

WISH YOU HAPPY NEW YEAR & SANKRANTHI

Volume-30

January-2017

Pages 1-21

For Private circulation only



SBS | **Wiki**
monthly e-Journal

By

SBS and Company LLP
Chartered Accountants



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NEW YEAR CELEBRATIONS



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INTERNATIONAL TAXATION

INDIA – DTAA – RECENT DEVELOPMENTS

Contributed by CA Suresh Babu S |

Indian Tax environment has been rapidly changing to absorb the global changes and the need to curb the tax avoidance and restrict the black money, which have been the primary objectives of the government. The recent developments provide us with a glimpse of India's treaty policy to prevent double non-taxation, curb revenue loss and check the menace of black money through automatic exchange of information. The following is a summary of the recent India- DTAA developments:

India – Singapore:

- **Resident based to Source based:** The India-Singapore DTAA at present provides for residence based taxation of capital gains of shares in a company. The Third Protocol amends the DTAA with effect from 1st April, 2017 to provide for source based taxation of capital gains arising on transfer of shares in a company. This will curb revenue loss, prevent double non-taxation and streamline the flow of investments.
- **Grandfathering clause:** Investments in shares made before 1st April, 2017 have been grandfathered subject to fulfillment of conditions in Limitation of Benefits clause as per 2005 Protocol.
- **Transition Period:** Two year transition period from 1st April, 2017 to 31st March, 2019 has been provided during which capital gains on shares will be taxed in source country at half of normal tax rate, subject to fulfillment of conditions in Limitation of Benefits clause.
- **LOB:** Under the present Treaty, and as retained in the Protocol, an entity is not entitled to the capital gains tax exemption in the source state if its affairs were arranged with the primary purpose to take advantage of such benefits. Similarly, shell or conduit companies, viz., resident legal entities with negligible or nil business operations, or with no real and continuous business activities, are disentitled from availing the capital gains exemption in the source state.

The aforementioned conditions of the primary purpose test under the "Limitation of Benefits" (LOB) article have also been made applicable to entities seeking to claim benefit of the 50% lower tax rate under the Protocol during the transition period from 1 April 2017 to 31 March 2019 (Transition Period).

The expenditure thresholds and corresponding temporal limits to avail of the capital gains exemption on investments made prior to 1 April 2017 continue to remain the same in the Protocol, i.e., an annual expenditure of at least S\$ 200,000 in Singapore or INR 5,000,000 in India on operations in each of the two blocks of 12 months in the immediately preceding period of 24 months from the date on which the gains arise

- **MAP:** The Third Protocol also inserts provisions to facilitate relieving of economic double taxation in transfer pricing cases. This is a taxpayer friendly measure and is in line with India's commitments under Base Erosion and Profit Shifting (BEPS) Action Plan to meet the minimum standard of providing Mutual Agreement Procedure (MAP) access in transfer pricing cases. The article on "Associated Enterprises" under the Treaty has been amended to provide that a corresponding adjustment to the income/profits of an enterprise of one contracting state would be made when an addition is made in the income of its associated enterprise in the other contracting state. In determining such adjustment, due regard shall be had to the other provisions of the Treaty, and the competent authorities of the contracting states shall consult each other, if necessary
- **GAAR:** The Third Protocol also enables application of domestic law and measures concerning prevention of tax avoidance or tax evasion. (To give effect to GAAR)
- **Things missed out, but can be subject to GAAR:** While the transfer of capital assets other than shares, such as debentures, partnership interests etc., and an indirect transfer of Indian assets would continue to be tax exempt under the Protocol even after 1 April 2017, and would not be subject to the LOB test, such transactions will nevertheless be required to pass the muster of GAAR (i.e. the domestic anti-abuse tax law of India).

India – Mauritius:

- The Protocol for amendment of the India-Mauritius Convention signed on 10th May, 2016, provides for **source-based taxation** of capital gains arising from alienation of shares acquired from 1st April, 2017 in a company resident in India.
- **Grandfathering and Transition:** Investments made before 1st April, 2017 have been grandfathered and will not be subject to capital gains taxation in India. Where such capital gains arise during the transition period from 1st April, 2017 to 31st March, 2019, the tax rate will be limited to 50% of the domestic tax rate of India.
- **LOB:** The benefit of 50% reduction in tax rate during the transition period shall be subject to the Limitation of Benefits Article.
- Taxation in India at full domestic tax rate will take place from financial year 2019-20 onwards.

India – Cyprus:

- The revised DTAA between India and Cyprus signed on 18th November, 2016, provides for **source based taxation** of capital gains arising from alienation of shares, instead of residence based taxation provided under the DTAA signed in 1994.
- **Grandfathering clause** has been provided for investments made prior to 1st April, 2017, in respect of which capital gains would continue to be taxed in the country of which taxpayer is a resident.
- Assistance between the two countries for **collection of taxes** and updates the provisions related to **Exchange of Information** to accepted international standards.
- **No more NJA:** Notification of Cyprus under section 94A of the Income Tax Act, 1961, as a notified jurisdictional area for lack of effective exchange of information, has been rescinded with effect from 1.11.2013 [Notification No. 114/2016 dated 14.12.2016].

India – Switzerland:

Fighting the menace of Black Money stashed in offshore accounts has been a key priority area for the Government. To further this goal, the 'Joint Declaration' for the implementation of **Automatic Exchange of Information (AEOI)** between India and Switzerland was signed in November, 2016.

It will now be possible for India to receive from September, 2019 onwards, the financial information of accounts held by Indian residents in Switzerland for 2018 and subsequent years, on an automatic basis.

Concluding Remarks:

The above protocols in the International tax environment from India Perspective are significant changes and could have great impact on the structuring/ tax planning of the MNC's and can also create transparency in the thought process of both the taxpayers and government. These changes/protocols indicate the importance of the exchange of information and source based taxation. With GAAR coming into picture very soon these changes would also help/attribute to the intentions of the government and would provide support in achieving the objectives.



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FEMA

EXTERNAL COMMERCIAL BORROWINGS (ECB) IN FOREIGN CURRENCY (FC) BY INDIAN COMPANIES – WHETHER BOON OR BANE?

Contributed by CA Murali Krishna G |

RBI has issued ECB regulations viz., Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, Notification No. FEMA 3/ 2000-RB, dated May 3, 2000 read with Sec.6(3) of FEMA Act, 1999

Indian companies are allowed to access funds from abroad in the following Methods:

- ECB
- FCCBs
- Preference Shares/Debentures
- FCEB

What is ECB

External Commercial Borrowings (ECBs) include

- bank loans,
- suppliers' and buyers' credits,
- fixed and floating rate bonds (without convertibility)
- Financial Lease
- borrowings from private sector windows of multilateral Financial Institutions such as **IFC, ADB, CDC** etc..
- Euro-issues include Euro-convertible bonds and GDRs.

RBI vide A.P. (DIR Series) Circular No.32, dated 30th November, 2015 has revised the total ECB Framework

ECB – under New Regime

Track – I	Track – II	Track – III
Medium term foreign currency denominated ECB with minimum average maturity of 3/5 years	Long term foreign currency denominated ECB with minimum average maturity of 10 years	Indian Rupee (INR) denominated ECB with minimum average maturity of 3/5 years

Eligible Borrowers

Track – I	Track – II	Track – III
Companies in Mfg and Software development	All entities listed under Track-I	All entities listed under Track-II
Shipping & Airline Companies	Companies in Infrastructure Sector	All NBFCs registered with RBI
SIDBI (Automatic Route) EXIM Bank(Approval Route)	REITs and INVITs	NBFC-MFI, NPOs engaged in MFI activity
Units in SEZ		Cos. engaged in R&D, Training (other than educational Inst.)
NBFC-IFC, NBFC-AFC		Cos. Supporting Infra and logistic services
Holding Companies and CIC		Developers of SEZ/NMIZs

Various other aspects of ECB have not been mentioned here for the sake of brevity and relevancy.

RBI publishes the quarterly outstanding debt position with a lag of one quarter. As per the available latest statistics of end of June, 2016, the outstanding Commercial Borrowings are USD 175.7 Billion (declined from USD 185.0 Billion as of June, 2015)

In order to understand that whether the ECBs are really cost effective and whether it is boon or bane, the author has made an attempt to compare with the effective Interest on INR loans borrowed in India and ECB loans borrowed from abroad

In the below table, comparable State Bank of India (SBI) Prime Lending Rate or Base Rate of MCLR based Base Rate has been listed. Also indicative 6 Months Average LIBOR rate has been mentioned for comparable effective date of interest of SBI. Similarly Forex rate of USD-INR is mentioned for each effective date.

An attempt is made to compute the effective estimated Total Rate of Interest (ROI) of ECB to compare the benefit or loss in case of the Borrower does not have Natural Hedge (viz., Exports receivables) or any forex hedge by way of derivative contracts.

Table

Effective Date	SBI Base Rate (%) ¹	USD-INR (Rs) ²	% of Forex change	6 Months Average LIBOR ³	Avg % of Forex change	Estimated Spread	Estimated Total ROI of ECB (%)
01-01-17	8.15 ⁴	67.9547	45.58%	1.3073%	6.91%	1.00%	9.21%
01-04-16	9.20	66.3329	42.10%	0.9018%	7.21%	1.00%	9.12%
05-10-15	9.30	65.2905	39.87%	0.5372%	7.47%	1.00%	9.00%
08-06-15	9.70	64.1100	37.34%	0.4164%	7.46%	1.00%	8.87%
10-04-15	9.85	62.3660	33.60%	0.3995%	6.94%	1.00%	8.34%
07-11-13	10.00	62.5740	34.05%	0.3804%	10.01%	1.00%	11.39%
19-09-13	9.80	61.7480	32.28%	0.3804%	9.88%	1.00%	11.26%
04-02-13	9.70	52.9730	13.48%	0.4890%	5.11%	1.00%	6.60%
20-09-12	9.75	54.3375	16.40%	0.6717%	7.27%	1.00%	8.94%
13-08-11	10.00	45.3740	N.C	0.4592%	N.C	N.C	N.C
11-07-11	9.50	44.3705	N.C	0.3976%	N.C	N.C	N.C
12-05-11	9.25	44.7900	N.C	0.4141%	N.C	N.C	N.C
25-04-11	8.50	44.4500	N.C	0.4423%	N.C	N.C	N.C
14-02-11	8.25	45.5000	N.C	0.4554%	N.C	N.C	N.C
03-01-11	8.00	44.6700	N.C	0.4584%	N.C	N.C	N.C
21-10-10	7.60	44.3600	N.C	0.4550%	N.C	N.C	N.C
01-07-10	7.50	46.6800	N.C	0.7518%	N.C	N.C	N.C

Note:

1. SBI has started computation of Interest on MCLR (MARGINAL COST OF FUNDS BASED LENDING RATE) plus Spread basis, effective from 1st April, 2016. Between 01-07-2010 and 31-03-2016 the interest was computed on Base Rate plus Spread Basis.
2. 6 Months Average LIBOR rate was taken on nearest date basis and for indicative purpose only. Actual rate may vary
3. % of change in FX Rates & Avg % of Forex change have been computed by taking base date as 1st July, 2010
4. N.C = Not Computed

¹Source: <https://www.sbi.co.in/portal/web/interest-rates/base-rate-historical-data>

²Source: <https://www.rbi.org.in/scripts/ReferenceRateArchive.aspx>

³Source: http://www.fedprimerate.com/libor/libor_rates_history.htm

⁴Source: <https://www.sbi.co.in/portal/web/interest-rates/marginal-cost-of-fund-based-lending-rate-mclr-with-effect-from-01-01-2017>

Conclusion

On a review of the above table it is apparent that unless the Borrower has Exports receivable and the inflow schedule matches with the Principle and Interest Payment obligations, the currency risk plays major role in determining the cost effectiveness of the ECB.

In case the borrower does not have sufficient Exports receivables, the borrower needs to obtain Hedging Contracts (derivatives), failing which the entire risk of Foreign Exchange fluctuation will severely impact the overall cost and may prove to be bane

In case the Borrower is able to raise the Rupee Denominated ECBs, then the foreign currency risk will be borne by the lender(s) and the borrower is insulated from such risk.

In view of the expected fall of Borrowing Costs in India, post Demonitisation of Specified Bank Notes (Rs. 500 and Rs. 1000), whether ECB will still be a lucrative option or not, one has to wait and watch.



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AUDIT**ROADMAP TO IND AS**

Contributed by CA Sandeep Das

Presently, the Institute of Chartered Accountants of India (ICAI) has issued 39 Indian Accounting Standards (Ind AS) which have been notified under the Companies (Indian Accounting Standards) Rules, 2015 ("Ind AS Rules"), of the Companies Act, 2013. The Rule specifies the Indian Accounting Standards (Ind AS) applicable to certain class of companies and set out the dates of applicability.

India has chosen a path of International Financial Reporting Standards (IFRS) convergence rather than adoption. Hence, Ind AS is primarily based on the IFRS issued by the International Accounting Standards Board (IASB).

Applicability of Ind AS As per the notification released by the Ministry of Corporate Affairs (MCA) on 16 February 2015, the roadmap for Ind AS implementation is as follows:

Financial	YearApplicable to (Mandatory)
2016-17	<ul style="list-style-type: none"> Companies (listed and unlisted) whose net worth is equal to or greater than 500 crore INR Holding, subsidiaries, joint ventures or associates of these companies
2017-18	<ul style="list-style-type: none"> Listed Companies whose net worth is less than INR 500 crore Unlisted companies whose net worth is equal to or greater than 250 crore INR and all listed companies Holding, subsidiaries, joint ventures or associates of these companies
2018-19 onwards	When a company's net worth becomes greater than 250 crore INR

Net worth for a company is to be calculated in accordance with its stand-alone financial statement as at 31 March 201X or the first audited financial statements for accounting period which ends after that date.

For the purpose of computing the net worth, reference should be made to the definition under the Companies Act, 2013. In accordance with section 2 (57) of the Companies Act, 2013, net worth is computed as follows:

Net worth means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

Ind AS will apply to both consolidated as well as standalone financial statements of a company. Overseas subsidiary, associate, joint venture and other similar entity (ies) of an Indian company may prepare its stand-alone financial statements in accordance with the requirements of the specific jurisdiction. However, for group reporting purpose (s), it will have to report to its Indian parent under Ind AS to enable its parent to present CFS in accordance with Ind AS.

As per exemption under Rule 5, Insurance companies, banking companies and non-banking finance companies are not required to apply Ind AS for preparing their financial statements either voluntarily or mandatorily, as specified in the roadmap (sub-rule (1) of rule 4).

Principles of Ind AS

The entities' general purpose financial statements give information about performance, position and cash flow that is useful to a range of users in making financial decisions. These users include shareholders, creditors, employees and the general public.

A complete set of financial statements under Ind AS includes the following:

- ❖ Balance sheet at the end of the period
- ❖ Statement of profit and loss for the period
- ❖ Statement of changes in equity for the period
- ❖ Statement of cash flows for the period; notes, comprising a summary of significant accounting policies and other explanatory information
- ❖ Comparative financial information in respect of the preceding period as specified
- ❖ Balance sheet as at the beginning of the preceding period when an entity applies an accounting policy retrospectively or makes a retrospective restatement of items in its financial statements, or when it reclassifies items in its financial statements having an impact on the balance sheet as at the beginning of the preceding period.

Transition to Ind AS is beyond "Accounting Change"

Considering the potential wide-ranging effects of the transition, the implementation effort would impact functions outside of the finance department, including IT, legal, sales, marketing, human resources, investor relations and senior management.

A number of related workstreams should be considered in this effort, including:

- Accounting and financial reporting system
- Taxation
- Business processes and systems
- Change management, communicating and training

Differences between Indian GAAP and Ind AS in certain critical areas

1. Ind AS 109 – Financial Instruments

Indian GAAP does not include mandatory guidance on accounting for financial instruments. Standards for accounting for financial instruments are used as a reference and have not been notified by the MCA. As per the existing roadmap, India will directly transition to Ind AS 109, ahead of the equivalent IFRS 9, which will be implemented in 2018 in other jurisdictions that have adopted IFRS or permit IFRS.

2. Ind AS 110 - Consolidated Financial Statements

Ind AS 110 establishes a single control model for all entities (including special purpose entities, structured entities or variable interest entities). The implementation of this standard will require management to exercise significant judgment to determine which entities are controlled and are, therefore, required to be consolidated. It changes whether an entity is consolidated, by revising the definition of control. This is a radical change in the Indian environment, because by applying the new 'control' definition, it may change which entities are included within a group.

3. Ind AS 115 – Revenue Recognition

The core principle of this standard is that an entity will recognize revenue when it transfers control over goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for underlying performance obligations arising from the transaction. This will require entities to use more judgment and make more estimates than under today's revenue standards. Ind AS 115 is likely to have an impact on the identification of performance obligations, warranties, sales incentives, right of return and options granting a material right. In such a scenario, it will be critical for companies to clearly understand the effects of the new standard, provide early communication to stakeholders and undertake advanced planning.

4. Ind AS 103 - Business Combination

Under extant Indian GAAP, there is no comprehensive standard for business combinations. There are separate standards that deal with amalgamation, consolidation and assets acquisition. Ind AS 103 will apply to all business combinations, including amalgamations. Once Ind AS 103 is effective, all assets and liabilities acquired will be recognized at fair value. Additionally, contingent liabilities and intangible assets not recorded in the acquiree's balance sheet are likely to be recorded in the acquirer's balance sheet on acquisition date. Goodwill on acquisition will not be amortized, but may only be tested for impairment.

Different terminology is used in Ind AS when compared to IFRS, e.g. the term 'balance sheet' is used instead of 'statement of financial position' and 'statement of profit and loss' is used instead of 'statement of comprehensive income'.



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INCOME TAX

TAXATION OF DIGITAL TRANSACTIONS - WAY FORWARD

Contributed by CA Ramprasad |

Finance Act 2016 has introduced Equalization Levy w.e.f 01-06-2016 on specified services provided by non-resident not having Permanent Establishment (here in after referred as Specified Non Resident - SPN) in India. It is levied @6% on the amount paid to SPN.

The levy refers to B2B transactions and not B2C transactions. This new levy introduced in line with the OECD BEPS action plan to tax e-commerce transactions.

The services covered under the levy so far are related to online advertisement, any provision for digital advertisement space or facility or service for online advertisement or any other service as may be notified by the Central Government.

Recommendations of the Committee:

The Committee on taxation of E-Commerce has made the recommendation for introduction of Equalization Levy on specified services by a separate chapter in the FA 2016. The report has defined the term "Specified Services".

Accordingly, the Specified services refer to:

- (I) *Online Advertising or any service, rights or use of software for online advertising including advertising on radio and television;*
- (II) *Digital Advertising Space;*
- (III) ¹*Designing, creating, hosting or maintenance of website;*
- (IV) *Digital space for website, advertising, emails, online computing, blogs, online content, online data or any other online facility;*
- (V) *Any provision, facility or service for uploading, storing or distribution of digital content;*
- (VI) *Online collection or processing of data related to online users in India;*
- (VII) *Development or maintenance of participative online networks;*
- (VIII) *Use or right to use or download online music, online movies, online games, online books or online software, without a right to make and distributed any copies there of;*
- (IX) *Online news, online search, online maps or global positioning system applications;*
- (X) *Online software applications accessed or downloaded through internet or telecommunications networks;*

¹Items in italic are not yet introduced.

- (XI) *Online software computing facility of any kind for any purpose;*
- (XII) *Any facility or service for online sale of goods or services or collecting online payments;*
- (XIII) *Reimbursement of expenses of a nature that is included in any of the above.*

Though the committee has recommended a big list of specified services the Finance Act, 2016 has made the applicability of Equalization Levy for the time being only on online advertisement services only.

Changes brought in Service Tax Levy² :-

With effective from, 01.12.2016, service tax will be levied on cross border online transactions. This levy has been extended to include services provided to non-business entities (referred to as "Non Assessee Online Recipient-NAOR i.e Government, Local Authority, Government Authority or individual in taxable territory³). As result of these changes service tax will be levied on B2c transactions also.

The levy has been expanded by defining the term "Online Information Database Access or Retrieval Services"(OIDAR) to include providing cloud services, provision of e-books, movie, music, digital data storage, online gaming etc...

The Way Forward:

If one look closely at the recommendations of the committee and changes in service tax from 01-12-2016 there could be possibility that few more services will be made subject to Equalization Levy through FA 2017. The new services could include cloud computing services, online movies, music, e-books download etc...

The interesting thing to be observed is in addition to expanding the scope of specified service whether changes would include bringing B2C transactions under the levy?

The Committee on taxation of E-Commerce has specifically expressed concern that no Equalization levy is payable on B2C transactions considering the compliance and administrative cost in collecting the revenue. So if Government follows the recommendations of the committee there won't be Equalization Levy on B2C transactions.

Conclusion:

We can expect more services to come under Equalization Levy in future and B2C transactions will be spared of new levy at least for the time being.

²For detailed discussion please refer to December, 2016 WIKI

<http://sbsandco.com/wpcontent/uploads/2016/12/December%20-2016%20e-Journal.pdf>

³Under the new changes in Service Tax (W E F 01-12-2016) if the OIDAR services are provided to NAOR non-resident service provider has to pay the tax.



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INDIRECT TAX

APPLICABILITY OF SERVICE TAX ON LICENSE FEE – PROHIBITION & EXCISE

Contributed by CA Sri Harsha & CA Manindar |

There were many audits conducted by the service tax authorities in and around Hyderabad during the last month on hotels, bars and restaurants. One of the common audit observation is the applicability of service tax on license fee paid to Government of Telangana to obtain license to sell alcohol in their hotels, bars and restaurants. The said applicability is pursued from the angle of reverse charge mechanism in light of the changes made to Finance Act, 1994 vide the Finance Act, 2015. We shall try to understand the changes brought in through Finance Act, 2015 and whether service tax has to be paid on such amounts paid to Government of Telangana.

Initially, when negative list of taxation has been introduced, all the services provided by Government or Local Authority except certain notified services were covered under the ambit of negative list. One of such exception is the support services provided to business entities. That is to say support services provided by Government or Local Authority to business entities is subjected to service tax. Further, the definition of support services was provided vide Section 65B(49) as *'means infrastructural, operational, administrative, logistic, marketing or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall include advertisement and promotion, construction or works contract, renting of immovable property, security, testing and analysis'*.

Hence, if any services are provided by Government or Local Authority which are in the nature of support services as defined above, then such service shall be out of negative list and accordingly service tax becomes payable. Then comes the question of who is obliged to pay such service tax. Notification No 30/2012-ST dated 20.06.2012 vide Entry 6 states that the person receiving such services from Government or Local Authority were obliged to pay service tax on such services. That is to say, such services are under the reverse charge mechanism thereby putting the service receiver as the service provider.

The phrase 'support' has been dropped from the entry in the negative list in light of Section 109 of the Finance Act, 2015 with effective from 01.04.2016 and the definition of 'support services' has been omitted with effective from the same date. The phrase 'support' in the negative list was omitted by substituting with the phrase 'any service'. Hence, with effective from 01.04.2016, any service provided by Government and Local Authority has become taxable in the hands of the service receiver leading to widening the ambit of the entry.

Consequent to such amendment being made and bringing any service provided by Government or Local Authority into tax net, the Central Government in public interest has granted certain exemptions vide Notification No 25/2012-ST dated 20.06.2012. One of such exemption is Entry 58, which deals with exemption from payment of service tax for services provided by Government or Local Authority by way of –

- a. **registration required under any law for the time being in force;**
- b. testing, calibration, safety check or certification relating to protection of workers, consumers or public at large, required under any law for the time being in force.

Hence, if the services provided by Government or Local Authority are in the nature of granting of registration required under any law, any amounts paid towards such services are exempted and does not require any obligation under service tax.

With this understanding of the law, we shall now try to understand, whether amounts paid to Government of Telangana as license fee to sell or buy alcohol is subjected to service tax under the reverse charge mechanism in the hands of service receiver. The department has taken a stand that since this is a service provided to the hotels/bars/restaurants, such entities has to pay service tax on such license fee under reverse charge. The above stand is not in accordance with the law as explained hereunder.

Sale of excisable article without a license is prohibited in terms of Section 15 of The Andhra Pradesh Excise Act, 1968. Section 28 deals with the License and permits and states that such licenses shall be granted only on payment of fee and adherence to conditions prescribed. The State Government is empowered to make rules to administer the Act vide Section 72.

In exercise of such powers, the State Government has issued The Andhra Pradesh Excise (Grant of License of Selling by Bar & Conditions of License) Rules, 2005 (for brevity 'Rules') vide GO MS No 997 Revenue (Ex II) Dept dated 24.05.2005.

Rule 4 of the said rules deals with grant of license. A license in Form -2B may be granted to an establishment licensed by local authority to serve food such as Hotel or Restaurant, for the sale of Indian Made Foreign Liquor (IMFL) and Foreign Liquor (FL) in glasses or pegs for consumption within the licensed premises but not for sale of IMFL and FL for removing it out of the licensed premises.

Rule 48 of the said rules deal with suspension, withdrawal or cancellation of a license which states that the license can be suspended, cancelled or withdrawn in accordance with the provisions of Section 31 and 32 of The Andhra Pradesh Excise Act, 1968. One of the condition under Section 31 to cancel or suspend the license is failure to pay the duty or fee payable by the holder.

Therefore, on a plain perusal of Section 15 read with Section 28 read with Rule 4 and Rule 48 of the said Rules read with Section 31, it can be concluded that without payment of license fee to the Government of Telangana, no establishment is allowed to buy or sell any excisable article, in this case, alcohol. Hence, the license fee is nothing but sort of registration required under the Andhra Pradesh Excise Act, 1968 and without which it cannot render any sale as per the relevant provisions extracted above.

Since the license fee paid is a registration fee, the said amounts are exempted vide Entry 58 of Notification No 25/2012-ST dated 20.06.2012 and accordingly no service tax is payable by hotels/bar/restaurants in the opinion of paper writers. The service tax authorities might resort to a different interpretation by strictly observing the phrase 'registration' in Entry 58 of Notification 25/2012 and may deny the above stating that the license fee paid does not assume the colour of registration. Circular 192/02/2016-ST dated 13.04.2016 vide Entry 5 has clearly clarified that '*service tax is leviable on any payment, in lieu of any permission or license granted by the Government or Local Authority*'. The Circular shall be of great help to the authorities to raise demands on the tax payers and it is till the courts quash such circulars, the pain shall remain.



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COMPANIES ACT , 2013**RULES, CIRCULARS AND NOTIFICATIONS ISSUED DURING THE MONTH OF DECEMBER, 2016****RULES**❖ **The Companies (Transfer of Pending Proceedings) Rules, 2016, Dt: 07.12.2016.**

Vide the said rules, the Ministry has notified the manner in which the pending Winding-up Petitions filed under various situations, be transferred to benches of the Hon'ble Company Law Tribunal or to be dealt by the High Court. The Rules shall come into force with effect from the 15th December, 2016, except rule 4, which shall come into force from 1st April, 2017.

http://mca.gov.in/Ministry/pdf/CompaniesTransferofPending_08122016.pdf

❖ **The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, Dt:14.12.2016.**

The Ministry has notified the rules relating to the procedural aspects pertaining to the provisions of Sections 230 to 233 and from sections 235 to 240 of the Act, relating to Compromise, Arrangements and Amalgamations. The said sections were notified with effect from 07.12.2016.

http://mca.gov.in/Ministry/pdf/compromisesrules2016_15122016.pdf

❖ **The National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016, Dt:15.12.2016**

Vide the said rules, the Ministry has notified the procedure for filing application or petition before the Hon'ble Company Law Tribunal, for Reduction of share capital under section 66 under the Act. The said section was notified with effect from 07.12.2016.

<http://mca.gov.in/Ministry/pdf/NCLTRules2016.pdf>

❖ **The National Company Law Tribunal (Amendment) Rules, 2016, Dt:20.12.2016.**

Vide the said amendment rules, the Ministry has notified certain new provisions to the existing Rules with respect of presentation of joint petition, Multiple remedies, and has also notified the procedure for filing of application with the Hon'ble Company Law Tribunal, for the cancellation of variation rights. [http://mca.gov.in/Ministry/pdf/NCLT\(Amendment\)Rules_21122016.pdf](http://mca.gov.in/Ministry/pdf/NCLT(Amendment)Rules_21122016.pdf)

❖ **The Companies (Removal of names from the Companies from the Register of Companies) Rules, 2016, Dt:26.12.2016**

Vide the said rules, the Ministry has notified the procedural aspects pertaining to the provisions of Sections 248 to 252 of the Act, relating to Striking-off of the name of the Company/Removal of the name of the Company from the Register maintained by the ROC. The said sections were notified with effect from 26.12.2016. However, the forms as notified vide the said rules, are yet to be placed in the MCA Portal. http://mca.gov.in/Ministry/pdf/Rules_28122016.pdf

❖ **The Companies (Incorporation) Fifth Amendment Rules, 2016, Dt:29.12.2016**

Vide the said rules, the Ministry has amended the principal Incorporation rules. The Form INC-2 has been discontinued, and Form INC-7 to be used for incorporating Part I Companies and companies with more than seven subscribers only. Further the existing Form INC-29, was replaced with Form INC 32 (SPICe), and substitution of Form INC-27 with a new form.

http://mca.gov.in/Ministry/pdf/5th_Amendment_Rules_29122016.pdf

NOTIFICATIONS❖ **Applicability of various sections, Dt:07.12.2016:**

Vide the said notification, the Ministry has notified the commencement of various sections of the Act w.e.f 15th December 2016. With this commencement notifications, most of the provisions of the Act, come in to force. http://mca.gov.in/Ministry/pdf/commencementnotif_08122016.pdf

❖ **Corrigendum to the Notification Dt:17.11.2016, in connection with Schedule-II to the Act, Dt:09.12.2016:**

Vide the said notification, the Ministry has corrected an typo error in the Notification Dt:17.11.2016, in connection with Schedule-II. <http://mca.gov.in/Ministry/pdf/SCHEDULE2CORRIGENDUM.pdf>

❖ **Delegation of powers to Regional Directors under section 458 of the Act, Dt:19.12.2016**

Vide the said notification, the Ministry has delegated the powers and functions vested in the sections as listed out the notification to the Regional Directors at Mumbai, Kolkatta, Chennai, New Delhi, Ahmedabad, Hyderabad and Shillong.

http://mca.gov.in/Ministry/pdf/Notification_PowerRD_20122016.pdf

❖ **Applicability of provisions under Section 248 to 252 of the Act, Dt:26.12.2016:**

Vide the said Commencement notification, the Ministry has appointed 26th December 2016, as the date from which the provisions of Section 248 to 252 of the Act, relating to Striking-off of the name of the Company/Removal of the name of the Company from the Register maintained by the ROC, shall come in force. http://mca.gov.in/Ministry/pdf/Notificatiion_28122016.pdf

❖ **Exemption from applicability of certain provisions of the Companies Act, 2013 to Specified IFSC private companies and Specified IFSC Unlisted Public Companies, Dt:04.01.2017**

Vide Two Separate Notifications, the Ministry has exempted/modified the applicability /applicable with some adaptations, the various provisions of the Act, to a private company and a Unlisted Public Company, which is licensed to operate by the Reserve Bank of India or the Securities and Exchange Board of India or the Insurance Regulatory and Development Authority of India from the International Financial Services Centre located in an approved multi services Special Economic Zone set-up under the Special Economic Zones Act, 2005 (28 of 2005) read with the Special Economic Zones Rules, 2006 (hereinafter referred to as "Specified IFSC private company").

Private :http://mca.gov.in/Ministry/pdf/IFSC_Private_04012017.pdf

Public:http://mca.gov.in/Ministry/pdf/IFSC_Public_04012017.pdf

CIRCULARS❖ **Clarification with regard to generating the challans and filing the form with IEPF authority under the Act, Circular No.13/2016, Dt:05.12.2016:**

Vide the said Circular, the Ministry has clarified that it is mandatory to generate challan, through online mode for depositing amounts to IEPF and file form IEPF 1, mentioning the said Challan. Time was given till 15.12.2016, for acceptance of the IEPF challans not generated on MCA-21 portal.

http://www.mca.gov.in/Ministry/pdf/GCircular_06122016.pdf

❖ **Relaxation of additional fees and extension of last date of filing of forms MGT 7(Annual Return) and AOC 4(Financial Statement) under Companies Act 2013, for the state of Jammu and Kashmir, Circular No.14/2016, Dt:07.12.2016:**

Vide the said Circular, the Ministry has relaxed the additional fees payable by the companies having registered offices in the State of Jammu and Kashmir, in connection with the filing of the Annual Return forms viz., e-form AOC-4, AOC (CFS), AOC- 4 XBRL and e- Form MGT-7, relating to for the FY 2015 – 2016, up to 31.12.2016.

http://mca.gov.in/Ministry/pdf/General_Circular_14-2016_07122016.pdf

❖ **Clarification regarding due date of transfer of shares to IEFCA Authority, Circular No.15/2016, Dt: 07.12.2016:**

Vide the said Circular, the Ministry has informed that the Ministry is considering the matters relating to simplification of transfer process of shares as required under the IEPF Rules, extension of due date for transferring the shares and accordingly, the existing rules are likely to be revised in due course.

http://mca.gov.in/Ministry/pdf/Gcircular15_08122016.pdf

❖ **Removal of names of companies from the Register of Companies- clarification regarding availability of Form STX on MCA-21 portal, Circular No.16/2016, Dt:26.12.2016:**

Vide the said Commencement notification, the Ministry has appointed 26th December 2016, as the date from which the provisions of Section 248 to 252 of the Act, relating to Striking-off of the name of the Company/Removal of the name of the Company from the Register maintained by the ROC, shall come in force. However, the required e-form STK-2, is still under development, and accordingly, vide the said Circular, the Ministry has requested the stake holders to bear with the inconvenience caused. http://mca.gov.in/Ministry/pdf/General_Circular_16_2016_26122016.pdf

ORDERS

❖ **The Companies (Removal of Difficulties) Fourth Order, 2016, Dt:15.12.2016:**

Whereas certain difficulties have arisen in connection with the transfer of proceedings under the Companies Act, 1956 from the High Courts to the benches of the Hon'ble Company Law Tribunal. Vide the ROC, the Ministry has inserted couple of provisos to remove the difficulty.

http://mca.gov.in/Ministry/pdf/CompaniesROD_08122016.pdf

These updates are contributed by K. Bhavani and vetted by CS D V K Phanindra of SBS and Company LLP, Chartered Accountants. For any queries, please reach at phanindra@sbsandco.com

IDT UPDATES**SERVICE TAX****Notification No. 52/2016**

Exemption has been provided from charging service tax on services provided by any banking company, financial institution including non-banking financial company or any other person to any person in relation to settlement of an amount up to ₹ 2,000/- in a single transaction when transacted through credit card, debit card, charge card or other payment card service.

Notification No. 53/2016

Person located in non-taxable territory providing online information and database access or retrieval services to a non-assesse online recipient located in taxable territory may issue online invoices not authenticated by means of a digital signature for a period upto 31st January, 2017.

These updates are contributed by Sai Ram and vetted by CA Manindar of SBS and Company LLP, Chartered Accountants. For any queries reach at manindar@sbsandco.com

DEBT & EQUITY ADVISORY

DEA UPDATES

1. Union Budget 2017 on 1st February:

Breaking away with the age long tradition of presenting the Indian Union Budget on the last day of February month, the Indian Government announced for presentation of the Budget a month in advance.

Presenting the Union Budget on 1st Feb instead of 28th (or 29th) Feb has the following advantage:

- The Finance Bill can be approved, getting all legislative approvals for annual spending and tax proposals, to be over by 31st March, before beginning of new financial year on 1st April.
- The delay in the several tax proposals coming into effect only after the Finance Bill is passed in May (earlier position) would be gone away, helping the companies and households to finalise their savings, investment and tax plans.
- The government expenditure can begin from 1st April, unlike the earlier delay of one month for getting approvals for spending.

Another significant departure from the traditional Budget presentation is the ***merging of Railway Budget in the Union Budget itself***, which had been presented separately since the last 92 years.

2. Likelihood for a change in Financial year to Jan -Dec:

The Government is considering the proposal of Government's think-tank NITI Aayog to change in the Financial Year (1st Apr- 31st Mar) to 1st Jan – 31st Dec, in sync with the calendar year. Committee set up by the government in this regard has supported the move and listed out the pros and cons of a shift in the accounting period. While the economists are divided on the committee's recommendations, Chartered Accountants point out that the change will not impact the common man.

3. Demonetisation – Success or failure:

Demonetisation has several objectives like flushing out the black money hoarded in cash, converting the cash based economy into a digital one and achieving low crime rate making terror funding difficult and traceable.

While demonetisation could be of slow one or surgical one, but Indian Government chose for Surgical demonetisation, main aim being capturing black money hoarded in cash. It is of wide opinion that the surgical demonetisation has failed in this objective.

However, the demonetisation has positive impacts too. First, it broke the ***"chaltahain"*** attitude towards taxation rules. Though being one of aims of demonetisation earlier, the digital push has now become the main focus and can be said as the true success of Demonetisation move.

4. CRR ratio hiked in November has been withdrawn in its December Monetary policy review:

Banks witnessed large increase in liquidity post demonetisation and RBI, on Nov 26 of 2016 had hiked the Cash Reserve Ratio (CRR) by 100 % of the increase in net demand and time liabilities (NDTL) of Scheduled Banks between Sept 16 and Nov 11 of 2016. Later, with enhancement in ceiling limit for issue of securities under Market Stabilization Scheme (MSS), on 7th Dec, RBI has withdrawn the incremental CRR. The liquidity released by the discontinuation of the incremental CRR would be absorbed by a mix of MSS issuances and liquidity adjustment facility (LAF) operations.

5. Banks cut home loan interest rates, Benefit passed on only to loans linked to MCLR:

Following the Government's call to the Banks for cutting lending rates (taking into consideration the huge deposits received in banks post demonetisation), the Indian Banks have cut down the Home loan lending rates sharply. (SBI has cut its MCLR across all tenors by 90 basis points). The corporates and big players will more likely to get the immediate benefit as their loans are linked to MCLR. Thus, the old borrowers on base rate need to take a call on switching to MCLR or not taking into consideration the processing & other costs.

6. Pradhan Manthri Awas Yojana - broader interest subsidy:

The Prime Minister of India, in his speech to public on 31st Dec 2016, announced for interest subvention of 4 % and 3 % on loans upto Rs. 9 lakhs and Rs. 12 lakhs respectively, against the initial scheme of providing loans upto Rs. 6 lakhs at subsidised rate of 6.5%. This is aimed for easing home loans to middle income category individuals.

7. Section 80 EE – Additional deduction of Rs. 50,000/- for home loans:

The Indian Government, in furtherance of the goal of providing 'housing for all', proposed to provide additional deduction in respect of interest on loan taken for residential property from any financial institution upto Rs. 50,000 under Section 80 EE of Income tax Act (in addition to the earlier deduction of Rs. One lakh). This applies for home loans amount not exceeding 35 lakhs sanctioned between 1st Apr 2016- 31st Mar 2017 for house property value < Rs. 50 lakhs. This is in addition to the deduction allowed under Sec 24 of the Act.

8. Fed increases interest rates for the second time in last decade:

As expected, US Federal Reserve has hiked FED Funds rate by 25 bps to 0.75% and also guided towards three rate hikes in 2017. This would result in temporary flow of capital into US government bonds as the returns will be higher. To India, Dollar outflows from India could weaken the rupee which puts pressure on government finances due to inflation of import bill with the crude prices on the rise and impacts Indian economy in several other ways.

These updates are contributed by P.Uday Kumar and vetted by CA Rajesh of SBS and Company LLP, Chartered Accountants. For any queries reach at rajeshd@sbsandco.com

TECHNICAL SESSIONS:

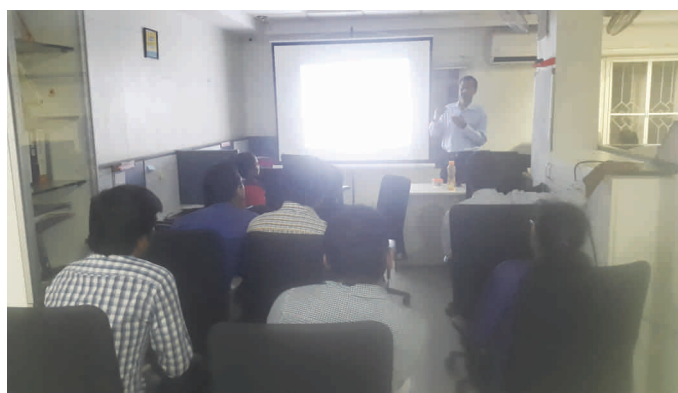
S.No.	Event	Date	Speaker	Venue
1	Insights into 'Right to Information Act, 2005'	20/01/2017	CA Manindar K	SBS - Hyd
2	Import and Export of Goods – FEMA Regulations – Part III	27/01/2017	CA Murali Krishna G	SBS - Hyd
3	Insights into 'Insolvency and Bankruptcy Code, 2016'	03/02/2017	CA Rajesh D	SBS - Hyd

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 two days in advance to make appropriate arrangements. The relevant material will be hosted at slideshare shortly after the session. The link to download is <http://www.slideshare.net/Team-SBS>



Interpretation of Status – Part I - CA Sri Harsha K



Import and Export of Goods – FEMA Regulations – Part II - CA Murali Krishna G



Role of Internal Auditor vis-a-vis Internal Controls - CA Bhyrav

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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 (Urban), Vizag, Andhra Pradesh

Bengaluru: B104, RIRCO, Santosh Apartments, Wind Tunnel Road, Murugeshpalya, Old Airport Road, Bengaluru, Karnataka.

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