KRESTON SGCO

Newsletter

February 2019

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DIRECT TAXES

Press Release and notifications

Assistant Commissioner of Income Tax vs. Shri Subhodh Menon (Mumbai ITAT) (AY 2010-11) (ITA No.676/Mum/2015)

Only when a higher than a proportionate allotment or non-uniform allotment is received by a shareholder the provisions of section 56(2)(vii) get attracted.
S. 56(2)(vii) is a counter evasion mechanism to prevent money laundering of unaccounted income & does not apply to bona fide business transaction done out of business exigency

Facts

- The Assessee, an individual resident in India was one of the promoters of Dorf Ketal Chemicals India Pvt. Ltd and also a director in the company. The Assessee at the beginning of the year held 1,04,179 (34.57%) shares

- The company has a wholly owned subsidiary in United States of America namely, Dorf Ketal Speciality Catalyst LLC ("the subsidiary"). During the year under consideration, the subsidiary intended to acquire the chemical business of Du Pont Inc., USA. To finance the acquisition, the subsidiary entered into a loan agreement. The loan agreement required the promoters of the company to increase the total net worth of the company to Rs. 150 crores by 31 March 2010

- In order to comply with this covenant in the loan agreement, the board of directors of the company passed a resolution on 7 September, 2009 to issue 63,00,000 shares at the face value of Rs 100 to the existing shareholders in proportion to their holding in the company so as to increase the share capital by Rs 63 Crores. On the same day, i.e. 7 September, 2009 an offer letter was circulated by the company to the existing shareholders. Based on the existing shareholding of 34.57%, the Assessee was offered 21,78,204 shares at face value of Rs. 100. The Asessee accepted the part offer of the shares of only to the extent of 20,94,032 shares. On 21st September, 2009 the company informed its shareholders about the acceptance by them of the shares offered by the company

- The shares were formally allotted by the company on 28 January, 2010 pursuant to the acceptance by the shareholders of the offer made to them in September, 2009. As the Assessee only partly accepted the shares offered to him, his shareholding came down from 34.57% to 33.30%

- The A.O worked out the fair market value of the share at Rs.1,438 per share. The difference in share value was brought to tax u/s 56(2)(vii)(c) of the Act in the hands of the Assessee

- Without prejudice to the above, AO stated that if section 56 is not applicable in the given case then the said addition to be taxed u/s 17 of the Act as perquisite or profit in lieu of salary. Accordingly, AO made addition of INR 301 crores u/s.56(2)(vii)(c) of the IT Act

CIT (A) deleted the said addition of Rs.301 crores. However, aggrieved by the said order of CIT (A), revenue preferred an appeal before ITAT

Held

- The facts of the instant case is similar to the case of Sudhir Menon HUF where it was observed that 'disproportionate allotment' (in which case section 56(2)(vii)(c) becomes applicable) means 'higher than proportionate or non uniform allotment'. In the instant case the shareholding of the assessee reduced from 34.57% to 33.30% and there is no increase in the wealth of the shareholder. Hence, it is not the case of disproportionate allotment and hence provisions of sec 56(2)(vii)(c) were not applicable

- Provisions of section 56(2)(vii) does not apply to bonafide business transaction. Circular No.1/2011 dated 6 April, 2011 issued by the CBDT explaining the provision of section 56(2)(vii) specifically states that the section was inserted as a counter evasion mechanism to prevent money laundering of unaccounted income. In paragraph 13.4 thereof where it is stated that "the intention was not to tax transactions carried out in the normal course of business or trade, the profit of which are taxable under the specific head of income". In the instant case, shares were issued to comply with a covenant loan agreement which required the promoters to increase the total net worth. The shares were issued by the company for a bonafide reason and as a matter of business exigency. Such a bonafide business transaction cannot be taxed u/s. 56(2)(vii). Reliance was also placed on the judgement of the SC in the case of ITO vs. K P Varghese (131 ITR 597)

- It was also found that the offer to subscribe the shares were made on 7 September 2009 pursuant to resolution passed by the Board. The acceptance of the said offer was communicated to the company on 21st September 2009. Provisions of Sec 56(2)(vii) was introduced from 1st October 2009 and hence the provisions of the said section will not be applicable to any contract executed prior to 1st October 2009. In the instant case, offer was accepted on 21st September 2009 prior to 1st October 2009. Mere formal routine act of issuance of certificate took place after 1st October 2009 which has no bearing on the taxability of the said transaction

- After the allotment of the said shares, the shareholding of the assessee came down from 34.57% to 33.30% and no benefit was received by the assessee and therefore, the provisions of section 17 of the Act were not applicable. Moreover, the shares were allotted to the assessee in the capacity of the shareholder of the company and not in the capacity of the employee of the company and therefore the provisions of section 17 of the Act was not applicable. There will not be any perquisite in the hands of the shareholder (who happens to be an employee of the company) when the shares are issued to the other shareholders or the general public at the same price, which was also present in the instant case (Circular No. 710 dated 24 July, 1995)

- In view of the above, the order of CIT(A) was upheld in favour of the Assessee

M/s. TUV Rheinland NIFE Academy Pvt Ltd vs. The Income Tax Officer (Bangalore ITAT) (AY 2015-15) (ITA No.3160/Bang/2018)

Discards DCF valuation for Sec.56(2)(viib) purposes as projections 'long long away' from actuals. AO has the power to examine and verify the correctness or the reasonableness of the valuation adopted by the Assessee

Facts

- The Assessee is a company engaged in the business of providing vocational training through direct training centres, franchise centres and information centres in many cities across the country. The Assessee is the 100% subsidiary of TUV Rheinland (I) Pvt. Ltd i.e., holding company

- During the year under consideration, the Assessee had allotted 5,00,000 shares to its parent company having face value of Rs.100 at a premium of Rs.479 for a total consideration of Rs. 28.95 crores out of which an amount of Rs.23.95 crores was towards share premium

- The Assessee worked the share premium amount as per DCF based on the valuation report of an Independent Chartered Accountant. AO rejected the said valuation report after stating that the said Valuation Report had relied only on values certified by the Management of the Assessee company, which had been prepared to justify the high premium and computed the value of shares under NAV method and determined the fair market value (FMV) of the shares at Rs.84.20 per share as against Rs.479/- per share determined by the assessee. The difference in the two amounting to Rs. 19.74 crores was added to the total income of the assessee as "excess share premium" exigible to tax u/s 56(2)(viib) of the Act

- Aggrieved by the said order of the AO, assessee preferred an appeal before the CIT (A). CIT (A) after considering the relevant facts upheld the order of the AO

Held

- The contention of the assessee that any price between the willing buyer and willing seller is the FMV and it does not require any justification, is not tenable. This would lead to situation that any share premium collected is allowable as long as both the buyer and seller accept it. Such a contention would defeat the very purpose of provisions of section 56(2)(viib)

- The contention of the assessee that since the shares are issued to the parent company therefore the price at which the shares are issued is not relevant; is also not tenable. The provisions of law does not make any difference as to whom the shares are being issued. It provides taxing of any excess share premium over the FMV of the shares irrespective of the character or position of the person to whom such shares are issued. Issue of shares to the parent company does not give freedom to the Assessee to value shares at any price

- The contention of the assessee that the Assessee is free to choose the method of valuation and once the assessee has exercised and chosen DCF method then the AO's hands are tied and he cannot adopt NAV method over DCF method and he can only verify the arithmetical accuracy of valuation and nothing beyond that. In the instant case, the AO has neither questioned the right of the assessee to select the Method of Valuation nor has the AO dismissed the choice of DCF Method as a Method of Valuation. On examining the Valuation Report AO rendered a finding, that the valuation is not realistic as the actual figures were a long way away from the projections made. The assessee was not able to substantiate the basis of the estimates adopted in DCF method.The AO had not accepted the valuation adopted by the Assessee as the parameters taken by the assessee in adopting the DCF Method are defective and / or not verifiable

- AO has the power to examine and verify the correctness or the reasonableness of the valuation adopted by the assessee. The same has been upheld in Tribunal (ITAT – Delhi Bench) in the case of Agro Portfolio Pvt. Ltd

- The ITAT upheld the action of the AO in determining the share premium collected in the Assessee's hand u/s 56(2)(viib) of the Act r.w.r. 114A(2)(a) of the Rules and the action of the CIT(A) in upholding the AO's action / addition

Principal Commissioner of Income Tax-3, Mumbai vs. Vembu Vaidyanathan [2019] 101 taxmann.com 436 (Bombay HC) (AY 2009-10)

For computing capital gain tax, date of allotment would be date on which purchaser of a residential unit can be stated to have acquired property

Facts

- During the year under consideration, the Assessee, an individual claimed long term capital gains out of the sale of a capital asset being a residential unit

- During the assessment proceedings, it was observed that the Assessee has considered date of allotment letter as date of acquisition of capital asset i.e. 31-12-2004 whereas the AO was of the view that the transfer of the asset took place only on the date of agreement which was executed on 17-05-2008

- The CIT (A) as well as the Tribunal held in favour of the Assessee

Aggrieved by the decision of CIT (A) as well as tribunal, Revenue preferred an appeal before the High Court ('HC')

Held

The HC held as follows:-

- CBDT in its circular no. 471 dated 15.10.1986 had clarified that when an assessee purchases a flat to be constructed by Delhi Development Authority (D.D.A.) for which allotment letter is issued, the date of such allotment would be relevant date for the purpose of capital gain tax as a date of acquisition. It was noted that the allottee gets title to the property on the issue of allotment letter and the payment of installments was only a follow-up action and taking the delivery of possession is only a formality

- Further, CBDT in its circular dated 16-12-1993 clarified that if the terms of the schemes of allotment and construction of flats/houses by the cooperative societies or other institutions are similar to those mentioned in para 2 of Board's Circular No.471, dated 15-10-1986, such cases may also be treated as cases of construction for the purposes of sections 54 and 54F of the Income-tax Act

- Thus, the entire issue had been covered by the CBDT in its two circulars as mentioned above. In view of the above two circulars, the date of allotment of the capital asset being residential unit would be the date of acquisition of such capital asset. Moreover, nothing on record was shown to prove that the terms of scheme in the present case was materially different from the terms of scheme by D.D.A.

- Therefore, in summary it was held that the date of allotment should be treated as date of acquisition

International Tax & Transfer pricing

International Tax

Case Laws

Buro Happold Limited v/s. DCIT (IT) (AY 2012-13) [ITAT Mumbai]

The second limb of Article-13(4)(c) of the Indo- UK tax treaty was to be read independently, cannot be the correct interpretation of Article 13(4) of the India-UK Treaty. As per the rule of ejusdem generis, the words "or consists of the development and transfer of a technical plan or technical design" will take colour from "make available technical knowledge, experience, skill, know-how or processes"

Facts

- The Assessee was a company registered in UK and is a tax resident of UK
- The Assessee was involved in the business of providing engineering design and consultancy services. As a part of such services, Assessee provides structural and MEP (Mechanical, Electrical and Public Health) engineering for various buildings
- For AY 2012-13, Assessee filed its return of income on 31st March, 2014, declaring nil income
- In course of Assessment proceedings, the AO found that in the previous year relevant to AY 2012-13, the Assessee earned approximately Rs. 1 crore from the provision of consulting engineering services to Buro Happold Engineers India Pvt. Ltd. (BHEI)
- Further, the assessee also received another Rs. 1 crore, from BHEI as a cost recharge towards Head Office expenses
- AO was of the view that the above amount received by assessee had accrued and arisen as income in India u/s 9 of the Income-tax Act, 1961 (the Act) and hence assessee was called upon to explain why it shouldn't be treated as Fees for Technical Services (FTS) under Article 13(4) of the Indo-UK tax treaty and brought to tax
- In response, the Assessee submitted that since while providing engineering consultancy services, the Assessee had not made available any technical knowledge or skill to BHEI for enabling it to apply them independently, the amount received by the Assessee would not qualify as FTS under Article-13(4)(c) of India-UK DTAA. Also since Assessee had no Permanent Establishment (PE) in India, such income couldn't be brought to tax under Article 7 of the treaty
- As regards common cost recharge, it was submitted that Assessee incurred certain common cost such as legal, I.T. related HR etc. for group entities and cost for the same was charged to various group entities based on a predetermined cost allocation/ apportionment key. It was submitted that the amount received by Assessee from BHEI was a part of cost allocation on a cost-to-cost basis without any profit element, hence it was not taxable in India
- The AO after considering the submissions, did not find merit in them. From Article 13(4)(c) of Indo-UK tax treaty, he interpreted that the words "make available" go with technical knowledge, experience, skill, knowhow, etc., but does not go with "the development and transfer of a technical plan or a technical design". Thus, he held that the amount received of Rs 1crore was in the nature of FTS even though not made available and hence taxable under the treaty
- As regards the common cost recharge, AO concluded that cost recharge related to and was ancillary to the provision of consulting engineering services which was held to be in the nature of FTS, hence taxable in India. He observed that cost recharge was merely an extension of and directly related to the consulting engineering services and hence was in the nature of FTS under Article 13(4)(c) of Indo-UK treaty
- Being aggrieved, the Assessee approached CIT (A)
- CIT (A) concurred with the view expressed by AO and held that the amount received towards consulting engineering services was in the nature of FTS not only u/s 9(1)(vii) of the Act but also under Article-13(4)(c) of the India-UK tax treaty
- CIT (A) observed that technical services in the form of designing and planning could not have been rendered by the Assessee without locating technical personnel in India for execution of the designs and drawing. In the Assessee's case, an entire team of experts from London arrived for nearly a month for every project executed during the year and assisted and guided the team of customers and clients in execution of the project at client's site through discussion, dialogue, assistance, guidance, instructions and supervision of the customers' project in India. Further, referring to Article 13(4)(c) of the treaty he stated overseeing its implementation and execution at site in India by technical personnel from London amounts to making available the technical services consisting of providing drawing and design would be FTS both u/s 9(i)(vii) of the Act as well as Article 13(4)(c) of the Indo-UK treaty. As regards common cost recharge, CIT (A) agreed with the AO that such amount was ancillary and incidental to consulting engineering services, therefore it should be treated as FTS
- Aggrieved, the assessee preferred an appeal before ITAT, Mumbai

Held

The ITAT held as follows:-

- There was no dispute between the parties that Assessee was a tax resident of UK and was governed under India-UK tax treaty and if the treaty provisions are more beneficial, they would apply to the Assessee in terms with section 90(2) of the Act
- On perusal of the sample copies of the agreements, it was noticed that Assessee was entrusted the work of providing consulting services for a twin city project by the Pune Munic-

ipality as well as other building projects in Mumbai. Further, it was observed that work of the Assessee was basically to provide consultancy services relating to the projects and in that context to provide technical designs/drawings/plans. It was a fact on record that technical designs/drawings/plans supplied by the Assessee under contract were project specific

- On a careful reading of Article-13(4)(c) of the Indo-UK tax treaty it becomes clear that the words "or consists of the development and transfer of a technical plan or technical design", appearing in the second limb has to be read in conjunction with "make available technical knowledge, experience, skill, knowhow or processes". The reasoning of AO that the second limb of Article-13(4)(c) of the Indo- UK tax treaty was to be read independently, in view of the ITAT, cannot be the correct interpretation of the Article. As per the rule of ejusdem generis, the words "or consists of the development and transfer of a technical plan or technical design" will take colour from "make available technical knowledge, experience, skill, knowhow or processes"

- Further in the present case, as revealed from the material on record, the technical design/drawings/plans supplied by the Assessee to the Indian entity were project specific, hence, couldn't be used by the Indian entity in any other project in future

- Therefore, the claim of the Assessee that it had not made available any technical knowledge, experience, skill, knowhow or processes while developing and supplying the technical drawings/designs/plans was accepted. If the Department was of the view that through development and supply of technical designs/drawings/plans the assessee made available technical knowledge, experience, skill, knowhow or processes, the Department is required to establish such fact through proper evidence. The Assessee cannot be asked to prove the negative. Thus, the amount received towards consulting engineering services were held to be not in the nature of FTS

- Therefore, it was held that the amount received by Assessee was to be treated as business profit and in the absence of a PE in India, it couldn't be brought to tax in India

- As the amount received towards consulting engineering services were held to be not in the nature of FTS, it was held that the reasoning of the departmental authorities with regard to cost recharge would also fail, since they treated it as ancillary and incidental to consulting engineering services


China
America
France
Japan
Germany
Product 1
Product 2
Product 3
Product 4
29%

IDTX

Notifications

Earlier, supply of services having place of supply in Nepal or Bhutan, against payment in Indian Rupees was exempted from payment of IGST. The same has been rescind now

Such supply would be considered as an export on fulfillment of conditions under section 2(6) of the IGST Act

(Notification No. 02/2019, Integrated Tax (Rate), dt. 04 Feb 2019)

Circulars

Amendments made in earlier issued circulars in wake of amendments in the CGST Act, 2017 (w.e.f. 01.02.2019)

Realization of export proceeds in Indian Rupee:

It is clarified that the acceptance of LUT for supplies of goods or services to countries outside India Nepal or Bhutan or SEZ developer or SEZ unit will be permissible irrespective of whether the payments are made in Indian currency or convertible foreign exchange as long as they are in accordance with the applicable RBI guidelines

Clarification for job worker registration:

It is clarified that a job worker is required to obtain registration only in cases where his aggregate turnover, to be computed on all India basis, in a financial year exceeds the threshold limit regardless of whether the principal and the job worker are located in the same State or in different States

Return of goods within stipulated time period:

if the inputs or capital goods are neither returned nor supplied from the job worker's place of business / premises within the specified time period, then the principal would issue an invoice for the same and declare such supplies in his return for that particular month in which the time period of one year / three years has expired

If inputs or capital goods are returned after the stipulated time period, then the same to be treated as supply by the job worker and he (i.e. the job worker) is liable to pay tax

Detention and Confiscation of the goods:

In case proposed tax and penalty are not paid within seven days, now amended to fourteen days, from the date of the issue of the order of detention in FORM GST MOV-06, the proper officer may serve a notice in Form GST MOV-10 forconfiscation of goods and imposition of penalty

CENVAT Credit or Transitional Credit wrongly availed in GST regime:

Taxpayers will have to reverse the wrongly availed CENVAT credit under the existing law and inadmissible transitional credit, either voluntarily in FORM GST DRC-03 or may be recovered through an order uploaded in FORM GST DRC-07, and payment against the said order shall be made in FORM GST DRC-03

Cancellation of Registration:

Section 29 (cancellation of registration) of the CGST Act has been amended by the CGST (Amendment) Act, 2018 to provide for "Suspension" of registration

The officer shall not issue notices for non- filing of return for taxpayers who have already filed an application for cancellation of registration under section 29 of the CGST Act. Further, the taxpayers are liable for filing of a final return under section 45 of CGST Act

Press Release

Rate Cut for Under Constructing Residential Projects to be effective from 1 April 2019

Effective GST rate of 5% without ITC on residential properties outside affordable segment;

Effective GST of 1% without ITC on affordable housing properties

Definition of affordable housing:

A residential house/flat of carpet area of up to 90 sqm in nonmetropolitan cities/towns and 60 sqm in metropolitan cities having value up to Rs. 45 lacs (both for metropolitan and nonmetropolitan cities)

Metropolitan Cities are Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (whole of MMR)

Recommendation provided to exempt intermediate GST applicable on Development Rights (DR) such as Transfer of Development Rights (TDR) / Joint Development Agreements (JDA) / Floor Space Index (FSI) / Long term lease (premium) for such residential properties

Details of the same to be worked out and to be approved separately in future GST council meetings

The Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975

Maharashtra Government introduced one time profession tax payment scheme, 2019 vide N No. PFT.1218/C.R.52/Taxation-3, dated the 22nd February 2019

SEBI & MCA

MCA UPDATES

COMPANIES (SIGNIFICANT BENEFICIAL OWNERSHIP) AMENDMENT RULES, 2019

- MCA vide its Notification dated 08th February, 2019 has amended Companies (Significant Beneficial Owners) Rules, 2018
- They shall come into force on the date of their publication in the Official Gazette
- In the Companies (Significant Beneficial Owners) Rules, 2018 (hereinafter referred to as the principal rules), in rule 2, in sub-rule (1), for clauses (b) to (e), the following clauses shall be substituted, namely
- "control" means control as defined in clause (27) of section 2 of the Act
- "form" means the form specified in Annexure to these rules
- "majority stake" means
  - holding more than one-half of the equity share capital in the body corporate; or
  - holding more than one-half of the voting rights in the body corporate; or
  - having the right to receive or participate in more than one-half of the distributable dividend or any other distribution by the body corporate;
- "partnership entity" means a partnership firm registered under the Indian Partnership Act,7932 (9 of 1,932) or a limited liability partnership registered under the Limited Liability Partnership Act, 2008 (6 of 2009)
- "reporting company" means a company as defined in clause (20) of section 2 of the Act, required to comply with the requirements of section 90 of the Act
- "section" means a section of the Act

COMPANIES PROSPECTUS AND ALLOTMENT OF SECURITIES) SECOND AMENDMENT RULES, 2019

- MCA vide its Notification dated 19th February, 2019 has amended Companies (Prospectus and Allotment of Securities) Rules, 2014
- They shall come into force on the date of their publication in the Official Gazette
- In the Companies (Prospectus and Allotment of Securities) Rules, 2014, in the Annexure, in Form PAS-3, against serial number 6, in item (b), the words "not allotted securities with an application size of less than twenty thousand per person" against the second check box shall be omitted

COMPANIES (ADJUDICATION OF PENALTIES) AMENDMENT RULES, 2019

- Ministry of Corporate Affairs (MCA) vide Notification dated 19th February, 2019 has amended Companies (Adjudication of Penalties) Rules 2014 which shall be called as Companies (Adjudication of Penalties) Rules 2019
- In the Companies (Adjudication of Penalties) Rules 2014, for rule 3, the following rule shall be substituted namely
- The Central Government may appoint any of its officers, not below the rank of Registrar as adjudicating officers for adjudging penalty under the provisions of the Act
- Before adjudging penalty, the adjudicating officer shall issue a written notice in the specified manner, to the company, the officer who is in default or any other person as the case may be ,to show cause, within such period as may be specified in the notice (not being less than fifteen days and more than thirty days from the date of service thereon) why the penalty should not be imposed on it
- Every notice issued under sub-rule (2), shall clearly indicate the nature of non-compliance or default under the Act alleged have been committed or made by such company, officer in default, or any other person , as the case may be and also draw attention to the relevant penal provisions of the Act and maximum penalty which can be imposed on the company, and each of the officers in default, or the other person
- The reply to such notice shall be filed in electronic mode only within the period as specified in the notice

COMPANIES (REGION OFFICES AND FEES)AMENDMENT RULES, 2019

- Ministry of Corporate Affairs (MCA) vide its Notification dated 21st February, 2019, has amended the (Registration Offices and Fees) Rules,2014 which shall be called as Registration Offices and Fees) Rules,2019 the following are some of the changes which has been made in the Rules
- In the companies (Registration offices and Fees) Rules, 2014,in the Annexure, after item Vll relating to Fees for filing E-form DIR-3 KYC under rule 12A of the companies (Appointment and Qualification of Directors) Rules, 2014, the following item shall be inserted, namely

Fee payable till 25.04.2019 on e -form ACTIVE	-
Fee payable (in delayed case)	Rs.10,000

COMPANIES (INCORPORATION) AMENDMENT RULES, 2019

- Ministry of Corporate Affairs (MCA) vide its Notification dated 21st February, 2019, has amended the Companies (incorporation) Rules, 2014 which shall be called as Companies (Incorporation) Amendment Rules, 2019 the following are some of the changes which has been made in the Rules
- They shall come into force with effect from 25th February, 2019
- In the Companies (incorporation) Rules, 2014 after rule 25, the following shall be inserted, namely
- Active Company Tagging Identities and Verification (ACTIVE)Every company incorporated on or before the 31st December,2017 shall file the particulars of the company and its registered office, in E-Form ACTIVE (Active Company Tagging Identities and Verification) on or before 25.04.2019.
- Where a company file "E-Form ACTIVE" on or after 26th April, 2019 the company shall be marked as "ACTIVE Compliant" on payment of fees of ten thousand rupees
- In the said Rules, after Form INC-22, the E-form ACTIVE (INC-22A) shall be inserted

SEBI UPDATES

PERFORMANCE REVIEW OF PUBLIC INTEREST DIRECTORS (PIDS)

In respect of Public Interest Directors (PIDs) appointed in the governing board of Stock Exchanges, Clearing Corporations and Depositories (herein after referred as Market Infrastructure Institutions or MIIs), SEBI Board, in its meeting dated June 21, 2018, inter alia,decided that the tenure of PIDs may be extended by another 3 years, subject to performance review in the manner specified by the Board

Public interest directors shall be nominated for a term of three years, extendable by another term of three years, subject to performance review in the manner as may be specified by the Board

For complying with the aforementioned regulation, while developing a framework for performance review of PIDs, MIIs need to consider the following

- Policy for Performance review of PIDs
- Guiding criteria of Performance Review
- Evaluation mechanism
- Disclosure

FORMAT FOR ANNUAL SECRETARIAL AUDIT REPORT AND ANNUAL SECRETARIAL COMPLIANCE REPORT FOR LISTED ENTITIES AND THEIR MATERIAL SUBSIDIARIES

- The SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 have been amended to include the following Regulation 24A
- 24A: Secretarial Audit: Every listed entity and its material unlisted subsidiaries incorporated in India shall undertake secretarial audit and shall annex with its annual report, secretarial audit report, given by a company secretary in practice, in such form as may be prescribed with effect from the year ended March 31, 2019
- This circular shall come into force as under
  - With respect to the annual secretarial audit report, in the annual reports of the listed entities and the material unlisted subsidiaries from the financial year ended March 31, 2019 onwards
  - With respect to the annual secretarial compliance report, applicable to listed entities, with effect from the financial year ended March 31, 2019 onwards

PHYSICAL SETTLEMENT OF STOCK DERIVATIVES (AMCS)

- In furtherance to the earlier circulars, it has been decided ,in consultation with Secondary Market Advisory Committee (SMAC) of SEBI, that in addition to the existing schedule of stock derivatives moving to physical settlement, if a stock satisfies any of the following criteria, then derivative on such stock shall be moved to physical settlement from the new expiry cycle
  - Stocks which witness 10% or more intra-day movement on 10 or more occasions in last 6 months
  - Or Stocks which witness 10% or more intra-day movement on 3 or more occasions in last 1 month
  - Or Stocks which witness 25% or more intra-day movement on 1or more occasions in last 1 month
  - Or Maximum daily volatility of the stock(as estimated for margining purpose)is more than 10% either in equity or equity derivatives segment in the last 1 month.
- Exchanges shall review the above conditions on a monthly basis. Existing contracts on the stock, however, shall continue to follow the settlement mode as applicable at the time of contract introduction

FRAMEWORK FOR UTILIZATION OF FINANCIAL SECURITY DEPOSIT (FSD)

- In order to rationalize security deposit and after consultation with WDRA& Exchanges/Clearing Corporations, it has been decided that Recognized Clearing Corporations having commodity derivatives segment shall adhere to the following norms for utilization of security deposit
- The Clearing Corporations shall immediately after accreditation, provide the details of WDRA registered warehouses accredited by them with full details of warehouseman registration, warehouse registration, WSP, address etc. to WDRA

- WDRA will in turn, share the details of security deposit received from these accredited warehouses/WSPs to the respective Clearing Corporations as per the enclosed format. Clearing Corporations shall inform the changes, if any, with respect to these warehouses as and when it happens to enable WDRA to provide the required information as above
- WDRA shall also inform Clearing Corporations of any changes, if any, in the security deposit placed by such warehouses/WSPs with WDRA

RELAXATION FROM REQUIREMENT TO FURNISH A COPY OF PAN FOR TRANSFER OF EQUITY SHARES OF LISTED ENTITIES EXECUTED BY NON-RESIDENTS

- It has been brought to the notice of SEBI that many non-residents such as Non-Resident Indians (NRIs), Overseas Citizens of India (OCIs), Persons of Indian Origin (PIOs) and foreign nationals have been facing difficulties in transferring shares held by them since many of them do not possess PAN card
- In order to address the difficulties faced by such investors, it has been decided to grant relaxation to non-residents (such as NRIs, PIOs, OCIs and foreign nationals) from the requirement to furnish PAN and permit them to transfer equity shares held by them in listed entities to their immediate relatives subject to the following conditions

  The relaxation shall only be available for transfers executed after January 01, 2016

  The relaxation shall only be available to non-commercial transactions, i.e. transfer by way of gift among immediate relatives

  The non-resident shall provide copy of an alternate valid document to ascertain identity as well as the non-resident status

ADVISORY COMMITTEE AT MARKET INFRASTRUCTURE INSTITUTIONS (MIIS)

- Based on representations received and the fact that the Advisory committee is the only committee wherein trading members, clearing members and depository participants can provide their suggestions to the concerned MIs on non-regulatory and operational matters, it has been decided that Clause 6 of the aforementioned circular shall not be applicable to the advisory committee at MIIs towards enabling wider participation of members of MIIs in the said advisory committee
- Clause 6 of the aforementioned circular shall also not be applicable to Advisory Committee, along-with IGRC
- Also the below stated clause provided in composition of advisory committee, at point A(5), B(5) and C(5) of the Annexure to the circular dated January 10, 2019, shall stand deleted

  The number of PIDs shall not be less than the total of number of shareholder directors and trading members / clearing members / depository participants[as applicable] put together

REVISION IN HAIRCUT ON CENTRAL GOVERNMENT SECURITIES (G-SEC) ACCEPTED AS COLLATERAL

- SEBI, vide circular dated February 23, 2005, captioned 'Comprehensive Risk Management Framework for the cash market has, inter alia, specified the applicable haircuts for the acceptable liquid assets deposited by members with the exchange/clearing corporation for various requirements.
- Based on the feedback received from the Clearing Corporations and the recommendations of the Risk Management Review Committee (RMRC) of SEBI, it has been decided to revise the minimum haircuts applicable to the Central Government securities deposited by clearing members
- Accordingly,Para2 of Annexure -I to the Circular stands modified as far as it relates to the haircut on Central Government Securities, as under

S.NO.	TYPE & TENOR OF SECURITIES	HAIRCUT
A	Treasury Bills and Liquid* Government of India Dated Securities having residual maturity of less than 3 year	2
B	Treasury Bills and Liquid* Government of India Dated Securities having residual maturity of more than 3 year	5
C	For all other Semi-liquid*and Illiquid*Government of India Dated Securities	10

The classification of the Government of India Dated Securities, as above, shall be reviewed on 15th of every month. The revision in classification, if any, shall be implemented with effect from 1st of the next month

Due Dates

Due Date Chart for March 2019

March 2019

	Due Date	Authority	Description
1	11-03-2019	GST	Due date for filing GSTR-1 for month of February 2019.
2	10-03-2019	GST	Due date for filing GSTR-7 for the month of February 2019.
3	10-03-2019	GST	Due date for filing GSTR-8 by the e-commerce operators required to deduct TDS under GST for the month of February 2019.
4	20-03-2019	GST	Due date for filing GSTR-5 & 5A required to be filed by the Non-Resident taxable person & OIDAR for the month of February 2019.
5	31-03-2019	GST	Filing of ITC-04 for July 2017 to December 2018 extended till 31st March 2019.
6	31-03-2019	GST	Last date to file GSTR-1, 3B or 4 for period from July 2017 to March 2018 from 22nd December 2018 but before 31st March 2019 without late fees.
1	02-03-2019	Income Tax	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA in the month of January, 2019.
2	02-03-2019	Income Tax	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB in the month of January, 2019.
3	07-03-2019	Income Tax	Due date for deposit of Tax deducted/collected for the month of February, 2019.
4	15-03-2019	Income Tax	Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of February, 2019 has been paid without the production of a Challan.
5	15-03-2019	Income Tax	Fourth instalment of advance tax for the assessment year 2019-20.
6	15-03-2019	Income Tax	Due date for payment of whole amount of advance tax in respect of assessment year 2019-20 for assessee covered under presumptive scheme of section 44AD/ 44ADA.
7	30-03-2019	Income Tax	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA in the month of February, 2019.
8	30-03-2019	Income Tax	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA in the month of February, 2019.
9	30-03-2019	Income Tax	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA in the month of February, 2019.
1	31-03-2019	International Tax	Country-By-Country Report in Form No. 3CEAD for the previous year 2017-18 by a parent entity or the alternate reporting entity, resident in India, in respect of the international group of which it is a constituent of such group.

Due Dates

Due date between

16-03-2019 To 15-04-2019

	Due Date	Authority	Form No	Description
1	20-03-2019	GST	GSTR - 3B	Monthly return for the month of February 2019 for all taxpayers
2	20-03-2019	GST	GSTR - 5	Monthly return for the month of February 2019 for Non- Resident foreign Tax Payers
3	20-03-2019	GST	GSTR - 5A	Monthly return for the month of February 2019 for NRI OIDAR Service Provider
4	21-03-2019	State Government (Maharashtra)	VAT Return	Dealers not covered under GST (Eg:Alchohol)
5	31-03-2019	Profession Tax (Maharashtra)	PTRC Return	PTRC return for the month of March or Yearly for FY 18-19
6	10-04-2019	GST	GSTR 7	Monthly return for the month of February 2019 for authorities deducting tax at source
7	10-04-2019	GST	GSTR 8	Monthly return for the month of February 2019 for e-commerce operators registered under gst
8	11-04-2019	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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