

**SBS** | **Wiki**  
monthly e-Journal

By

**SBS and Company LLP**  
**Chartered Accountants**



**CONTENTS**

<b>COMPANIES ACT</b> .....	<b>1</b>
<b>INTERNAL AUDIT OF COMPANIES UNDER THE COMPANIES ACT, 2013</b> .....	<b>1</b>
<b>SERVICE TAX</b> .....	<b>4</b>
<b>INPUT SERVICE VS RENTING OF IMMOVABLE PROPERTY SERVICES – A CASE STUDY</b> .....	<b>4</b>
<b>INCOME TAX</b> .....	<b>7</b>
<b>IS SALE OF AGRICULTURAL LAND FOR NON-AGRICULTURAL PURPOSE TAXABLE?</b> .....	<b>7</b>
<b>FOREIGN EXCHANGE MANAGEMENT ACT</b> .....	<b>10</b>
<b>ALLOTMENT OF SHARES – UNLISTED COMPANIES – CRITICAL ASPECTS</b> .....	<b>10</b>
<b>TECHNICAL SESSIONS</b> .....	<b>14</b>
<b><i>INTERACTIVE SESSION – BY SBS AND COMPANY LLP @ SRI CITY, TADA (NELLORE DIST, A.P.) – 18<sup>th</sup> December</i></b>	

## COMPANIES ACT

### INTERNAL AUDIT OF COMPANIES UNDER THE COMPANIES ACT, 2013

Contributed by CS Phanindra DVK

**Chapter – IX - Section 138** of the Companies Act, 2013, together with the rules made thereunder, deal with the provisions as to Internal Audit of Companies - Notified to be effective from 01.04.2014.

#### **Section-138:**

#### **The Section reads as under:**

*“138. (1) Such class or classes of companies **as may be prescribed** shall be required to appoint an internal auditor, who shall either be a chartered accountant or a cost accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company.*

*(2) The Central Government may, by rules, prescribe the manner and the intervals in which the internal audit shall be conducted and reported to the Board.”*

#### **TAKEWAY POINTS:**

- ➔ Internal Audit (IA) applicable for companies as **prescribed** by Central Government (CG) by **rules**.
- ➔ Internal Auditor can be a **CA, CWA or such other professional as decided by the Board**.
- ➔ CG may by rules prescribe the intervals in which IA to be conducted and reported.

**Rules:** Rule 13 of the Companies (Accounts) Rules, 2014, relates to Internal Auditor:

#### **Applicability to Companies:**

Sub-rule (1) of Rule 13 of the Companies (Accounts) Rules, 2014, lists out the companies who are required to appoint an Internal Auditor,

- (a) every **LISTED** company;
- (b) every **UNLISTED PUBLIC** company having:

- (i) **PAID UP SHARE CAPITAL** of Rs.50 Crores or more during the preceding financial year;  
or
  - (ii) **TURNOVER** of Rs.250 Crores or more during the preceding financial year; or
  - (iii) **OUTSTANDING LOANS OR BORROWINGS** from **BANKS** or **PUBLIC FINANCIAL INSTITUTIONS** exceeding Rs.100 Crores or more at any point of time during the preceding financial year; or
  - (iv) **OUTSTANDING DEPOSITS** of Rs.25 Crores or more at any point of time during the preceding financial year; and
- (c) every private company having:
- (i) **TURNOVER** of Rs.200 Crores or more during the preceding financial year; or
  - (ii) **OUTSTANDING LOANS OR BORROWINGS** from **BANKS OR PUBLIC FINANCIAL INSTITUTIONS** exceeding Rs.100 Crores or more at any point of time during the preceding financial year:

An existing company covered under any of the above criteria shall have to comply with the requirements of section 138 and this rule within Six (06) months of commencement of such section. i.e., **30.09.2014**.

As per the explanation, given to the rule:-

- (i) the internal auditor may or may not be an employee of the company;
- (ii) the term "Chartered Accountant" shall mean a Chartered Accountant whether engaged in practice or not.

#### **Intervals/periodicity of Internal Audit:**

Sub-rule 2 of Rule 13(2), stipulates that the Audit Committee of the company (in case the company is required to have one) or the Board shall, in consultation with the Internal Auditor, formulate the scope, functioning, periodicity and methodology for conducting the internal audit.

#### **TAKEWAY POINTS:**

- ➔ For Private Limited Companies, the criteria as to Paid-up is not included, thereby companies having turnover is Rs.200 Crores or more /loans of Rs.200 Crores or more are required to have IA.

- ➔ From the explanation, a CA other than in practice can also be appointed as an Internal Auditor.
- ➔ Periodicity of Audit and report to be decided by the Board and the Auditor.

*(This article is contributed by Mr. Phanindra D.V.K., a practicing Company Secretary operating from Hyderabad. The author can be reached at [phanindra@sbsandco.com](mailto:phanindra@sbsandco.com))*

## SERVICE TAX

### INPUT SERVICE VS RENTING OF IMMOVABLE PROPERTY SERVICES – A CASE STUDY

Contributed by CA Sri Harsha

The definition of 'input service' is always a mystery to the trade and business and has created a huge litigation as regards to what is eligible as input service for utilization of the same. The Board has amended the definition of the 'input service' with effective from 01.04.11 in anticipation of putting an end to huge litigation. The restricted amended definition has put an end to majority of the issues, however still leaving certain issues unaddressed. This article aims at dealing an issue 'whether the credit of service tax paid on renting of immovable property services is eligible for Cenvat credit to utilize the same against the excise duty/service tax as far as the manufacturer/service provider is concerned.

Before examining the issue, it is very important for the reader to note the changes that have taken place in the definition of 'input service' as laid down vide Rule 2(l) of Cenvat Credit Rules, 2004. Earlier to 2011, the definition of 'input service' is very wide enough to cover all the services in its ambit to claim as Cenvat Credit for the service provider. This definition has led to a huge revenue loss to the exchequer and hence there was an amendment to the definition of 'input service' post 2011 which has restricted the scope of such definition, which shall be discussed in detail in the later part of the article.

The amended definition which was effective from 01.04.2011 has made the definition of 'input service' into 3 parts.

*1<sup>st</sup> Part* – 100% nexus with the provision of the output services provided by service provider;

*2<sup>nd</sup> Part* – Irrespective of the Nexus theory, the credit stand eligible;

*3<sup>rd</sup> Part* – Specifically Excluded from the ambit of the definition.

As laid above, the first part of the definition deals with eligibility of the credit of services, which are having nexus with the provision of output services. Hence, all services which are having intimate nexus shall be eligible vide this part of the definition except specifically excluded (vide third part of the definition). The second limb of the definition of the said input service deals with eligibility of the credit of services irrespective whether they having nexus with the provision of output services. To be more lucid, once the services procured falls in the second limb, they are eligible for availment of credit irrespective of having nexus with the output services.

Let us take the current issue for examining the eligibility of the cenvat credit of service tax paid. Let us understand by taking an example. Consider a company engaged in provision of services pertaining to leasing of vacant land with infrastructural supports to manufacturers. The manufacturer enters a lease agreement with such company for availing the leasing services and infrastructural support. The said company charges service tax and the manufacturer pays the same and avails the said service tax paid as cenvat credit.

Now the revenue is of the opinion that such service tax is not eligible since the same does not have nexus with the output service provided or manufacturing of the finished goods as far as the service tax on the lease hold land is concerned. Further, they were of opinion that service tax paid on the infrastructural services<sup>1</sup> is not eligible since said services are used outside the premises of the manufacturer/service provider. In this context let us examine whether the contention laid out by the department stands to the test of the judicial scrutiny.

For the manufacturer, the definition of 'input service' vide 1<sup>st</sup> limb allows services used by manufacturer whether directly or indirectly in or in relation to manufacture of the final products. Without the land, a factory cannot be established and without the factory, there cannot be any manufacturing activity and hence it is very absurd and illogical to state that the immovable property is not having nexus with the manufacture of final product.

Further, for the service provider, as laid down above, the 1<sup>st</sup> limb of the definition allows credit on services which are having intimate nexus with the provision of output service unless specifically excluded by 3<sup>rd</sup> limb. It is very illogical or completely absurd that to state that without a leased land there would be provision of output services. There cannot be a provision of output service without an premises of the service provider, it is highly unimaginable and hence the service tax paid on the lease hold land is very eligible since the said input service is also not specified in the 3<sup>rd</sup> limb of the definition of 'input service'.

It is very important to note that the provision of infrastructure services plays a crucial role for the manufacturer/service provider to avail the land on the lease. In absence of the proper infrastructural services, the land shall not be useful because no prudent business man would avail the land for construction of factory. Hence, the said infrastructural services are also having nexus with the manufacture of final products and hence eligible for availment of cenvat credit.

So, in my view, the credit of service tax paid on lease land hold and infrastructure services are eligible for availment as cenvat credit both for manufacturer and service provider for utilization

---

<sup>1</sup> Infrastructural support would mean development of roads, water supply network and reservoirs, sewer networks and sewerage treatment plant and other various allied support services.

against the output payable. The contentions raised by the revenue would not stand before the judicial scrutiny at the higher levels. When the 99 year lease hold land is considered as service and service tax is being collected, the same shall be eligible for credit in absence of any specific restrictions in the definition of 'input service'.

*(This article is contributed by CA Sri Harsha, Partner at SBS and Company LLP, Chartered Accountants. The author can be reached at [harsha@sbsandco.com](mailto:harsha@sbsandco.com))*



## INCOME TAX

### IS SALE OF AGRICULTURAL LAND FOR NON-AGRICULTURAL PURPOSE TAXABLE?

Contributed by CA Ram Prasad

Section 45 of the Income Tax Act, 1961 provides for chargeability of Capital Gain on transfer of a “Capital Asset”.

Capital Gain arises only when a capital asset is transferred. If the asset transferred is not a capital asset, it will not be covered under the head “Capital Gains”.

The term “Capital Asset” is defined U/S 2(14) as property of any kind held by the assessee, whether or not connected with his business or profession but does not include inter alia agricultural land in rural area.

Rural area for this purpose is any area which is outside the jurisdiction of municipality or cantonment board having a population<sup>2</sup> of 10,000 or more and also which does not fall within distance (measured aerially) given below-

- 2 KM from the local limits of municipality or cantonment board- If the population of municipality or cantonment board is more than 10,000 but not more than 1 lakh;
- 6 KM from the local limits of municipality or cantonment board- If the population of municipality or cantonment board is more than 1lakh but not more than 10 lakh;
- 8 KM from the local limits of municipality or cantonment board- If the population of municipality or cantonment board is more than 10lakh.

(As Amended by FA 2013)

To attract charge of capital gain, the property transferred must be a capital asset on the date of transfer and it is not necessary that it should have been capital asset also on the date of acquisition by the assessee<sup>i</sup>.

If the concerned asset does not fall within the definition of capital asset on the date of transfer, no capital gain can be levied<sup>ii</sup>.

---

<sup>2</sup> Population means population according to the last preceding census of which relevant figures have been published before the first day of the previous year.

As the Rural Agricultural Land is not a Capital Asset, capital gain on transfer of the same is not subject to tax.

It is the usage of seller of the land that will decide the nature of land.

Now, the question is whether this contention is valid when the buyer of the agricultural land has intention to use for commercial purpose after the transfer?

The above question was answered in the following case:

**Commissioner of Income-tax, Panaji-Goa v. Smt. Debbie Alemao**

The assessee's were co-owners of the land. They purchased said land for a sum of Rs. 8 lakhs as an agricultural land. Later on, they sold the said land to 'V' Ltd. for a sum of Rs. 73 lakhs. The assessee's filed separate returns of income wherein capital gain arising out of the sale of agricultural land was claimed by each of them to be exempt.

The Assessing Officer held that the said land had non-agricultural potential and the fact that it was sold at a price which was nearly 10 times the purchase price within two years from its purchase and, moreover, it was purchased for the purpose of a beach resort showed that the said land was not an agricultural land. Consequently, he held that the profit arising out of the sale of the said land was assessable to the tax as capital gain. On appeal, the Commissioner (Appeals) set aside the assessment order. The Tribunal upheld the order of the Commissioner (Appeals).

Aggrieved by the decision of the ITAT the revenue preferred appeal to High Court

**Before the High Court:**

The learned Counsel for the appellant contended that the Respondents had not shown any agricultural income during the period of two years from the date of the purchase till the date of the sale, arising out of the said land. This also showed that the land was not an agricultural land.

The Counsel for the appellant submitted that the Commissioner of Income-tax (Appeals) as well as the ITAT committed a gross error, bordering on perversity, in holding that the said land was an agricultural land.

The High Court held that the assessing officer has note that the land was noted in the revenue records as agricultural land and ITAT also held that the land was recorded in the revenue records as agricultural land. This fact is not disputed by the revenue.

It is however contended that the land was not actually used for agriculture inasmuch as no agricultural income was derived from this land and was not shown by the respondents in their Income-tax return.

This was explained by the respondents by saying that there were coconut trees in the land but the agricultural income derived by sale of the coconuts was just enough to maintain the land and there was no actual surplus and hence, no agricultural income was shown from this land.

The High Court held that if an agricultural operation does not result in generation of surplus that cannot be a ground to say that the land was not used for the agricultural purpose. It is not disputed that the land was shown in the revenue record to be used for agricultural purpose and no permission was ever obtained for non-agricultural use by the respondents.

The permission for non-agricultural use was obtained for the first time by the Varca Holiday Beach Resort Private Limited the purchaser after it purchased the land.

Thus, the finding recorded by the two authorities below that the land was used for the purpose of agriculture is based on appreciation of evidence and by application of correct principles of law. As a result the High Court dismissed the appeal.

**Note:** The Tribunal has relied upon two unreported decisions of this Court in *CIT v. Minguel Chandra Pais/ Smt. Maria Leila Tovar Furtado [2006] 282 ITR 618/ [2005] 149 Taxman 131 (Bom.)* which involved identical issue. In those appeals, this Court has upheld the order of the Tribunal holding that the land was agricultural land and its sale did not invite the payment of capital gain.

Similar view was also expressed by Gujrat High Court in case of Commissioner of Income-tax v. Rajshibhai Meramanbhai Odedra [2014] 42 taxmann.com 497 (Gujarat)

*(This article is contributed by CA Ram Prasad & CA Suresh Babu S, Both are Partners at SBS and Company LLP, Chartered Accountants. The authors can be reached at [caram@sbsandco.com](mailto:caram@sbsandco.com) & [suresh@sbsandco.com](mailto:suresh@sbsandco.com) respectively)*

<sup>i</sup> Nachiappan (M) Vs CIT 230 ITR 98

<sup>ii</sup> CIT Vs Jitender Ram Mittal 162 ITR 371

## FOREIGN EXCHANGE MANAGEMENT ACT

**ALLOTMENT OF SHARES – UNLISTED COMPANIES – CRITICAL ASPECTS**

Contributed by CA Murali Krishna G

In the changed landscape of Company Law, we have thought it fit to cover the critical aspects of allotment of shares, its related regulations under Foreign Exchange Management Act, 1999 vis-à-vis Companies Act, 2013 read with rules made there-under. For keeping the topic simple and useful, we have listed out relevant provisions of respective law:

Foreign Exchange Management Act, 1999 read with FEM (Transfer or Issue of Security by a person resident in India) Regulations, 2000 [Notification No. 20/2000], (as amended from time to time), normally referred as FEMA FDI Regulations, Foreign Investment is prohibited in the following sectors<sup>3</sup>:

Sl. No.	SECTORS	POLICY	NIC CODE-2008 <sup>4</sup>
1.	Lottery Business including Government/private lottery, online lotteries, etc.	Prohibited	92009
2.	Gambling and Betting including casinos etc.	Prohibited	92009
3.	Chit funds	Prohibited	64990
4.	Nidhi company	Prohibited	64990
5.	Trading in Transferable Development Rights (TDRs)	Prohibited	66110
6.	Real Estate Business or Construction of Farm Houses	Prohibited	68200
7.	Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes	Prohibited	12001-12009
8.	Activities/sectors not open to private sector investment e.g. Atomic Energy and Railway Transport (other than permitted activities mentioned in para 6.2).	Prohibited	35104, 49110, 49120

<sup>3</sup> Source: Chapter 6 of Consolidated FDI Policy, dated 17<sup>th</sup> April, 2014

<sup>4</sup> Source “Mapping of the sector specific FDI Policy as given in Consolidated FDI Policy 2014 in terms of NIC-2008 – inviting comments/suggestions” put up by DIPP

Note: **Foreign technology collaboration in any form** including licensing for franchise, trademark, brand name, management contract is also prohibited for Lottery Business and Gambling and Betting activities.

**Process flow under the FEMA and the Companies Act, 2013:**

1. **Board Approval:** Convening of Board Meeting to consider issue of shares to Investor and calling of EGM for obtaining approval from Members (Section 42 read with Rules made there under)
2. **Valuation Report:**
  - a. The company has to obtain valuation report from a Chartered Accountant to arrive at the value of shares proposed to be issued
  - b. In case of listed company the valuation  $\geq$  the value decided under SEBI regulations
  - c. In case of Unlisted Companies, the valuation has to be done as per internationally recognized method of valuation (RBI A. P. (DIR Series) Circular No. 4, dated 15/07/2014 and for justification of issue price, pursuant to provision to Sub rule (2) (a) of Rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014
3. **Intimation to ROC:** The company shall File Form MGT-14 with ROC within 30 days of Board Resolution
4. **Shareholders Meeting:**
  - a. The company needs to call General Meeting (EGM/AGM) to obtain the approval of members by way of special resolution
  - b. The company shall File Form MGT-14 with ROC within 30 days of Shareholder approval
5. **Letter of Offer (LOO):** The Board has to approve Letter of Offer (in PAS-4) along with share application (serially numbered) to be sent to the investor(s). The number of proposed offer to the investors cannot exceed 200 persons aggregate in a FY.
6. **Filing of LOO with ROC:** Company has to prepare the details/record of Letter of Offer (LOO) in Form PAS-5, and file the same with ROC along with the LOO, within 30 days of circulation of LOO. The value of such offer or invitation per person shall be with a minimum investment size of **Rs.20,000/-** of face value of the securities

7. **Open Escrow Bank Account:** The company has to open separate bank account (escrow account) to receive the proposed subscription and can adjust such money only either for allotment of shares or for refund of money
8. **Remittance:** The investor remits the amount into the Company in eligible currency
9. **Intimation to RBI:**
  - a. The company shall intimate RBI through AD within 30 days of remittance
  - b. The intimation to be made in Annexure II of Circular 44 dated 30/05/2008. The said annexure has been attached as Annexure 5 to DIPP Circular 1/2014 and Annexure 6 to RBI Master Circular dated 01/07/2014
10. **KYC:**
  - a. The company needs to facilitate the AD to obtain KYC information of the remitter from their counterpart bank
  - b. The KYC format is prescribed vide Annexure III of Circular 44 dated 30/05/2008. The said annexure has been attached as Annexure 6 to DIPP Circular 1/2014 and Annexure 7 to RBI Master Circular dated 01/07/2014
11. **UIN:**
  - a. RBI upon receipt of the intimation allots Unique Identification Number (UIN) for each such remittance and intimates the company
  - b. This UIN has to be quoted at the time of filing the FC-GPR / refund of the money
12. **Allotment / Refund:** The company shall allot Shares / CCPS / CCD within 60 days<sup>5</sup> of the remittance failing which the money shall be refunded within 15 days thereafter (Section 42 of Companies Act, 2013 read with rules made there under)
13. **PAS-3:** Return of allotment is required to be filed with the ROC within 30 days in Form **PAS-3**, along with the prescribed details/information [**Filing pursuant to Sec. 42(9) and Rule 14 (4) of the Companies (Prospectus and Allotment of Securities) Rules, 2014**]

---

<sup>5</sup> Though it is 180 days as per Proviso to Paragraph 8 (ii) of Schedule 1 FEM (Transfer or Issue of Security by a person resident in India) Regulations, 2000 [Notification No. 20/2000], (as amended from time to time), the time stands reduced to 60 days due to rule of Harmonious Construction.

**14. Form FC-GPR:**

- a. The company after allotting the shares/ CCPS/CCD shall file form FC-GPR with AD who have received the remittance
- b. The intimation to be made in Annexure I of Circular 102 dated 11/02/2014. (Previous format has been attached as Annexure 1 to DIPP Circular 1/2014 and Annexure 8 to RBI Master Circular dated 01/07/2014)

- 15. Intimation from RBI:** Upon receipt of the Form FC-GPR RBI after scrutiny of the form, allots registration no. for FC-GPR which shall be used at the time repatriation by the investor

*(This article is contributed by CA Murali Krishna G, Partner at SBS and Company LLP, Chartered Accountants. The author can be reached at [gmk@sbsandco.com](mailto:gmk@sbsandco.com))*

## TECHNICAL SESSIONS

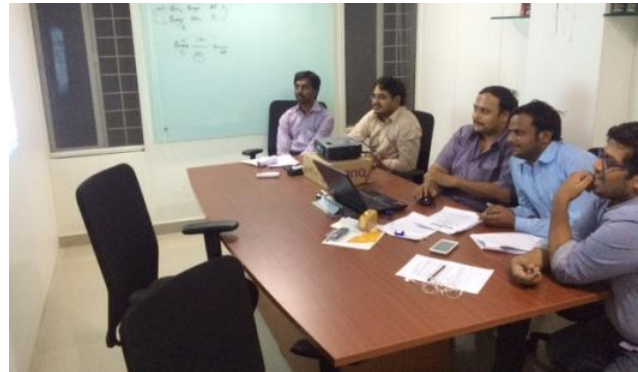
S No.	Event	Date	Speaker	Venue
1	Borrowings and Creation of Charges – Companies Act	12-Dec-2014	CS Phanindra DVK	SBS – Hyd
2	Overview of Agriculture Land Ceiling	19-Dec-2014	Syslex Law Firm	SBS – Hyd
3	Practical Aspects on Scrutiny – Income Tax	26-Dec-2014	CA Suresh Babu S	SBS – Hyd
4	Critical Review on ECB – FEMA	02-Jan-2015	CA Murali Krishna G	SBS – Hyd

**Note:**

The timings for the above events shall be from 17:30 hrs to 19:30 hrs. We request the recipients of “SBS Wiki” who are interested to attend the above events to send confirmation of your participation 2 days in advance to make appropriate arrangements and sharing of the relevant material, if any.

**Events Gallery:**

Technical session on "Issues on VAT Input" by CA Ram Kumar D S



Technical session on "Limited Liability Partnership - an Overview" by CS Phanindra



## **INTERACTIVE SESSION – CONDUCTED BY SBS AND COMPANY LLP @ SRI CITY, TADA (NELLORE DIST, A.P.)**

**Date:** 18<sup>th</sup> December 2014 (Thursday)

**Venue:** Chennai Business School, Sri City

**Timings:** 01.30 PM – 4.30 PM

**Fee:** Free

<b>S No.</b>	<b>Topic</b>	<b>Timing</b>
1	Welcome Note	13.30 – 13.45
2	Session on Central Excise and Service Tax – CA Sri Harsha	13.45 – 14.30
3	Session on VAT & CST – CA Ram Kumar D S	14.30 – 15.00
4	Tea Break	15.00 – 15.15
5	Session on Companies Act – CS Phanindra DVK	15.15 – 16.00
6	Wrap up and Other related matters	16.00 – 16.30

© All Rights Reserved with SBS and Company LLP

### **Our Offices:**

**Hyderabad:** 6-3-900/6-9, #103 & 104, Veeru Castle, Durganagar Colony, Panjagutta, Hyderabad, Telangana

**Kurnool:** No. 302, 3rd Floor, V V Complex, 40/838, R.S. Road, Near SBI Main Branch, Kurnool, Andhra Pradesh

**Nellore:** 16-6-259, 1st Floor, Near Santi Sweets Opp: SBI ATM, Vijayamahala Centre, SPSR Nellore, Andhra Pradesh

**Tada:** 8-3-425/2, Flat No. 202, 2nd Floor, Bigsun Avenue, Near SRICITY, TADA, SPSR Nellore Dist, Andhra Pradesh

**Visakhapatnam:** 39-20-40/6, Flat No.7, Sai Yasoda Apartments, Madhavadhara, Visakhapatnam, Andhra Pradesh

### **Disclaimer:**

The articles contained in **SBS Wiki**, are contributed by the respective resource persons and any opinion mentioned therein is his/their personal opinion. **SBS Wiki** is intended to be circulated among fellow professional and clients of the Firm, to provide general information on a particular subject or subjects and is not an exhaustive treatment of such subject(s). The information provided is not for solicitation of any kind of work and the Firm does not intend to advertise its services or solicit work through **SBS Wiki**. The information is not intended to be relied upon as the sole basis for any decision. Before making any decision or taking any action that might affect your personal finances or business, you should consult a qualified professional adviser.

**SBS AND COMPANY LLP [Firm]** does not endorse any of the content/opinion contained in any of the articles in **SBS Wiki**, and shall not be responsible for any loss whatsoever sustained by any person who relies on the same.

To unsubscribe, kindly drop us a mail at [kr@sbsandco.com](mailto:kr@sbsandco.com) with subject 'unsubscribe'.