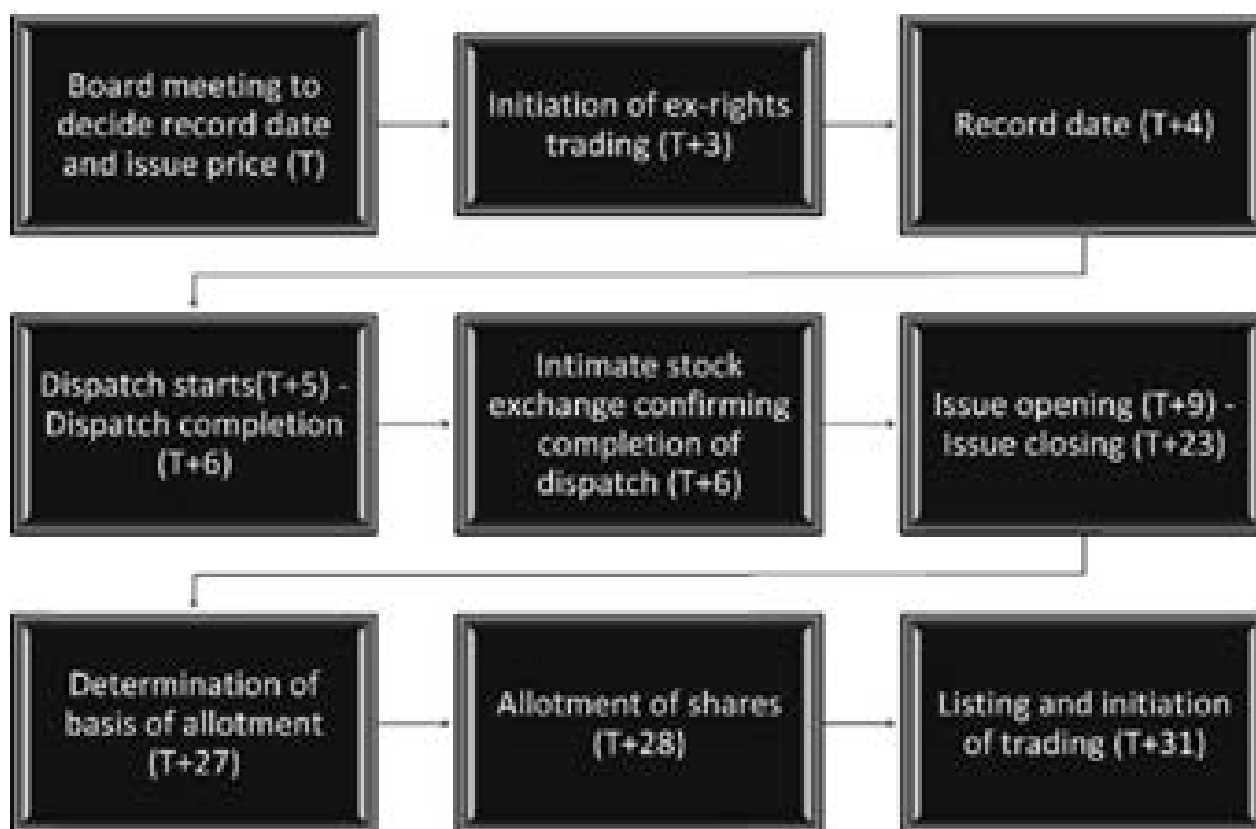
Outcome : Reduction in time involved in the rights issue process.

How the timelines differ under existing and proposed process?

Timeline under existing process



Timeline under proposed process



Conclusion

As mentioned in the Discussion Paper, the Securities market, including the primary markets, is dynamic and needs to keep pace with the evolving economic and technological environment. Accordingly, there has been a significant change in the regulatory framework governing the primary markets, particularly initial public offerings, thereby making the product timelines and processes efficient.

As per the timelines mentioned above, it can be inferred that the time involved in rights issue process will largely

be reduced through the proposed process. While, existing process required around 55 days after the Board meeting, the proposed process will require only 31 days after Board meeting. Also, it is expected to reduce the compliance cost and increase efficiency of the procedures.

Therefore, witnessing the growing requirement of the streamlined process and timelines involved in public offerings, the SEBI's proposal seems to bring much relief to the investors as well as issuers of the rights issue.

¹ https://www.sebi.gov.in/reports/reports/may-2019/discussion-paper-on-review-of-rights-issue-process_43049.html



Recent Important Amendments in Companies Act, 2013 And Rules

CS Uma Agarwal

Companies (Incorporation) Second Amendment Rules, 2019 [Amendment in the Companies (Incorporation) Rules, 2014]

· In case of companies incorporated, with effect from the 26th day of January, 2018, with a nominal capital of **less than or equal to rupees fifteen lakhs** or in respect of companies not having a share capital whose number of members as stated in the articles of association does not exceed twenty, fee on INC-32 (SPICe) shall not be applicable.

(Previously there was no fees with a nominal capital of less than or equal to ten lakhs but now the limit has increased to fifteen lakhs)

· Rule 38A inserted in the above rules i.e. Application for registration of the Goods and Service Tax Identification Number (GSTIN), Employees' State Insurance Corporation (ESIC) registration and Employees' Provident Fund Organisation (EPFO) registration

The application for incorporation of a company under rule 38 shall be accompanied by e-form AGILE (INC-35) containing an application for registration of the following numbers, namely:-

- (a) GSTIN with effect from 31st March, 2019
- (b) EPFO with effect from 8th April, 2019
- (c) ESIC with effect from 15th April, 2019

Companies (Acceptance of Deposits) Amendments Rules, 2019 [FILING OF E-FORM DPT-3]

· It is mandatory for every company (other than Govt. company) to file Form DPT-3 to report about receipt of money or loan (not considered as deposit) on or after 1st April 2014 and outstanding as on 31st March 2019. The form is required to be filed on or before **29th June, 2019** i.e. within 90 days from 31st March, 2019 along with fee as provided in the Companies (Registration Offices and Fees) Rules, 2014.

· **Every company** (other than Govt. company) shall file DPT-3 for reporting such amounts outstanding as on 31st March of every year. This form is required to be filed on or before 30th June of every year. This shall include transactions considered as deposit and also not considered as deposit.

· Hence two forms to be filed in this year – one-time reporting on or before 29th June, and annual reporting for

balance outstanding as on 31st March, 2019 on or before 30th June 2019.

· The reporting requires information about details of amounts received and not considered as deposits for the purpose of Companies Act, 2013

CA Certificate is required to be attached in form DPT-3 in case the receipt of money or loan is considered as deposit.

National Company Law Tribunal (Second Amendment) Rules, 2019 [Amendment in National Company Law Tribunal Rules, 2016]

84. (1) An application under sub-section

(1) of section 245, read with sub-section (3) of section 245 of the Act, shall be filled in **Form NCLT-9**.

The following amendment shall come into force on the date of their publication in the Official Gazette.

In the National Company Law Tribunal Rules, 2016 (hereinafter referred to as the principal rules), the following sub-rules shall be inserted after rule 84 sub-rule (2):-

(3) In case of a company having a share capital, the requisite number of member or members to file an application under sub-section (1) of section 245 shall be -

(i) (a) at least five per cent, of the total number of members of the company; or (b) one hundred members of the company, whichever is less; or

(ii) (a) member or members holding not less than five per cent, of the issued share capital of the company, in case of an unlisted company;

(b) member or members holding not less than two per cent, of the issued share capital of the company, in case of a listed company.

(4) The requisite number of depositor or depositors to file an application under sub-section (1) of section 245 shall be -

(i) (a) at least five per cent, of the total number of depositors of the company; or

(b) one hundred depositors of the company, whichever is less; or;

(ii) depositor or depositors to whom the company owes five per cent, of total deposits of the company.

Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2019

The Amendment shall come into force with effect from 10th May, 2019.

- An application for removal of name of the Company under sub section (2) of section 248 shall be made in form SKT-2 with a fee of **Rs. 10,000**

- A proviso has been inserted where it has been clearly stated that application for SKT-2 shall be filed only after filing of the overdue returns i.e. Form nos. AOC-4, AOC-4 XBRL and MGT-7.

- If a notice in Form No. SKT-7 has been issued to the Companies by the Registrar pursuant to section 248(1) then those Companies shall not be allowed to file an application in Form No. SKT-2.

Format of statement of accounts has been prescribed in Form **SKT-8**. Further amendment has come in form SKT-4 also.

Companies (Prospectus And Allotment of Securities) Third Amendment Rules, 2019

[Amendment in Companies (Prospectus And Allotment of Securities) Rules, 2014]

The Amendment shall come into force with effect from 30th September, 2019.

- Every unlisted public company governed by rule 9A of the Companies(Prospectus and Allotment of Securities) Rules, 2014 shall submit Form **PAS-6 (Reconciliation of Share Capital Audit Report (Half-yearly))** to the Registrar with such fee as provided in Companies (Registration Offices and Fees) Rules, 2014 within sixty days from the conclusion of each half year duly certified by a company secretary in practice or chartered accountant in practice.

(Format of PAS-6 is also prescribed in the MCA Notification dated 22.05.2019)

Companies (Significant Beneficial Owners) Amendment Rules, 2019. [FILING OF FORM BEN-2]

APPLICABILITY:

- Every reporting company shall take necessary steps to find out if there is any individual who is a

COMPLIANCES:

<u>FORM NUMBER</u>	<u>TIME PERIOD</u>	<u>BY WHOM</u>	<u>TO WHOM</u>
BEN-4	Not Specified. Hence, Must be made within a reasonable time from the date of notification of these rules	Reporting Company in which any individual is holding significant beneficial owner (SBO)	To the Member (other than an individual), who holds not less than ten per cent. of its;- (a) shares, or (b) its voting rights.
BEN-1	Ninety days from the commencement date. AND within thirty days in case of any change in his significant beneficial ownership	Every SBO	Reporting Company in which he/she holds significant beneficial ownership
BEN-2	Within a period of thirty days from the date of receipt of a declaration by the company.	Where any declaration is received by the Reporting company , the company shall file a return in the prescribed form.	With MCA.
BEN-3		The company shall maintain a register of significant beneficial owners in the format as prescribed by the central government.	

significant beneficial owner in relation to that reporting company, and if so, identify him and cause such individual to make a declaration in Form No. BEN-1.

Not applicable to direct individual shareholders.

SIGNIFICANT BENEFICIAL OWNER:

- Individual- alone /together, through one/ more natural persons, through trust possess one or more of the following rights:
- holds indirectly or together with any direct holdings, **Not less than ten percent of the shares/voting rights in the shares of the reporting company.**
- Has been vested with the right to receive or participate in at least 10% of the total distributable dividend, or any other distribution in a financial years.
- has right to exercise or actually exercises, significant influence or control in any manner other than through direct-holdings alone.

An Individual shall be considered to hold individually right indirectly in the reporting company if he satisfies any of the following:-

WHEN BODY CORPORATE (OTHER THAN LLP AND THE INDIVIDUAL) IS A MEMBER-THE SBO IS:

- holds **MAJORITY stake*** in that member;
- holds a majority stake in the ultimate holding

company (whether incorporated or registered in India or abroad) of that member.

WHEN THE HUF IS A MEMBER-THE SBO IS:

The Karta of HUF

WHEN PARTNERSHIP FIRM/LLP IS A MEMBER-THE SBO IS:

- is a partner
- holds a majority stake in the body corporate which is a partner of the partnership firm/LLP
- holds a majority stake in the ultimate holding company of the body corporate which is a partner of the partnership firm/LLP.

There may be SBO where the member of the reporting entity is a trust/a pooled investment vehicle or an entity controlled by the pooled investment vehicle as per the rules.

***MAJORITY STAKE:**

- (i) holding more than one-half of the equity share capital in the body corporate; or
- (ii) holding more than one-half of the voting rights in the body corporate; or
- (iii) having the right to receive or participate in more than one-half of the distributable dividend or any other distribution by the body corporate;

**SEARCH
COMPANIES ACT, 2013**

FROM THE DESK OF GENERAL SECRETARY ACTIVITIES SINCE 11.01.2019

Date	Name of Programme	Speaker
11.01.2019	Study Circle Meeting on "Recent amendments in Company law"	CS Siddharth Murarka
18.01.2019	Study Circle Meeting on "Defending share capital additions with respect to recent judicial pronouncements"	CA P. K. Himmatsinghka
22.01.2019	Group discussion on "Empowering Practise with Technology - Must have tools for professionals"	CA Sanjib Sanghi
31.01.2019	Study Circle Meeting on "Recent Amendments in GST Law"	CA Pulak Saha
01.02.2019	Live Telecast of Union Budget	CA Anand Kr. Tibrewal
07.02.2019	Group discussion on "Budget 2019 Proposals & Prosecution Notices for TDS defaults"	Adv Ritesh Goel
08.02.2019	DTPA Rules & Regulation Amendment Sub - Committee Meeting	N/A
13.02.2019	SCM on "Interactive Session on Search & Survey by Investigation Wing"	Mr. Ashish Verma
26.02.2019 & 27.02.2019	SCM on "Audit Workshop for SME practice"	CA Vivek Agarwal, CA Abhijeet Bandyopadhyay
08.03.2019	Critical Compliances under Companies Act, 2013 AND Banning of Unregulated Deposits Ordinance	CS Manoj Banthia, Adv Narayan Prasad Jain
16.03.2019	Full Day Conference with Bombay Chartered Accountants Society (BCAS) as Knowledge partner	CA Milin Mehta, Baroda, Adv K. Vaitheeswaran, CA Sunil Gabbhawal, Mumbai, CA Sanjay Bajoria, Kolkata
26.03.2019	Bank Audit Seminar	CA Abhijeet Bandyopadhyay, CA Sanjib Sanghi, Kolkata
16.04.2019	UDIN & Companies Act, 2013	CARANJEET AGARWAL
24.04.2019	Interactive Seminar on new GST regime for Real Estate Sector effective from 1.4.2019	CA Rajendra Kumar P, Chennai, Mr. Khalid Aizaz Anwar
27.04.2019	Information Technology Conference organised jointly with EIRC of ICAI	CA Shailesh Haribhakti, CA Anil Bhandari & CA Guru Prasad
06.05.2019	Group Discussion on Changes in New ITR Form - 5 PM	Initiator - CA Giridhar Dhelia
09.05.2019	2 days Workshop on "GST Annual Return & Audit" (Threadbare discussion on Annual Return (GSTR-9) with live from overview	CA Anshuma Rustagi
10.05.2019	2 days Workshop on "GST Annual Return & Audit" (Practical approach to GST Audit (GSTR-9C) with detailed from level discussion	CA D. S. Agarwala & CA Vikash Kr. Banka
30.05.2019	Valuation of Shares of Unlisted Companies - Regours of Section 56/50CA read with Rule 11UA and Income Tax Return Forms : Changes & New Requirements	CAS. S. Gupta & CA Sanjay Bhattacharya

LIST OF OTHER ACTIVITIES

Date	Name of Programme
17.01.2019	New Year Get Together with IT Officials at SHISHA
26.01.2019	Republic Day Celebrations of Income Tax Dept at Aayakar Bhawan
03.02.2019	Inter CA Study Circle Cricket Tournament at Space Circle
16.02.2019	Day Night Cricket Match with IRS Association at NKDA Cricket Ground, New Town
19.03.2019	Holi Get Together organised jointly with EIRC and other Study Circles at Panache Banquet
17.05.2019	DTPA 37th Foundation Day / 27 Library Anniversary
19.05.2019	International Trip (Bali / Singapore) 29 May 2019



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Study Circle Meeting on "Recent amendments in Company Law" on 11th January 2019



CS Siddharth Murarka



Study Circle Meeting on "Defending share capital additions with respect to recent judicial pronouncements" on 18th January 2019



CA P.K. Himmatsinghka
Kolkata



Study Circle Meeting on "Recent Amendments in GST Law" on 31st January 2019

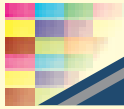


CA Pulak Saha
Kolkata



Live Telecast of Union Budget on 1st February 2019





SCM on “Interactive Session on Search & Survey by Investigation Wing” on 13th February 2019



Mr. Ashish Verma



SCM on “Audit Workshop for SME practice” on 26th & 27th February 2019



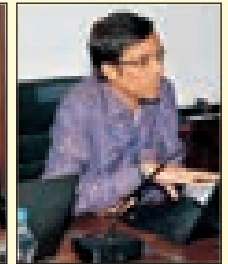
CA Vivek Agarwal



CA Abhijeet Bandyopadhyay



CA Mohit Bhuteria

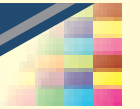
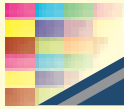


CA Vivek Newatia



Felicitation of Central & Regional Council Members of EIRC Eastern Region on 8th March 2019





Critical compliances under the Companies Act, 2013 and Banning of Unregulated Deposits Ordinance on 8th March 2019



CS Manoj Banthia



Adv Narayan Prasad Jain



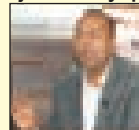
Full Day Conference with Bombay Chartered Accountants Society (BCAS) as Knowledge Partner on 16th March 2019



Bank Audit Seminar on 26th March 2019



CA Abhijeet Bandyopadhyay



CA Sanjib Sanghi



Interactive Seminar on new GST Regime for Real Estate Sector on 24th April 2019



CA Rajendra Kumar P, Chennai



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