KRESTON SGCO

Newsletter

January 2019

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DIRECT TAXES

Press Release and notifications

Simplification of exemption procedure for Startup u/s. 56(2)(viib)

F. No. 5(4)/2018-SI

The DIPP has issued a new notification (attached) simplifying the process for seeking exemption from applicability of Angel tax

The DIPP has substituted Para (4) of its earlier issued Notification no. GSR 364(e) which provides for conditions to be fulfilled by the Startups and Investors for seeking approval for claiming exemption u/s. 56 (2)(viib) of the Income Tax Act, 1961

A comparative analysis of the conditions are as follows:-

Particulars	Earlier	Revised
Applicability of approval	To Proposed investments	Extended to all investments i.e. both shares already issued* and proposed to be issued
Conditions		
Aggregate amount of paid up share capital and share premium of the startup	Does not exceed INR 10 crores	Does not exceed INR 10 crores
Investor/Proposed Investor Conditions		
Returned Income	Average Returned Income of INR 25 lakhs or more for	Returned income of Rs. 50 lakh or more for the financial year
	preceding 3 FYs; OR	preceding the year of investment/ proposed investment; AND
Net Worth	Net worth of two crore rupees or more as on the last date of the preceding financial year and	Net worth exceeding Rs. 2 crore or the amount of investment made/proposed to be madein the startup, whichever is higher, as on the last date of the financial year preceding the year of investment/ proposed investment
Merchant Banker Report specifying the fair market value of shares	Required to be obtained by startup	Requirement withdrawn i.e. not required
Application for approval to be made to which Authority	Inter-ministerial Board	DIPP DIPP shall then transmit the same to CBDT
Time period for granting or declining approval by CBDT	No time period specified	Within a period of 45 days from the date of receipt of application from DIPP

*In case the approval is requested for shares already issued by the Startup, no application shall be made if assessment order has been passed by assessing officer for the relevant FY

The Form-2 (Application for approval) has also been revised

This Notification shall come into effect from January 16, 2019

CASE LAWS

Gundecha Builders Vs. Commissioner of Income Tax (HIGH COURT OF BOMBAY) (AY 2008-2009) [IT Appeal No. 347 of 2016] [2019]102 Taxmann.com 27

Rental income received from unsold portion of property constructed by real estate developer is assessable to tax as income from house property

Facts

- The Assessee was engaged in the business of developing real estate projects
- The Assessee claimed rental income of Rs. 30.18 lakhs under the head income from house property
- The AO rejected the claim of the Assessee and held that rental income received by Assessee was its business income. The CIT(A) allowed the appeal holding that the rental income received by the respondent has to be classified as income from house property
- The ITAT held that the dispute stands squarely covered by the decision of the Supreme Court in Sambhu Investment (P.) Ltd
- Aggreived, the Revenue filed Appeal before the High Court

Held

- It is an undisputed fact that the assessee was in the business of development of real estate projects and letting of property is not the business of the respondent-assessee
- The Revenue relied upon judgements of Chennai Properties & Investment Ltd. v. CIT [2015] and Rayala Corpn (P.) Ltd. v. Asstt. CIT [2016] wherein the Supreme Court on facts found that the appellant was in the business of letting out its property on lease and earning rent therefrom. The HC observed that the same was not the present case
- The Assessee relied on the decision of HC in CIT v. Sane &

Doshi Enterprises [2015] wherein on identical facts the HC had taken a view that rental income received from unsold portion of the property constructed by real estate developer is assessable to tax as income from house property

- Therefore, in view of the above, the question as proposed does not give rise to any substantial question of law. Thus, appeal was not entertained and the income was treated as income from house property

Ramprasad Agarwal Vs. Income Tax Officer 2(3)(2), ITAT Mumbai (AY 2013-2014 & 2014-15) [IT Appeal Nos. 1228 & 4843 (MUM.) OF 2018] [2018]100 taxmann.com 172

Where Assessee had produced relevant record to show allotment of shares by company on payment of consideration by cheque and assessee dematerialized shares in Demat account and Assessing Officer had not brought any material on record to show that assessee had paid over and above purchase consideration, it could not be held that assessee had introduced his own unaccounted money by way of bogus long-term capital gain

Facts

- The assessee is an individual who has earned income by way of salary, house property, other sources and long-term capital gain

- The Assessing Officer received information from DGIT (Inv.), Kolkata that some companies were engaged in the business of issuing penny stocks for which there were large number of beneficiaries claiming bogus long-term capital gain/short-term capital loss/business loss/speculation loss

- The Assessing officer found that assessee was one of the beneficiaries of the said arrangement and had earned profit on sale of investments in equity shares of a company, (M/S Rutron International Ltd.) and claimed the same as exempt under section 10(38). Therefore, the Assessing officer made an addition u/s 68 to the income of the assessee

- The Commissioner (Appeals) affirmed the said assessment order

Held

- The Assessee submitted that identical issue in the case of Meghraj Singh Shekhawat v. DCIT in ITA Nos.443 & 444/JP/2017 for A.Y. 2013-14 and 2014-15 had been decided by the co-ordinate bench of the Tribunal involving the same company M/S Rutron International Ltd. and with all identical facts holding that the order of the AO treating the LTCG as bogus and consequential addition to total income of the assessee is not correct and deleted the same

The Tribunal analysed the abovementioned judgement wherein it was held as follows:-

- The shares acquired by the assessee was not a trading transaction but these were allotted directly by the company under the preferential issue and hence, the role of intermediate was ruled out.
- Assessment based on statement without giving an opportunity is not sustainable in law. The statement cannot be used by the AO without giving an opportunity to cross examination of Shri Anil Agrawal (Broker)
- Not allowing the Assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected
- When the AO has not brought any material on record to show that the Assessee has paid over and above purchase consideration as claimed and evident from the bank account then, in the absence of any evidence it cannot be held that the Assessee has introduced his own unaccounted money by way of bogus long term capital gain
- Further, the Assessee had produced the relevant record to show the allotment of shares by the company on payment of consideration by cheque and the assessee dematerialized the shares in the D-mat account which is also an independent material and evidence which cannot be manipulated
- Therefore, it was held by ITAT that holding of the shares by the assessee cannot be doubted and the finding of the Assessing Officer is based merely on the suspicion and surmises without any cogent material to show that the Assessee had introducted his unaccounted income in the shape of long-term capital gain

- The facts of the case of the assessee are identical with the facts in the Meghraj Singh Shekhawat v. Dy. CIT [IT Appeal Nos. 443 & 444 (JP) of 2017] case wherein the Tribunal has deleted the addition. Therefore, respectfully following the same, the order of the CIT (A) was set aside and, the AO was directed not to treat the long-term capital as bogus and delete the consequential addition

International Tax & Transfer pricing

International Tax

Case Laws

M/s Polyplex Corporation Ltd. Vs. ACIT, Circle 14(1), Delhi ITAT [AY 2010-11 to 2013-14] [ITA nos. 4347 to 4350/ Del/ 2016] [TS-30-ITAT-2019(DEL)]

Since Assessee was not liable to pay any tax in Thailand by virtue of exemption granted as per Investment Promotion Act, therefore Assessee would be entitled to credit of such taxes deemed to have been payable in Thailand under Article 23 (3) of DTAA between India and Thailand. Tax credit claimed by Assessee against dividend received from Thailand company at 10% was allowed

Facts

- Assessee was an Indian company and had wholly owned subsidiary situated in Thailand i.e. M/s Polytex Thailand Co. Ltd. The subsidiary declared dividend during years under consideration
- The Assessee claimed relief u/s. 90 of the Act, on account of tax paid in Thailand by its subsidiary from whom assessee had received dividend and offered for taxation as per Indian Income tax Act
- In light of the above, AO called upon assessee to provide proof of payment of tax in Thailand in support of tax credit claim. In response to the same, assessee stated that its return of income includes Dividend income Rs. 68,81,05,808/- earned from M/s Polyplex (Thailand) Public Limited Company and contended that as per the Paragraph 2 & 3 of Article 23 of DTAA between Indian and Thailand read with section 90(2) of the Act, Assessee was eligible for tax rebate of 10% on the said income
- From submissions made by the assessee, AO observed that tax was not actually paid by the Assessee in Thailand as tax on dividend was exempt in Thailand under provisions of Investment Promotion Act of Thailand
- AO was of the view that since tax was only paid in India therefore the question of double taxation didn't arise. Hence, AO denied the relief of Rs.1,60,74,706/- claimed by the Assessee u/s 90 of the Act
- Aggrieved, the Assessee preferred an appeal before CIT (A). However, CIT (A) confirmed the addition made by AO
- Aggrieved, the Assessee filed appeal before the Tribunal

Held

- Assessee's contention:
  - By virtue of Investment Promotion Act B.E, 2520(1977) in Thailand, tax on income was exempt u/s 31 of said Act in the hands of Thailand company and u/s 34 in assessee's hands
  - In the aforesaid years, it was entitled to claim sparing of foreign tax payable in Thailand, due to exemption available to assessee as per Investment Promotion Act B.E, 2520(1977), under Article 23(3) of DTAA between India and Thailand, as credit against Indian Tax payable in respect of such profits or income against tax payable in India on the dividend income
- Article 23(3) of Treaty with Thailand provides for relief from double taxation. The methodology prescribed under is "Tax sparing method"
- ITAT noted that as per Commentary to Model Conventions (both OECD and UN Model) relief from double taxation is to be calculated on the basis of provisions of Treaty, read with domestic legislations in India
- Though chargeable provision of Income-tax Act was applicable to assessee for its global income, however u/s 90 (2) of the Act, if income was taxed both in India and Thailand, assessee was entitled to relief as per clause 23 of the treaty with Thailand
- On perusal of Commentaries, ITAT observed that "tax sparing method" was applicable to an assessee only if dividend received by the assessee was taxable in the hands of assessee as per "Thai tax laws" and exemption was available to assessee either as per the "Revenue Code of Thailand" or as per "Investment Promotion Act B.E, 2520(1977)" in order to avail credit of such taxes spared in Thailand as mentioned in Article 23 (2) of Indo-Thailand treaty
- From conjoint reading of taxability of dividend income under Thailand Revenue Code, which was exempt as per Investment Promotion Act (as amended), exemption was available to Assessee on dividend received from its subsidiary in Thailand, which would have been otherwise taxable as per Thailand Revenue Code @ 10% i.e. Assessee was not liable to pay any tax in Thailand by virtue of exemption granted as per Investment Promotion Act and therefore Assessee would be entitled to credit of such taxes deemed to have been payable in Thailand under article 23 (3) of DTAA between India and Thailand
- From records placed before the ITAT, it was noted that assessee had sought credit at 10% on dividend received by it from its Thailand subsidiary, which was the tax that would have been otherwise payable by assessee in Thailand as per section 70bis of Thailand Revenue Code. The tax paid by assessee on dividend income in India was at 30% which was more than tax payable in Thailand and therefore, no violation was found with regards to requirements of Paragraph 2 of Article 23 of DTAA between India and Thailand
- Tax credit claimed by Assessee against dividend received from Thailand company at 10% was allowed

ACIT – 52(1), Delhi Vs. M/s. Grant Thornton (AY 2010-11) [ITAT Delhi] [ITA No. 4143/Del/2015] [TS-10-ITAT-2019(DEL)]

Article 14 on 'Independent Personal Services' is definitely applicable on the income derived by a partnership firm or an LLP

Facts

- The Assessee was a partnership firm engaged in providing international accountancy and advisory services to various clients in India and abroad
- In the scrutiny proceedings, the Assessing Officer (AO) noticed certain payments for professional fees to non-residents firms, on which no tax was deducted at source
- The services of the foreign firms were obtained to render services to foreign clients of the assessee in UK, USA, Netherland and France
- According to the AO, in view of the explanation w.e.f. 01/06/1976 to section 9(i)(vii) of the Act, services rendered by a non-resident - Fee for Technical Services (FTS) though having no residence or place of business or business connection in India or rendered outside India shall be deemed to accrue arise in India
- Further according to AO, Article 15 of respective DTAA is applicable to an individual whether in his own capacity or as a member of a partnership. In the instant case, the parties were admittedly Limited Liability Partnership Firms (LLP) and not individuals and hence not covered by the benefit of Article 15 for "IPS" rendered
- Further, as per the AO, the services rendered being technical in nature, the payments were FTS, which falls under Article 13 of the respective DTAA. In view of the same, the AO made disallowance of Rs.1,41,08,805/-under section 40(a)(i) of the Act
- It was contended by the assessee that fee paid to these firms was paid for services rendered outside India and same was covered by Article 15 "Independent Personal Services" (IPS) of respective DTAA and in absence of any fixed base of the recipient in India, income was not chargeable to tax in India and thus no withholding tax was required to deduct on such payments under section 195 of the Act and consequently no disallowance under section 40(a)(i) of the Act was required
- Aggrieved, the assessee approached CIT (A)
- CIT (A) gave the decision in favour of the assessee and deleted addition of Rs.1,41,08,805/- made under section 40(a)(i) and u/s 37 (1) of the Act respectively by the AO
- Aggrieved, the Revenue preferred an appeal before ITAT, Delhi

Held

- ITAT noted that there was no dispute with regards to nature of services rendered by the assessee. The only dispute which was raised by the Revenue was that the benefit of Article 15 of relevant DTAAs can be availed by the individual non-residents, whereas in the instant case the non-resident parties were LLP
- In view of provisions of DTAAs with respective countries, CIT(A) had concluded that as regards the UK entity, there was no Permanent Establishment (PE) / fixed base of the recipient in India and on account of the fact that no one from the said firm had even a single day stay in India, professional fees for rendering services outside India should be taxable only in UK and not in India
- The ITAT upheld CIT(A)'s observation that in the case of DTAAs with USA, UK and France, it is unambiguously written in the said Article itself that it is applicable on income derived by an individual or firm of individuals. Further in the case of the Netherlands, the word 'resident' is used in Article relating 'Independent Personal Services', which as per Article 4(1) means any person including an individual, a company, any other body of persons and any other entity which is treated as a taxable unit. Thus, even in this case, Article 14 on 'Independent Personal Services' is definitely applicable on the income derived by a partnership firm or an LLP
- ITAT noted that the Revenue couldn't establish that any technical knowledge was made available by the non-resident parties to assessee. In absence of not making the technology available, in view of the Article 13 of the respective DTAAs, payment for services could not be held as FTS under the provisions of respective DTAAs
- Also, ITAT held that since the provisions of DTAA was more favourable to assessee than the provisions of Section 9(i)(vii) of the Act, thus the assessee was having option of choosing more favourable provisions of the DTAA. Therefore CIT(A) was correct in in his judgement in this regard

Transfer pricing

Pr. Commissioner of Income Tax, Central 3 Vs. KSS Limited (AY 2009-10) [IT Appeal No. 476 of 2016] [TS-1379-HC-2018(Bom)-TP]

The present case was a simple one where the money was routed through the AE by the Assessee for the purpose of acquisition of distributorship. This was not a case of either financing or landing or advancing of any moneys. The transaction did not result into diversion of income of the Assessee to its AE and therefore did not give rise to any "international transaction" for transfer pricing purpose

Facts

- The Assessee (Indian Company) was engaged in the business of production and distribution of films and desired to acquire distribution rights of three Hollywood films in India
- As M/s Citi Gate Trade, FZE (third party) would not deal with the Assessee directly, the Assessee formalized an arrangement using a UAE based company (AE) as an intermediary to such transaction
- The Assessee entered into consecutive agreements for procurement of film rights with its AE and the AE entered into similar agreements immediately with Citi Gate
- So as to operationalize the said arrangement Assessee advanced certain amounts to its AE which the AE in turn immediately paid to Citi Gate. However, the arrangement did not work out and thereupon, Citi Gate refunded the advance to the Assessee through its AE. In the process, however, some time was consumed and the repayment was made over a period of time
- The Revenue contends that by making interest free advances to the AE, the Assessee has transferred its profit and therefore, the transfer price regime would apply
- The Tribunal held as follows:-
  - AE had entered into back to back contracts with the Assessee and Citi Gate which envisaged inter alia that Citi Gate would grant, sale, assign and transfer to the AE as well as to the Assessee all rights for sale, absolute and exclusive rights of distributorship. There was no ambiguity over the scope of such agreements. Under the arrangement, the AE of the Assessee was under obligation to transfer the rights to the Assessee. The Assessee had, therefore, established that the transaction of giving advance to the AE was for no other purpose except for acquiring the rights in respect of the said Hollywood films
  - Also from the bank statements it could be observed the AE never retained any amount either when the Assessee released the same for payment to Citi Gate or when Citi Gate refunded the same to the Assessee through AE

    There was no diversion of income and therefore, the transfer pricing provisions would have no applicability.
  - In order to attract the provisions of Chapter X of the Act, there must be transaction or arrangement between two or more associated enterprises which gives rise to the income or benefit in the hands of at least one of them. In the present case, the advance was not given to the AE but to the third parties which was for the purpose of acquisition of rights of distributorship
- Aggrieved the Revenue filed an appeal in the High Court (HC)

Held

- The HC held as follows:
  - In absence of any perversity being pointed out, the findings of the Tribunal were final
  - The reliance of the Revenue on the Explanation (c) of Section 92B (meaning of international transaction) "capital financing including any type of long-term or short-term borrowings, lending or guarantee, purchase or sale of marketable securities or any type of advance, payments or deferred payment or receivable or any other debt arising in the course of business" was not accepted as the said explanation would not cover the present situation
  - The present case was a simple one where the money was routed through the AE by the Assessee for the purpose of acquisition of distributorship. This was not a case of either financing or landing or advancing of any moneys
  - The back to back agreements, the contents thereof and most significantly, the fact that neither at the point of payment nor at the point of refund of money, the AE retained the same for any significant period of time, in our opinion, were crucial aspects
  - The transaction did not result into diversion of income of the assessee to its AE
  - No question of law arose in this respect
  - The transaction did not give rise to any "international transaction" for transfer pricing purpose


April
May
June
July
China
America
France
Japan
Germany
Product 1
Product 2
Product 3
Product 4
29%

IDTX

Notifications

- In case of purchase of goods or services from unregistered dealers, Reverse charge mechanism shall be applicable only to notified registered person. Notified registered person have still not been defined under the Act or the Rules **(Notification No. 01/2019 – Central Tax (Rate) dt. 29 Jan 2019 & Notification No. 01/2019 – Integrated Tax (Rate), dt. 29 Jan 2019)**

- Central Goods and Services Tax (Amendment) Act 2018 is applicable from 01 February 2019 except for the following cases:
  Section 8 - Mixed supplies of Goods and services
  Section 17 – Apportionment of credit and block credit
  Section 18 – Availability of credit in special cases
  Section 20 – Manner of Distribution of credit by Input service distributor
  Section 28 – Amendment of Registration
  (Notification No. 02/2019 – Central Tax dt. 29 Jan 2019)

- Integrated Goods and Services Tax (Amendment) Act 2018 is applicable from 01 February 2019
  (Notification No. 01/2019 – Integrated Tax dt. 29 Jan 2019)

- Due date to file GSTR - 07 by a registered person, who is required to deduct tax at source under the provisions of section 51, for the month October 2018 to December 2018 is extended till 28 February 2019
  (Notification No. 07/2019 – Central Tax, dt. 31 Jan 2019)

- **Amendments in Central Goods and Services Tax (CGST) Rules, 2017**

  - Upper Limit of turnover for opting of composition scheme shall be raised from Rs. 1 Crore to Rs. 1.5 crore

  - A composite dealer (in goods) shall be allowed to supply services (other than restaurant services) for a value not exceeding higher of 10% of turnover in the preceding financial year or Rs. 5 lakhs. (Rule 7 of the CGST Rules)

  - No Separate registration is required for a person having a unit in Special Economic zone ("SEZ") or being a special economic developer as a business vertical distinct from his other units located outside the SEZ. (Rule 8 of the CGST Rules, 2017)

  - Separate registration for multiple places of business within a state or a union territory can be obtained by any person in case he has more than one place of business. Definition of business vertical has been omitted. (Rule 11 of the CGST Rules, 2017)

  - Rule 21A - Suspension of registration rule inserted

    - Registration shall be deemed to be suspended from the date of submission of the application by any registered person

    - Proper officer to verify the application and provide a reasonable opportunity before cancellation of registration

    - A registered person shall not make any taxable supplies and not required to furnish any return after suspension of registration

  - Rule 41A inserted - Transfer of credit on obtaining separate registration for multiple place of business within a state or Union territory has been prescribed A composite dealer (in goods) shall be allowed to supply services (other than restaurant services) for a value not exceeding higher of 10% of turnover in the preceding financial year or Rs. 5 lakhs. (Rule 7 of the CGST Rules)

    - Registered person who intends to transfer either wholly or partly any unutilized credit to any of its newly registered place of business shall furnish the details within 30 days in Form GST ITC-02A

    - Input tax credit to be transferred to newly registered entities in the ratio of value of assets held by them at the time of registration

    - Newly registered person shall accept the details so furnished by registered person, the same will be credited to the electronic credit ledger

  - For the purpose of Rule 42 and Rule 43, the aggregate value of exempt supplies and total turnover shall exclude the amount of taxes paid under Central Sales tax

  - Separate provision has been inserted in relation to issue of Credit Notes, debit note and revised Tax invoices

  - Supply of Services outside India shall be regarded as exports, even if payment received in Indian rupees subject to RBI permission

Circulars

- It is clarified that supply of food and beverages by an educational institution to its students, faculty and staff, where such supply is made by the educational institution itself, is exempt under Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, vide Sl. No.66 w.e.f. 01-07-2017 itself. However, such supply of food and beverages by any person other than the educational institutions based on a contractual arrangement with such institution is leviable to GST@ 5%
  (Circular No. 85/2019 – dt. 01 Jan 2019)

- Section 140(1) of the CGST Act, 2017 amended with retrospective effect to allow transition of CENVAT credit under the existing law viz. Central Excise and Service Tax law, in respect of "eligible duties". The word "duties" is used interchangeably with the word "taxes". Thus, expression "eligible duties" includes the taxes paid under section 66B of

the Finance Act, 1994, as listed at sl. no. (i) to (viii) of explanation 2 to section 140. **(Circular No. 87/2019 dt. 02 Jan 2019)**

Maharashtra VAT

- MVAT Audit due date extended till 28 February 2018 **(Notification No. VAT. 1519/C.R.02/Taxation-1 dt. 09 Jan 2019)**

SEBI & MCA

MCA UPDATES

- **NCLT AMENDMENT RULES, 2019**
  - Ministry of Corporate Affairs (MCA) vide its Notification dated January 15, 2019, has amended the National Company Law Tribunal Rules, 2016 which shall be called as National Company Law Tribunal (Amendment) Rules, 2019 the following are some of the changes which has been made in the Rules
  - As per amendment in clause (b) in Sub- rule (3) of Rule 71 of National Company Law Tribunal Rules, 2016 now a company shall serve a notice along with copy of application and acknowledgement due, by registered post to "Regional Director" instead of "Central Government" for obtaining approval from tribunal for consolidation and division of all or any of the share capital into shares of a larger amount than its existing shares which results in changes in the voting percentage of shareholders
  - As per amendment in Sub- rule (4) of Rule 71 of National Company Law Tribunal Rules, 2016 now any person whose interest is likely to be affected by the proposed application under Rule 71(Application under Section 61 (1)(b) of Companies act, 2013) of National Company Law Tribunal Rules, 2016 has been received by applicant than such applicant shall serve a copy thereof to Regional Director" instead of "Central Government

- **COMPANIES (ACCEPTANCE OF DEPOSITS)AMENDMENT RULES, 2019**
  - MCA vide its `Notification dated January 22, 2019, has amended Companies (Acceptance of Deposits) Rules, 2014, which shall be called as the Companies (Acceptance of Deposits) Amendment Rules, 2019 the following are some of the changes which has been made In Sub- clause (xviii) of clause (c) in sub-rule (1) of rule 2 of Companies (Acceptance of Deposits) Rules, 2014 after the word "Infrastructure Investment Trusts" the word "Real Estate Investment Trusts" has been inserted
  - Explanation in Rule 16 of Companies (Acceptance of Deposits) Rules, 2014 has been added which specifies that DPT-3 shall be used for filing return of deposit or for particulars of transaction not considered as deposit or both by every company other than Government Company
  - New Sub-rule (3) after Sub-rule (2) of Rule 16A of companies (Acceptance of Deposits) Rules, 2014 has been inserted which mentions that every company other than Government Company shall file a one Time return of outstanding receipt of money or loan received by a company but not considered as deposit in terms of Rule 2(1)(c) (i.e "deposit" includes any receipt of money by way of deposit or loan or in any other form, by a company) from 1st April, 2014 to publication of this notification in form DPT-3 within 90 days from the date of publication of this notification
  - E- Form DPT-3 has been substituted

- **COMPANIES (PROSPECTUS AND ALLOTMENT OF SECURITIES) AMENDMENT RULES, 2019**
  - Ministry of Corporate Affairs (MCA) vide Notification dated January 22, 2019, has amended Companies (Prospectus and Allotment of Securities) Rules, 2014 which shall be called as Companies (Prospectus and Allotment of Securities) Amendment Rules, 2019
  - In rule 9A of Companies (Prospectus and Allotment of Securities) Rules, 2014 a new sub- rule (10) has been inserted which mentions that the rule of Issue of Securities in dematerialized form by unlisted companies shall not apply to the following companies;
    - Nidhi Company (Recognised under Section 406 of the Companies Act, 2013)
    - Government Company (As defined under Section 2(45) of The Companies Act, 2013)
    - Wholly owned Subsidiary

- **SECTION 465 -REPEAL OF CERTAIN ENACTMENT AND SAVING, OF COMPANIES ACT, 2013 NOTIFIED**
  - MCA vide its Notification dated January 30, 2019 has Notified Section 465(Repeal of certain enactment and saving) of The Companies Act, 2013.

- **COMPANIES (FURNISHING OF INFORMATION ABOUT PAYMENT TO MICRO AND SMALL ENTERPRISE SUPPLIERS) ORDER, 2019**
  - MCA vide its Notification dated January 22, 2019 has further amended the notification published on November 02, 2018 by Ministry of Micro, Small, and Medium Enterprise

    It is Applicable to all the companies, who
    - receive supplies of any goods and services from Micro, Small and Medium Enterprise("MSME") and
    - whose payment exceeds 45 days from the date of acceptance or from the date of deemed acceptance of the goods or services ("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) as per the provisions of section 9 of the Micro, Small and Medium Enterprises Development Act,2006 (referred to as "Specified Companies")
  - Every Specified Companies shall file "MSME Form I" with the Ministry of Corporate Affairs, within 30 (thirty) days from the date of the said Notification and every half yearly as well stating (1) the amount of payment due and (2) the reason of the delay

    MSME Form I should also be filed on a half-yearly basis i.e:

- on /before 30th April for the period October to March and
- on /before 31st October for the period April to September.

SEBI UPDATES

- **SECURITIES EXCHANGE BOARD OF INDIA (CUSTODIAN OF SECURITIES) AMENDEMENT REGULATIONS, 2018:**
  - SEBI vide its Notification dated January 01, 2019 has published Securities and Exchange Board of India (Custodian of Securities) (Amendment) Regulations, 2018 to further amend the Securities and Exchange Board of India (Custodian of Securities) Regulations, 1996
  - Some of major amendments to the SEBI (Custodian of Securities) Regulation, 1996 are as follow:
    - The Title "Securities and Exchange Board of India (Custodian of Securities) Regulations1996", has been substituted with the title "Securities and Exchange Board of India (Custodian) Regulations, 1996"
    - The word "Custodian of securities" wherever occurs in Securities and Exchange Board of India (Custodian of Securities) Regulations, 1996 has been substituted with word "Custodian"
  - In Regulation 2 which specifies Definition and includes the following:
    After clause (h), the following new clause shall be inserted, namely:
    - "(ha) 'goods' means the goods notified by the Central Government under clause (bc) of section 2 of the Securities contracts (Regulation) Act, 1956 and forming the underlying of any commodity derivative contract;"
    - After clause (j), the following new clause shall be inserted, namely,
      "(k) "securities" shall have the meaning assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956
- **DISCLOSURES BY STOCK EXCHANGES FOR COMMODITY DERIVATIVES**
  - SEBI vide its Circular dated January 04, 2019 directed recognized stock exchanges to make additional disclosures on their websites with respect to trading in commodity derivatives
  - Stock exchanges will have to make the disclosures on a weekly basis for every Wednesday by next Wednesday (and for next trading day in case of holiday on any Wednesday) by October 01, 2019. However, from April 1, 2020 onwards disclosures would be made on a daily basis by 6 pm on T+1 day, where T refers to the trading day
  - The exchanges need to make disclosures about open interest and turnover for various categories of participants at commodity as well as market level in a prescribed format
  - The disclosures regarding commodity-wise top participant among others, exchanges needs to make it on daily basis, "latest within a month,"
- **CYBER SECURITY AND CYBER RESILIENCE FRAMEWORK FOR MUTUAL FUNDS / ASSET MANAGEMENT COMPANIES (AMCS)**
  - SEBI vide its Circular dated January 10, 2019 put in place a robust and stricter cyber security framework for Mutual Funds (MFs) and Asset Management Companies (AMCs) to guard against breaches of data leak
  - The new norms and guideline would be effective from April 1, 2019
  - Quarterly reports containing information on cyber-attacks and threats experienced by mutualFunds/AMCs and measures taken to mitigate vulnerabilities, threats and attacks including information on bugs/vulnerabilities/threats that may be useful for other AMCs/MFs should be submitted to SEBI in a soft copy
  - AMCs/ MFs needs to submit the audited report on its systems which is audited by an independent Certified Information Systems Auditor (CISA) / Certified Information Security Manager (CISM) qualified or Computer Emergency Response Team - India (CERT-IN) empanelled auditor with the SEBI within 3 months of the end of financial year
- **PORTFOLIO CONCENTRATION NORMS FOR EQUITY EXCHANGE TRADED FUNDS (ETFS) AND INDEX FUNDS**
  - SEBI vide its Circular dated January 10, 2019 has announced portfolio concentration norms for equity exchange traded funds (ETFs) and index funds
  - According to the new norms:
    - The index will have a minimum of 10 stocks as its constituents
    - For a sectoral/ thematic Index, no single stock will have more than 35% weight in the index. For other than sectoral/ thematic indices, no single stock willl have more than 25% weight in the index
    - The weightage of the top three constituents of the index, cumulatively will not be more than 65% of the Index
    - The individual constituents of the index shall have a trading frequency greater than or equal

to 80% and an average impact cost of 1% or less over previous six months

- **NORMS FOR INVESTMENT AND DISCLOSURE BY MUTUAL FUNDS IN DERIVATIVES**
  - SEBI vide its circular dated January 16, 2019 provides the norms for investment and disclosure by Mutual Funds in derivatives"
  - SEBI has decided to allow mutual funds to write call options subject to certain conditions. Generally, call options refer to an agreement that gives a buyer the right to purchase an asset at a specified price within a particular time period
  - Mutual Fund schemes are permitted to undertake transactions in equity derivatives but cannot write options or purchase instruments with embedded written options
  - Mutual Fund Schemes (except Index Funds and ETFs) can write call options as per the callstrategy of NIFTY 50 and BSE SENSEX
- **SECURITIES EXCHANGE BOARD OF INDIA (PROHIBITION OF INSIDER TRADING) (AMENDEMENT) REGULATIONS, 2019**
  - SEBI vide its Notification dated January 21, 2019 has published the Securities and Exchange Board of India (Prohibition of Insider Trading) (Amendment) Regulations, 2019 to further amend the SEBI (Prohibition of Insider Trading)Regulations, 2015
  - Amendments to the SEBI (Prohibition of Insider Trading) Regulation, 2015 are as follow:
  - After clause (h), following new clause shall be inserted, namely:
    - "(ha) "promoter group" shall have the meaning assigned to it under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations,2018 or any modification thereof;"
  - In Regulation 7 which specifies the provisions regarding disclosures by certain persons:
  - In Sub-regulation (1)and (2) which specifies the provisions for Initial and Continual Disclosures:
    - in clause (a) after the word "promoter", and before the word and symbol "key" the words ", member of the promoter group" shall be inserted;
    - in clause (b), the word "promoter" wherever appearing shall be substituted with"promoter or member of the promoter group";
- **REVISED MONTHLY CUMULATIVE REPORT (MCR)**
  - Securities and Exchange Board of India (SEBI) in consultation with Association of Mutual Funds in India (AMFI) has revised the format for reporting of Monthly Cumulative Report(MCR) vide its circular dated January 22, 2019.
- **ALIGNMENT OF TRADING LOT AND DELIVERY LOT SIZE**
  - SEBI vide its circular no. SEBI/HO/CDMRD/DNPMP/CIR/P/2019/023 dated January 23, 2019 has directed stock exchanges to follow the policy of having uniform trading and delivery lot size for commodity derivatives contracts


Factory A
Factory B
Factory C
2005 2006 2007 2008 2009 2010 2011 2012
Factory A 4.3 2.5 3.5 1 2 2.5 3.5 4.5
Factory B 2.4 4.4 1.8 2.8 2.4 4.4 4 5
Factory C 2 2 3 5 6 7 9 15

FEMA

FEMA

External Commercial Borrowing (ECB) - The new framework

A.P. (DIR Series) Circular No. 17

With a view to rationalize the existing framework for ECB and Rupee Denominated Bonds (RDB), the Reserve Bank of India (RBI) introduced a new framework vide A.P. (DIR Series) Circular No. 17 dated 16th January, 2019 which is instrument neutral.

The salient features of the new framework are as under:

i) Merging of Tracks I and II as "Foreign Currency denominated ECB" and merging of Track III and Rupee Denominated Bond (RDB) framework as "Rupee Denominated ECB";

ii) "Eligible Borrowers" shall include all entities eligible to receive FDI;

iii) The lender should be resident of Financial Action Task Force (FATF) or International Organization of Securities and Commission (IOSCO) compliant country to qualify as "Recognised Lender";

iv) Minimum Average Maturity Period (MAMP) will be 3 years for all ECBs subject to certain exclusions;

v) Introduction of Late Submission Fees (LSF) for delay in reporting

ECB up to USD 750 million or equivalent per financial year, which otherwise are in compliance with the parameters and other terms and conditions set out in the new ECB framework, will be permitted under the "Automatic route"

The amended policy will come into force with immediate effect

Due Dates

GST Due dates of GST from

11 February 2019 To 15 March 2019

	Due Date	Authority	Form No	Description
1	11-02-2019	GST	GSTR - 1	Applicable to those taxpayers with Annual Aggregate Turnover more than 1.5 Crore for the month of January 2019
2	13-02-2019	GST	GSTR - 6	Monthly return for the month of January 2019 for Input Service Distributors
3	20-02-2019	GST	GSTR - 3B	Monthly return for the month of January 2019 for Input Service Distributors
4	20-02-2019	GST	GSTR - 5	Monthly return for the month of January 2019 for Non- Resident foreign Tax Payers
5	20-02-2019	GST	GSTR - 5A	Monthly return for the month of January 2019 for NRI OIDAR Service Provider
6	21-02-2019	State Govt. (Maharashtra)	VAT Return	Dealers not covered under GST (Eg:Alchohol)
7	28-02-2019	GST	GSTR - 7	Monthly return for the month of October 2018, November 2018, December 2018 for authorities deducting tax at source.
8	28-02-2019	GST	GSTR - 11	Monthly return for the month of January 2019 for inward supplies statement for persons having UIN (Unique Identification Number)
9	21-02-2019	MSME	MSME Form I	All the Specified Companies, required to file details of all outstanindg dues to Micro or small enterprises suppliers existing on 22 January, 2019 within 30 days i.e . the due date is on 21 February 2019
10	28-02-2019	VAT Audit 16-17	Form 704	VAT Audit for the period 2016-17 if the aggregate turnover is 25 lakhs or more
11	10-03-2019	GST	GSTR 7	Monthly return for the month of February 2019 for authorities deducting tax at source
12	10-03-2019	GST	GSTR 8	Monthly return for the month of February 2019 for e-commerce operators registered under gst
13	11-03-2019	GST	GSTR - 1	Applicable to those taxpayers with Annual Aggregate Turnover more than 1.5 Crore for the month of February 2019

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