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By

SBS and Company LLP
Chartered Accountants



Make in India - Labour Laws



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COMPANIES ACT

[UNDER SCHEDULE-II TO THE COMPANIES ACT, 2013]

Contributed by CA Murali Krishna, CS Phanindra DVK & CA Sai Ram Prakash |

All are aware that the Companies Act, 2013, came in to fore, as an updated mixed bag of regulations, to cater the business needs of the changing economic environment thereby providing sustainable growth and better corporate governance. The Act has roped in many new concepts, thereby making the enactment to be at par with International Standards, and also to be in co-relation with the Accounting Standards.

In this context, the provisions relating to depreciation have been listed in Schedule II to the Companies Act, 2013, thereby replacing the provisions of the Schedule XIV to the Companies Act, 1956. The provisions of Schedule II have been applicable from the FY 2014 – 2015.

Through this Article an effort is being made to list out the changes/provisions, so as to enable the co-professionals and Corporates, to understand better for easy implementation.

Computation of Depreciation based on Useful Life:

Unlike under the Companies Act, 1956, wherein depreciation rates have been prescribed on rate basis/shift wise, the concept of depreciation on the basis of Useful life of the asset, has been brought in. Apart from this, the provisions relating to Amortisation in respect of an Intangible Asset, which hitherto were not available in Schedule XIV to the Companies Act, 1956, have also been listed in Schedule-II.

Structure of the Schedule:

Clause 1 of Part-A, defines depreciation, depreciable amount and the concept of useful life of an Asset.

Sub-Clause ii of Clause 3 of Part-A, deals with the Amortisation of Toll Roads, created under 'Build, Operate and Transfer', 'Build, Own, Operate and Transfer' or any other form of public private partnership route in case of road projects, and for other intangible assets, the provisions of the accounting standards applicable for the time being in force shall apply.

Part-B of Schedule II deals with the non-applicability of the useful life or residual value in respect of a particular asset, and applicability of the rates as notified for accounting purposes by a Regulatory Authority constituted under an Act of Parliament or by the Central Government, in respect of such asset.

Part-C of Schedule-II, prescribes the useful life of various Tangible Assets, in respect of companies, not covered under Part-B. The schedule also details the list of assets, for which **No Extra Shift Depreciation [NESD]** is permitted/allowed.

Notes to the Schedule: Notes detail the various aspects in the process of calculating depreciation, the basis on which depreciation is to be computed for extra shift in respect of an Asset.

[For the purpose of Schedule-II, Depreciation includes Amortisation.]

Aspect of difference:

The following table compares the provisions under both the Acts, for the basic elements of calculating depreciation:

| Sl. No. | Particulars/Aspect | Under CA, 2013 | Under CA, 1956 |
|---------|--------------------------------------|--|---|
| 1 | Useful life | Useful life for various assets has been specified in Part C of Schedule II. | Concept not available/ Not Applicable |
| 2 | Residual value | The residual value of an asset shall not be more than 5% of the original cost of the asset. | Concept not available/ Not Applicable |
| 3 | Cost of asset | As per accounting standards(AS)i.e., AS-10,AS-6,AS11 | Concept not available/ Not Applicable |
| 4 | Rate of depreciation | No rates of depreciation, prescribed. Depreciable amount to be arrived basing on the useful life of the asset | Asset wise depreciation rates are specified for both methods i.e., Straight Line Method and Written Down Valuemethod in Schedule XIV, for 1, 2 and 3 Shifts of operation. |
| 5 | Method of Depreciation | Schedule-II, as such does not prescribe any method of depreciation, and depreciation amount to be arrived basing on the useful life of the asset. ¹ | The Company may either adopt Straight Line Method or Written Down Value Method, in computing the depreciation based on the rates prescribed in the Schedule. |
| 6 | Monetary limit for 100% depreciation | No reference / Limit | Assets whose actual cost does not exceed Rs.5000/-, shall be depreciated at the rate of 100% |

¹In **Para-33** of the **Application guide on the provisions of Schedule II to the Companies Act, 2013**, issued by the ICAI, a formula has been prescribed for existing companies, who have been using WDV as the method of depreciation, to calculate a new rate of depreciation to depreciate the asset over their remaining useful life using the following formula as per WDV method:

$$R = \{1 - (S/C)^{1/N}\} \times 100$$

Where **R** = Rate of Depreciation (in %), **N** = Remaining useful life of the asset (in years), **S** = Scrap value at the end of useful life of the asset, **C**= Cost of the asset/Written down value of the asset.

Concepts and Aspects discussed along with illustrations:

As we all are aware that Depreciation is the systematic allocation of the depreciable amount of an asset over its useful life.

Depreciable amount of an asset = Cost of an asset or [other amount substituted for cost]² less its residual value.

Depreciation for the year = (Cost of the asset or substitute cost – Residual value)/Useful life.

1. Cost of the asset:

Cost of the asset is arrived by applying the relevant accounting standards i.e., AS-10,AS-11,AS-16,AS-26 any other if applicable ,as issue by the Institute of chartered accountants of India

2. Useful Life:

The useful life of an asset is the:

- ➔ period over which an asset is expected to be available for use by an entity; or
- ➔ number of production or similar units expected to be obtained from the asset by the entity.

Useful lives of Tangible Assets are listed out in Part-C of Schedule II.

3. Residual Value:

Residual value of an Asset is the expected value of the Asset after its useful life, and as per Schedule-II, the residual value of an asset shall not be more than 5 % of the original cost of the asset.

The Difference in calculating Depreciation under the Companies Act, 2013 and 1956, is explained below in the form of a example:

| Sl. No. | Particulars | As per Companies Act, 2013 | | As per Companies Act, 2013 | |
|---------|---|----------------------------|-------------------------|----------------------------|-------------------------|
| | | Depreciation as per SLM | Depreciation as per WDV | Depreciation as per SLM | Depreciation as per WDV |
| A | Date of purchase - Projecting equipment of film exhibiting concerns | 01-04-2010 | 01-04-2010 | 01-04-2010 | 01-04-2010 |
| B | Cost of the asset | 10,00,000 | 10,00,000 | 10,00,000 | 10,00,000 |
| C | Rate of depreciation | NA | #65% | 7.07% | 20% |
| D | Residual value | Nil | 1* | Nil | Nil |
| E | Useful life | 13years | 13years | Not specified | Not specified |
| F | Amount of depreciation for the year [b x c] (except for column 1) | 76,923 | 6,50,000 | 70,700 | 2,00,000 |
| G | Net carrying value | 9,23,077 | 3,50,000 | 9,29,300 | 8,00,000 |

²The cost of a fixed asset may undergo changes subsequent to its acquisition or construction on account of exchange fluctuations, price adjustments, and changes in duties or similar factors. Substituted cost also includes value assigned as per revaluation in accordance with Accounting Standard 10(AS 10)

#WDV: $R = \{1 - (1/10,00,000)^{1/13}\} \times 100$

*While calculating the rate of depreciation under WDV method residual value can never be Zero because the rates will 100% when zero is substituted in formula.

Q & A:

Q. Will there be any change in the amount of depreciation to be charged as per the New Act in comparison with the Companies Act, 1956 ?

A. Yes. Since there is a change in the method of calculation obviously there will be change in the amount of depreciation to be charged as per new act.

Q. Where are the useful lives for various categories of assets listed in the Schedule?

A. Useful lives of only Tangible Assets are listed in Part C of Schedule II to the Companies Act, 2013, and the useful life of Intangible Assets are not provided in the Schedule.

Q. Is the useful life mentioned in Part-C of Schedule II of new act is applicable to all companies and the effective date of its applicability?

A. (i) Yes the useful lives mentioned in the schedule is applicable for all companies, except for those Companies or assets where useful lives or residual value are prescribed by a regulatory authority constituted under an act of the Parliament or by the Central Government.

For example electricity companies have to charge the depreciation at the rates prescribed by the **CENTRAL ELECTRICITY REGULATORY COMMISSION** or such other regulatory board, which governs them.

(ii) The Schedule II provisions are applicable from the financial year 2014-15.

Q. Whether useful lives and residual value can be taken other than mentioned in Schedule II?

A. Yes, but the variation should not result in useful life of an asset being more than useful life mentioned in the Part-C, and the residual value not more than 5 % of the Original cost of the Asset, i.e., variation of both the Useful Life and the residual value may be less than the tenure mentioned in the Schedule and less than 5 % of the original cost of the asset, respectively.

Where a company adopts a useful life different from the limits specified in Part C or uses a residual value different from the limit specified above, the financial statements shall disclose such difference and provide justification in this behalf duly supported by technical advice.

Q. How and Who can we assess the useful lives and residual value of the asset?

A. Now, in order to compute the depreciation of each and every asset, the Useful Life and the residual value shall have to be computed. The person with technical knowledge on respective class of assets has to assess the useful lives and residual value.

Assessment of Useful lives: Determination of the useful life of a depreciable asset is a matter of estimation and is normally based on various factors including experience with similar types of assets. Such estimation is more difficult for an asset using new technology or used in the production of a new product or in the provision of a new service but is nevertheless required on some reasonable basis.

Assessment of residual value: AS 6 states that determination of residual value of an asset is normally a difficult matter. If such value is considered as insignificant, it is normally regarded as nil. On the contrary, if the residual value is likely to be significant, it is estimated at the time of acquisition/installation, or at the time of subsequent revaluation of the asset. One of the bases for determining the residual value would be the realisable value of similar assets which have reached the end of their useful lives and have operated under conditions similar to those in which the asset will be used after allowing for the effect of any anticipated developments such as significant technological changes. The possible effects of future price-level changes (inflation) in estimating residual values should not be considered because anticipated increases in residual values as a result of inflation represent gain contingencies that should be recognized only when realized.

The following is the analysis on **residual value** which explains the impact in the case of WRITTEN DOWN VALUE.

| Residual value | 0 | Rs.1 only | 1% | 2% | 3% | 4% | 5% |
|-------------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| Cost of the asset | 10,00,000 | 10,00,000 | 10,00,000 | 10,00,000 | 10,00,000 | 10,00,000 | 10,00,000 |
| Residual value in Rs. | 0 | 1 | 10,000 | 20,000 | 30,000 | 40,000 | 50,000 |
| Useful life | 5 | 5 | 5 | 5 | 5 | 5 | 5 |
| Rate of depreciation | 100.00 | 93.69 | 60.19 | 54.27 | 50.41 | 47.47 | 45.07 |
| Amount of Depreciation | | | | | | | |
| Year I | 10,00,000 | 9,36,904 | 6,01,893 | 5,42,695 | 5,04,066 | 4,74,694 | 4,50,720 |
| Year II | - | 59,115 | 2,39,618 | 2,48,177 | 2,49,983 | 2,49,360 | 2,47,571 |
| Year III | - | 3,730 | 95,394 | 1,13,493 | 1,23,975 | 1,30,990 | 1,35,986 |
| Year IV | - | 235 | 37,977 | 51,901 | 61,484 | 68,810 | 74,694 |
| Year v | - | 15 | 15,119 | 23,734 | 30,492 | 36,146 | 41,028 |

Analysis of the above table:

- If the residual value is taken zero, it may lead to 100% depreciation.
- If Rs.1, is taken instead of zero there is a difference of Rs.63,096/- and if 1% of the cost of the asset is taken as residual instead of zero there is a huge difference of Rs.3,98,107/-. It leads to a huge impact in the statement of profit and loss at the initial years usage.
- Accordingly, corporates have to be more cautious in determining the residual value which can be helpful for more appropriate estimation of depreciation and in turn true and fair presentation of profit or loss for the company.

Q. Whether review of useful life is possible for the company if so how it has to be dealt?

A. Yes, review of useful life of an asset is possible.

Pursuant to Accounting Standard-6, the useful lives of major depreciable assets or classes of depreciable assets may be reviewed periodically. Where there is a revision of the estimated useful life of an asset, the unamortized depreciable amount should be charged over the revised remaining useful life.

Pursuant to Accounting Standard-5, an estimate may have to be revised if changes occur regarding the circumstances on which the estimate was based, or as a result of new information, more experience or subsequent developments. The revision of the estimate, by its nature, does not bring the adjustment within the definitions of an extraordinary item or a prior period item.

Q. How to work out Charging of depreciation on pro-rata basis?

A. Note No.2 to the Schedule-II to the Companies Act, 2013, provides that where, during any financial year, any addition has been made to any asset, or where any asset has been sold, discarded, demolished or destroyed, the depreciation on such assets shall be calculated on a pro rata basis from the date of such addition or, as the case may be, up to the date on which such asset has been sold, discarded, demolished or destroyed.

Accounting Standard-6, also provides for a similar provision.

Q. Can a company have a policy to depreciate 100% of cost of asset below certain amount?

A. Life of the asset is a matter of estimation, therefore the materiality of impact of such charge should be considered with reference to the cost of asset. The size of the company will also be a factor to be considered for such policy.

Accordingly, a company may have a policy to fully depreciate assets up to certain threshold limits considering materiality aspect in the year of acquisition. However, unlike the Schedule-XIV of the Companies Act, 1956, there is no such provision under Schedule II, of the Companies Act, 2013.

4. Component Accounting:

Though the Useful life specified in Part C of the Schedule-II, is for whole of the asset, where cost of a part of the asset is significant to total cost of the asset and useful life of that part is different from the useful life of the remaining asset, useful life of that significant part shall be determined separately.

Accordingly, a Component accounting requires a company to identify and depreciate significant components with different useful lives separately.

This can be understood with a small illustration:

XYZ co. Ltd purchases a multi-engine aeroplane on 1st April 2012. Its estimated useful life is 5 years. One of its engines got damaged on 31st March 2014. They purchased a new engine and replaced with damaged engine. The new engine also has 5 years useful life.

Accounting Treatment:

Normal Accounting: The whole purchase cost of new engine is charged to profit and loss account in the year of purchase.

Component accounting: Since the aeroplane and new engine has two different useful lives,

| Particulars | Remaining useful life |
|-------------|-----------------------|
| Aeroplane | 3years |
| New engine | 5years |

The new engine is to be capitalized as separate component of the asset and should be depreciated over a period of 5 years, with consequent expensing of net carrying value of the replaced part (i.e., the net carrying value of damaged part should be expensed)³.

Basis for determining the component:

The component or part should be of significant value of total cost of the asset.

Applicability of Component Accounting:

Component accounting is required to be done for the entire block of assets as at 1st April 2014, if a company opts to follow it voluntarily, and as at 1st April, 2015 mandatorily. It cannot be restricted to only new assets acquired after 1st April 2014 or 1st April, 2015 as the case may be.

³In order to determine the cost of such component following criteria can be used:

- (a) Break up cost provided by the vendor
- (b) Cost break up given by internal/external technical expert
- (c) Current replacement cost of component of the related asset and applying the same basis on the historical cost of asset

.5. Continuous Process Plant:

Continuous Process Plant means a plant which is required and designed to operate 24 hours a day. This means by the very design itself, it was intended to be used for 24 hours. Accordingly, such plants are not allowed any extra shift depreciation.

Certain Plant and machinery are used continuously, in order to meet the business requirements those will not fall the under the purview of continuous process plant. In such circumstances extra shift depreciation has to be allowed.

Double/ Triple Shift working:

In case of industries like manufacturing, textile etc., the plant & machinery is worked on double and triple shift basis.

Rate of Depreciation:

Except for assets in respect of which no extra shift depreciation is permitted (indicated by NESD), if an asset is used for any time during the year for double shift, the depreciation will increase by 50% for that period and in case of the triple shift the depreciation shall be calculated on the basis of 100% for that period.

Illustration for computing depreciation under Straight Line Method:

| Particulars | Normal working | Double shift | Triple shift |
|---|------------------|--|---|
| Cost of Heavy truck (Falls under the category of earth moving equipment) | Rs.1,00,00,000/- | Rs.1,00,00,000/- | Rs.1,00,00,000/- |
| Residual value | Rs.10,00,000/- | Rs.10,00,000/- | Rs.10,00,000/- |
| Useful life as per Schedule II | 9 Years | 9 Years | 9 Years |
| Extra shift working period | NA | 2 months | 2 months |
| Amount of depreciation | Rs.10,00,000/- | Rs.10,83,333/- {Rs.10,00,000+ (Rs.10,00,000*50%)* 2/12} | Rs.11,66,667/- {Rs.10,00,000+ (Rs.10,00,000*100%)* 2/12} |

6. Transitional Provisions:

Q. Now, the question arising in the minds, is what is to be done for computing the depreciation for the year 2014-15?

A. (i) New Companies: For Companies incorporated during FY 2014 – 2015, the provisions of Schedule-II will be applied basing on the useful life of the assets held by the Company, and accordingly the depreciation will be calculated.

(ii) Existing Companies: The carrying amount of the asset as on the date of coming in to effect of the Schedule, shall be depreciated over the remaining useful life of the asset

Case-I: A computer is purchased for Rs.1,00,000 on 01/04/2013.

Method of depreciation: Straight Line Method (SLM)

| Sl. No. | Particulars | For 2013-14 (Under CA, 1956) | 2014-15 (under CA, 2013) | 2015-16 (under CA, 2013) |
|---------|--------------------------------|---------------------------------|-----------------------------|-----------------------------|
| a. | Useful life | Not Applicable | 3years | 3years |
| b. | Remaining Useful life | Not Applicable | 2years | 1year |
| c. | Residual value | Not applicable | 5000 | 5000 |
| d. | Rate of depreciation | 16.21% | Not Required | Not required |
| e. | Amount of depreciation | 16210 | #39395 | #39395 |
| d. | Carrying value at the year end | 80790 | 44395 | 5000 |

Method of depreciation: Written Down Value (WDV)

| Sl. No. | Particulars | For 2013-14 (Under CA, 1956) | 2014-15 (under CA, 2013) | 2015-16 (under CA, 2013) |
|---------|--------------------------------|---------------------------------|-----------------------------|-----------------------------|
| a. | Useful life | Not Applicable | 3years | 3years |
| b. | Remaining Useful life | Not Applicable | 2years | 1year |
| c. | Residual value | Not applicable | 5000 | 5000 |
| d. | Rate of depreciation | 40% | *71.13 | *71.13 |
| e. | Amount of depreciation | 40000 | 42678 | 12322 |
| d. | Carrying value at the year end | 60000 | 17322 | 5000 |

$$\begin{aligned} *WDV: R &= \{1 - (\text{Residual value} / \text{Cost of the asset})^{1/\text{Remaining useful life}}\} \times 100 \\ &= \{1 - (5000/60000)^{1/2}\} \times 100 \end{aligned}$$

@Cost of the asset should be replaced with carrying value at year end

From the above illustration, it can be seen that the Computation of depreciation under Schedule-II, is fairly simple if the has been following the Straight Line Method (SLM) of depreciation and the asset will be depreciated equally over the new remaining useful life of the asset determined as per Schedule II.

However, if a company has been using Written Down Value (WDV) method of depreciation, it will need to calculate a new rate for depreciation to depreciate the asset over their remaining useful life using the formula for calculation of rate for depreciation under WDV method. Accordingly, many depreciation rates will have to be calculated for same class of assets.

$$\# \{ \text{Depreciable amount or Cost of the asset} / \text{Useful life} = \{(80970-5000)\} / 2$$

Case II: This illustration, deals with an asset in the financials existing as on 31.03,2014, which may not have any Useful Life and /or residual value (as per books, but can be used in reality). The accounting and the treatment in the financial statements for the FY 2014 – 2015, will be as below:

Straight line method:

| Particulars | Asset having no Residual Value | Asset has Residual value |
|---|--------------------------------|--------------------------|
| Date of purchase of computer | 01-04-2010 | 01-04-2010 |
| Cost of the asset | 1,00,000/- | 1,00,000/ |
| Useful life as per Schedule II | 3 | 3 |
| Remaining useful life | 0 | 0 |
| Carrying value as on 31.03.2014 | 35,160 | 35,160 |
| Residual value as assessed on 31.03.2015 | 0 | 5000 |
| Amount of depreciation to be charged for the FY 2014-15 | 35,160 | 30,160 |
| Carrying value as on 31.03.2015 | 0 | 5,000 |

Treatment in financial statements: ICAI has prescribed the following Two types of accounting treatments:

1. Charge the entire amount of depreciation to statement of profit and loss;or
2. Adjust the carrying amount of the assets to the retained earnings

If the Company opts for method 2 i.e., adjust the carrying amount of the assets to the retained earnings, the tax effect of the same also to be adjusted directly against the retained earnings.

Q. How to compute Depreciation in case of Revaluation of Assets ?

A. Schedule II to Companies Act, 2013 requires depreciation to be provided on historical cost or the amount substituted for the historical cost. Therefore, in case of revaluation, a company needs to charge depreciation based on the revalued amount.

Consequently, the ICAI Guidance Note, which allows an amount equivalent to the additional depreciation on account of upward revaluation to be recouped from the revaluation reserve, may not apply.

AS 10 allows amount standing to the credit of revaluation reserve to be transferred directly to the general reserve on retirement or disposal of revalued asset. A company may transfer the whole of the reserve when the asset is sold or disposed of. However, some of the surplus may be transferred as the asset is used by a Company. In such a case, the amount of the surplus transferred would be the difference

between depreciation based on the revalued carrying amount of the asset and depreciation based on its original cost. Transfers from revaluation surplus to the general reserve are not made through the statement of profit and loss.

Q. Company wants to change its depreciation policy to whole class of assets or for a particular class of assets from 1st April 2014 ?

A. In such a case, the provisions of AS 6 and AS 5 are to be applied first and then the transitional provisions are to be applied to the carrying value arrived.

The same is explained in the form of a Illustration:

Assuming that if the company wants to change its depreciation policy from Straight line method (SLM) to Written Down Value method (WDV), then the First thing that the Company has to do is work out the WDV for all the assets in the company using WDV method from the date of capitalization of the particular asset, as detailed below

| Particulars | Depreciation as per old policy (SLM), under CA, 1956 | Depreciation as per new policy (WDV), under CA, 1956 |
|--|--|--|
| Date of purchase | 01.04.2013 | 01.04.2013 |
| Cost of the asset | Rs. 1,00,000/- | Rs. 1,00,000/- |
| Useful life | Not specified | 3 Years |
| Rate of depreciation | 13.91 % | 40 % |
| Amount of depreciation till 31.03.2014 | Rs. 13,910/- | Rs. 40,000/- |
| Carrying value as on 01.04.2014. | Rs. 86,090/- | Rs. 60,000/- |

Since the amount of depreciation, charged as per SLM is less than amount now calculated under WDV, the difference i.e., Rs.26,090/- is debited/charged to Profit and Loss Statement as excess depreciation on account of change in accounting policy in accordance with Accounting Standard-5.

Now, comes the computation of the depreciation amount for the FY 2014 – 2015 under WDV.

| Particulars | Amount (Rs.) |
|--|------------------|
| Carrying value as on 01-04-2014 | 60,000/- |
| Remaining useful life | 2 Years |
| Rate of depreciation | ^s 78% |
| Residual value | 3,000.00 |
| Amount of depreciation | 46,800.00 |
| Carrying value as on 31-03-2015 | 13,200.00 |

$$^sR = \{1 - (3000 / 60000)^{1/2}\} \times 100$$

*This article is contributed by CA Murali Krishna, CS Phanindra DVK & CA Sai Ram Prakash.
The author can be reached at gmk@sbsandco.com*

INCOMETAX

PROCEDURE FOR RESPONSE TO ARREAR OF DEMAND BY TAXPAYER AND ACTION OF THE ASSESSING OFFICER¹

Contributed by CA Ram Prasad |

The CBDT Vide Instruction No. 4 of 2014 prescribed Standard Operating Procedure (SOP) for Verification and Correction of Demand available or uploaded by AO in CPC Demand Portal. Online facility² has been provided to taxpayers to provide online responses to such demands.

Action to be performed by the taxpayer:

- ✓ Logon to e-filing website. Go to E-file menu and click on “Response to Outstanding Tax Demand”;
- ✓ Click on “Submit” link under Response Column for the respective Assessment Year to submit the response;
- ✓ Tax Payer has to select one of the three options from radio button i.e Demand is Correct **Or** Demand is Partly Correct **Or** Disagree with the demand;
- ✓ If taxpayer selects demand is correct, any refund due will be adjusted against outstanding demand along with the interest. If no refund is due, taxpayer has to pay the outstanding demand;
- ✓ If taxpayer selects demand is partially correct, then the amount which is correct and which is not correct has to be entered;
- ✓ If taxpayer selects demand is incorrect he should mandatorily give one or more reasons; (See Annexure I).

Wherever the taxpayer finds it difficult to access to Income Tax Department Website, he or she may make necessary application to the Assessing Officer along with the prescribed details. (See Annexure I)

Action by the Assessing Officer:

Demand due to mismatch of TDS:

If taxpayer’s reply or departmental records show that the demand is on account of TDS mismatch the AO has to follow the below stated steps:

- **TDS credits are available in the system:** AO should reduce the demand by passing rectification order U/S 154 on the system after taking into account the TDS credits available on the system. ***If the demand is prior to 01/04/2010, the demand has to be reduced directly on CPC-FAS system after rectification U/S 154.***

¹Circular No.8/2015 dt. 14/05/2015

²www.incometaxefiling.gov.in

- **TDS credits are not available in 26AS:** The reduction can be done only in the cases of Individuals and HUF. The amount of reduction should not exceed Rs. 1,00,000/- for that Assessing Year. Besides
 - AO should pass order U/S 154 manually after obtaining the TDS certificate from the assessee;
 - In case the outstanding demand is more than Rs. 25,000/- for that AY the AO should obtain an indemnity bond (*irrespective of the quantum of demand being reduced*);
 - In case *of reduction of demand exceeds Rs. 50,000/-* for that AY by rectification order passed manually above besides the indemnity bond approval of Range Head should be taken before reducing demand.

If taxpayer has already paid the tax demand:

- **Challan Identification Number (CIN) is available on the system:** The AO should reduce the demand by posting the challan or passing rectification order U/S 154 on the system. If the demand is prior to 01/04/2010 the demand has to be reduced directly on the CPC-FAS system.
- **IF CIN is not available or payment is made prior to the period of introduction of CIN:** The reduction can be made only in case of Individuals and HUF provided outstanding demand does not exceed Rs. 1,00,000/- for that AY. Besides
 - AO should obtain evidence of payment in the form of counter foil or bank certificate. In case where the taxpayer is senior citizen and tax payer is not able to obtain bank certificate (as the place of payment of tax is different from the current place of taxpayer), the AO should obtain the certificate from the bank directly.
 - In case the outstanding demand is more than Rs. 25,000/- for that AY the AO should obtain an indemnity bond (*irrespective of the quantum of demand being reduced*);
 - In case *of reduction of demand exceeds Rs. 50,000/-* for that AY by rectification order passed manually above besides the indemnity bond approval of Range Head should be taken before reducing demand.
 - If the payment relates to mismatch of advance tax or self-assessment tax order U/S 154 needs to be passed.

Annexure I:

| Reason Selected | Additional details required |
|---|--|
| Demand Paid and Challan has CIN | BSR Code, Date of Payment, Serial Number of Challan, Amount etc.. |
| Demand Paid and Challan has no CIN | Date of Payment, Amount, Copy of Challan (Upload copy of challan) |
| Demand already reduced by rectification or Revision | Date of order, Demand after rectification, revision, Details of AO who has rectified or revised (Upload the copy of the order) |
| Demand already reduced by Appellate Order but appeal effect to be given | Date of Order, Appellate order passed by, Reference Number of Order |
| Appeal has been filed (Stay Petition has been filed) | Date of filing of appeal, Details of CIT, Stay Petition filed.. |
| Appeal has been filed (Stay has been granted) | Date of filing appeal, Appeal pending with, Stay granted (Upload the copy of stay order) |
| Appeal has been filed (Instalments granted) | Date of filing appeal, Details of CIT with whom appeal is pending, Instalment granted by (Upload the copy thereof) |
| Rectification or Revised return filed at CPC | E-Acknowledgment No, Challan Copy, TDS Certificate, Letter requesting rectification , Indemnity Bond (Upload these) |
| Rectification filed with AO | Date of application, other information etc |
| Other Reasons | Any comments of taxpayer. |

After the taxpayer submits the response the success screen would be displayed along with the transaction ID.

The taxpayer can click on “View” link under response column to view the response submitted.

This article is contributed by CA Ram Prasad, Partner at SBS and Company LLP, Chartered Accountants. The author can be reached at caram@sbsandco.com

SERVICE TAX

CHANGE IN SERVICE TAX RATE — SECTION 67A VS RULE 4 OF POINT OF TAXATION RULES.

Contributed by CA Manindar & CA Sri Harsha |

Introduction:

Finance Bill, 2015 has proposed to increase the service tax rate to 14% by amending Section 66B. The said bill has received President's assent on 14/05/2015. The increased rate is going to be effective from 01.06.2015. As there is a change in rate of tax, the applicability of new service tax rate assumes significant importance. Further, there are conflicting provisions in the law creating much ambiguity on this issue.

Point of Taxation Rules, 2011:

Point of Taxation Rules, 2011 are brought into effect from April 2011 onwards to determine the point of taxation (POT) i.e. point of time when a service is deemed to have completed. This point of taxation when introduced has twofold objectives. One is that the applicable rate of service tax is one prevailing on date of POT. The other one is that service tax is payable immediately by 5th/6th of a month subsequent to the calendar month in which POT occurs.

Rule 5B of the Service Tax Rules, 1994 provides that rate of tax shall be the rate prevailing at the time when the services are deemed to have been provided under the rules made in this regard. Consequently, Rule 4 of the Point of Taxation Rules, 2011 provides for determination of POT when there is a change in service tax rate.

The other rule of Service Tax Rules, 1994 that refers to Point of Taxation Rules, 2011 is Rule 6. This rule provides that service tax shall be paid by 5th or 6th of the month immediately following the month in which services are provided or deemed to be provided as per the rules framed in this regard. As Rule 6 still exists, it can be concluded without any doubt that Point of Taxation Rules, 2011 are still relevant for determining the due date for payment of service tax.

Coming to Rule 4 of the Point of Taxation Rules, 2011, it provides that applicability of service tax rate depending on timing of invoice and payment for the taxable service and they completely ignore the date on which service is provided. It provides as follows;

1. Where services provided prior to change in service tax rate, new rate is applicable if invoice is issued or payment is received after the change in service tax rate. Otherwise old rate is applicable.
2. Where services are provided after the change in service tax rate, old rate is applicable if invoice is issued or payment is received before the change in service tax rate. Otherwise new rate is applicable.

This rule has received much attention from the service sector and every one is aware that these rules are required to be referred to for changes in service tax rate. However, with effect from 18.05.2012, a new Section 67A is introduced in Finance Act, 1994 which also provides for determination of service tax rate. Further, with effect from same date, Rule 5B of the Service Tax Rules, 1994 which provides for determination of service tax rate with reference to the point of taxation rules is deleted. All these

amendments cast doubt on relevance of the Rule 4 of the Point of Taxation Rules, 2011 after 18.05.2012. Let us have a look at the scope of Section 67A.

Scope of Section 67A:

Section 67A provides that—‘The rate of service tax, value of a taxable service and rate of exchange, if any, shall be the rate of service tax or value of a taxable service or rate of exchange, as the case may be, in force or as applicable at the time when the taxable service has been provided or agreed to be provided.’

Thus in terms of this Section, the applicable rate of service tax shall be the one prevailing at the time when a taxable service is provided or agreed to be provided. This section is standalone and is not leaving anything to delegated legislation. No reference is given to any rules framed by Central Government.

The phrase ‘provided or agreed to be provided’ is also existing current levy section i.e. Section 66B as well as in the erstwhile Section 65 (105) of the Finance Act, 1994. The phrase ‘to be provided’ is added in levy section after the words ‘provided’ during the Finance Budget, 2005. It has been then clarified that the objective of the amendment is to link payment of service tax on the advances received for the services to be provided in future.

On a harmonious construction of Section 67A in line with charging Section 66B, similar interpretation can be adopted for the phrase ‘provided or agreed to be provided’ appearing in Section 67A. Thus it can be rationally concluded that in terms of Section 67A, the rate of service tax shall be the rate in force at the time when service is provided. Similarly, in a case where advance is received for a taxable service to be provided in future, it is the rate in force on the date on which the advance amount is received.

However, there is another school of thought on this issue as the Rule 4 of the Point of Taxation Rules, 2011 continued to exist even after insertion of Section 67A, the phrase ‘provided or agreed to be provided’ shall be interpreted in align with the Rule 4 of the Point of Taxation Rules, 2011.

Conflict between Section 67A and Point of Taxation Rules, 2011:

Going plain understanding of the language employed by Section 67A and Rule 4 of the Point of Taxation Rules, 2011, there is a clear conflict between the provisions as discussed above. This can be further appreciated by the following examples.

1. X Ltd has provided consultancy services which got completed by May 15th 2015. Invoice issued on 5th June 2015 and payment received on 30th June 2015. The new rate of service tax is applicable from 01.06.2015 onwards. What is the applicable rate of service tax?

As per POT: Services are completed before the change in service tax rate. Invoice is issued and payment is received after the change in service tax rate i.e. in June month. In terms of Rule 4, new rate of service tax i.e. 14% is applicable. As point of taxation in this case falls under June Month, the due date for payment of service tax is on or before 6th July, 2015.

As per Section 67A: In terms of Section 67A, rate prevailing at the time of provision of service is relevant. Service got completed by May 15th 2015. The rate prevailing on this date i.e. 12% is applicable. However, the due date for payment of service tax is still driven by Point of Taxation Rules, 2011 only.

2. X Ltd has provided consultancy services in June 2015 for an advance received in the month of May 2015 itself. X Ltd paid service tax on this amount by 6th of June, 2015 at 12.36%. 14% rate of service tax is applicable from 01st June. X Ltd is considering invoice issue on 30th June, 2015. What is the applicable rate of service tax on this service?

As per POT: Rate of service tax has increased to 14% before provision of taxable service. As payment alone is received before the change in rate of service tax, invoice is issued on 30th June, the rate of tax applicable in this case is 14%. POT is June. Therefore service tax is payable by 6th of July, 2015.

As per Section 67A: As advance money is received in the month of May itself, the services are agreed to be provided in the month of May itself. The rate prevailing at the time of receipt of advance is relevant i.e. 12.36%. However, the due date for payment of service tax is still driven by Point of Taxation Rules, 2011 only.

Conclusion:

Before parting, based on the above discussion it is clear that in view of the above referred conflicting provisions, ambiguity exists about the applicability of the new service tax rate. Therefore it is high time for the CBEC to clarify on this issue with proper illustrations. Otherwise this will lead to litigation.

This article is contributed by CA Manindar & CA Sri Harsha. The authors can be reached at manindar@sbsandco.com, harsha@sbsandco.com

EXEMPTIONS TO PRIVATE LIMITED COMPANIES

All are aware that the Companies Act, 2013, came in to effect from 12.09.2013, and most of the working provisions came in to force with effect from 01.04.2014.

In comparison with the Companies Act, 1956, though the number of sections have reduced in the Companies Act, 2013, it is mostly due to clubbing of various sections in to single section and most of the operating provisions being moved to Rules.

After the commencement of the Act, it is evident that many representations were received by the Ministry, from the Trade as to difficulties in implementation of certain provisions with specific reference to Private Companies. This was clearly evident from the draft notification by the Ministry wherein certain exemptions were proposed to be given to Private Companies. The said Draft notification was placed in the MCA Website on 24.06.2014, seeking comments from General Public, till 01.07.2014.

There was no trace of the said proposed exemptions as per the Draft notification Dt:24.06.2014, after receiving of the public comments.

On 05.06.2015, the Central Government has issued Four Notifications all Dt: 05.06.2015, vide which the Central Government has provided certain exemptions/modifications and adaptations as to certain provisions of the Companies Act, 2013 which are applicable to:

- ➔ Government Companies
- ➔ Nidhi Companies (Nidhis)
- ➔ Private Company
- ➔ Section 8 Companies (Companies not for profit)

In this article, an effort is being made to look in to the exemptions, modifications and adaptations to the provisions of the Companies Act, 2013, to Private Limited Companies

| Sl. No | Chapter/Section number/Sub-section(s) in the Companies Act, 2013 and Description of the Section, under which the changes were proposed. | Exceptions/Modifications/Adaptations, as the case may be, as per the Notification | Remarks |
|--------|---|---|---|
| 1 | Chapter 1, sub-clause (viii) of Clause 76 of Section2 (Related Party definition) | Exception:- (A) a holding, subsidiary or an associate company of Private company; or (B) a subsidiary of a holding company to which it is also a subsidiary; is /are not a Related Party to such Private Company for the purpose of Section 188. | For the purpose of Sec.188, the Holding, Subsidiary or Associate Company of a Private Limited Company not be considered as a related party. |

| Sl. No | Chapter/Section number/Sub-section(s) in the Companies Act, 2013 and Description of the Section, under which the changes were proposed. | Exceptions/Modifications/Adaptations, as the case may be, as per the Notification | Remarks |
|--------|---|---|--|
| 2 | Chapter IV, section 43 (Kinds of Capital) and 47 (Voting Rights) | Exception:- Shall not apply | So, a Private Limited Company, now, can have Capital other than Two Types as given in Section 43, and also have voting rights in the form other than as given in Section 47. |
| 3 | Chapter IV, sub-clause (i) of clause (a) of sub-section (1) of section 62) (Rights Issue) and sub-section (2) of section 62 (relating to Despatch of Notice of Rights issue) | Modification:- As to inclusion of a proviso after sub-clause (i) of clause (a), for having a lesser period of notice, subject to obtaining of consent from 90 % members of a Private Limited Company. | Enables the Private Company to have rights offer with lesser period, if approved by 90 % of the members of the Company. |
| 4 | Chapter IV, clause (b) of sub-section (1) of section 62 (Issue of Shares to Employees under ESOPS) | Modification:- Shall apply except that instead of Special resolution, Ordinary resolution would be enough. | Reduction in requirement as to the nature of resolution, from Special to Ordinary Resolution . |
| 5 | Chapter IV, Section 67 (Restrictions on purchase by company or giving of loans by it for purchase of its shares) | Modification/Adaptation/Exception:- Shall not apply to Private Companies: - In whose share Capital no other Body corporate has invested any money; - Whose borrowings from Banks/FI or other Body Corporates is less than (a) Twice its Paid-up capital or (b) Rs. 50 Crores, whichever is less; and - Has not defaulted in repayment of such borrowings, subsisting at the time of making transactions under this section. | Benefit to closely held Private companies with small amounts of borrowings and who does not have any equity investment from other Body Corporates. Certain Limits have been prescribed, thereby, any private Company not hitting any of the said limits, is free to purchase its shares or give loans for purchase of its shares. |

| Sl. No | Chapter/Section number/Sub-section(s) in the Companies Act, 2013 and Description of the Section, under which the changes were proposed. | Exceptions/Modifications/Adaptations, as the case may be, as per the Notification | Remarks |
|--------|--|---|---|
| 6 | Chapter V, Clauses (a) to (e) of sub-section (2) of section 73 (Acceptance of deposits from its Members) | <p>Exemption/Adaptation:-</p> <p>Shall not apply to private companies which accepts from its members monies not exceeding 100 % of aggregate of the Paid-up Share Capital and Free Reserves and such company shall file the details of monies so accepted to the registrar in such manner as may be specified.</p> | <p>Exemption to private companies which propose to accept monies from its members not exceeding 100 % of aggregate of the Paid-up Share Capital and Free Reserves.</p> <p>However, the details of deposits accepted needs to be informed to the Registrar.</p> |
| 7 | Chapter VII, sections 101 to 107 and section 109 (Notice of Meetings, Statement to be annexed to the notice, Quorum for meetings, Chairman of meetings, Proxies, Restrictions on voting rights, voting by show of hands, and Demand for Poll) | <p>Exemption/Adaptation:</p> <p>Shall apply unless:</p> <ul style="list-style-type: none"> - otherwise specified in respective sections or - articles of the private company otherwise provide. | |
| 8 | Chapter VII, Clause (g) of sub-section (3) of Section 117 (Filing of Resolutions passed by the Board) | <p>Exemption:</p> <p>Shall not apply.</p> | <p>Accordingly the resolutions passed by the Board of Directors of the Company pursuant to Section 179 (3) read with Rule 8 of the Companies (Meetings of Board and its Powers) Rules, 2014, as amended from time to time, are not required to be filed with ROC</p> |

| Sl. No | Chapter/Section number/Sub-section(s) in the Companies Act, 2013 and Description of the Section, under which the changes were proposed. | Exceptions/Modifications/Adaptations, as the case may be, as per the Notification | Remarks |
|--------|--|---|--|
| 9 | Chapter X, Clause (g) of sub-section (3) of section 141 (Appointment of a person as a Auditor, who is already an auditor of more than 20 Companies) | Exception/Modification: Shall not apply in respect of appointment of auditors by private companies. | In calculating 20 companies, the following shall be excluded: - One Person Companies; - Dormant Companies; - Small Companies; and - Private Companies having paid-up Share capital less than Rs.100 Crores. |
| 10 | Chapter XI, section 160 (Right of person other than the retiring director to stand for directorship) | Exception: Shall not apply | Relief as to deposit of Rs.1 Lakh by the member making the proposal as to candidature of a particular person for directorship. |
| 11 | Chapter XI, section 162 (Appointment of Directors to be voted individually) | Exception: Shall not apply | Accordingly, for a Private Company, a motion for appointment of two or more persons as directors of the company can be moved by a single resolution. |
| 12 | Chapter XII, Section 180 (Restrictions on the Powers of the Board) | Exception: Shall not apply | The provisions of Section 180 are not applicable to Private Companies, and accordingly, in case of borrowings in excess of paid-up capital and free reserves, approval of members is not required and no approval is required for mortgaging the properties of the Company |

| Sl. No | Chapter/Section number/Sub-section(s) in the Companies Act, 2013 and Description of the Section, under which the changes were proposed. | Exceptions/Modifications/Adaptations, as the case may be, as per the Notification | Remarks |
|--------|---|---|--|
| 13 | Chapter XII, Sub-Section (2) of Section 184 (Disclosure of Interest in a particular part and participating in the Board meeting) | Modification/Exception:- Shall apply with the exception that the interested director may participate in such meeting after disclosure of interest. | Keeping in view of the practical difficulties, the earlier harsh restriction that the said interested Director shall not participate in the Board meeting has been relaxed, and now allowing him to participate in the meeting, after he has disclosed his interest to the Board |
| 14 | Chapter XII, section 185 (Loans to Directors) | Modification/Adaptation/Exception:- Shall not apply to Private Companies:- <ul style="list-style-type: none"> - In whose share Capital no other Body corporate has invested any money; - Whose borrowings from Banks/FI or other Body Corporates is less than (a) Twice its Paid-up capital or (b) Rs. 50 Crores, whichever is less; and - Has not defaulted in repayment of such borrowings, subsisting at the time of making transactions under this section. | Benefit to closely held Private companies with small amounts of borrowings and who does not have any equity investment from other Body Corporates. |

| Sl. No | Chapter/Section number/Sub-section(s) in the Companies Act, 2013 and Description of the Section, under which the changes were proposed. | Exceptions/Modifications/Adaptations, as the case may be, as per the Notification | Remarks |
|--------|--|---|---|
| 15 | Chapter XII, section 188 (Related Party Transactions) | Exception: Shall not apply. | Total relief to Private Companies. |
| 16 | Chapter XIII, section 196, sub-section (4) and sub-section (5) (Appointment of MD, WTD or MGR, approval of Member, filing of Form etc.,.) | Exception: Shall not apply. | Exemption from obtaining of Members approval for the appointment, and filing of return on appointment with ROC. |

From the above, it can be seen that contents of the Draft notification Dt:24.06.2014, majorly form part of the exemption notification. The exemption notification brings a sigh of relief for many of the Private Companies.

This article is contributed by CS Phanindra DVK, an Associate to SBS and Company LLP, Chartered Accountants. The author can be reached at phanindra@sbsandco.com

COMPANIES AMENDMENT ACT, 2015 [No.21 of 2015] – A REVIEW

All are aware that on the pretext of ease of doing business in India, some amendments were proposed to the Companies Act, 2013 and the said amendments were approved by the Union Cabinet on 02.12.2014.

The said Amendment Bill was placed in the Lower house (Lok Sabha) of the Parliament and the same was approved on 17.12.2014, and the Upper House (Rajya Sabha) approved the said Amendment Bill on 13.05.2015. The Amendment Bill received the assent of the Hon'ble President on 25.05.2015, and notified in the Gazette on the 26.05.2015.

Since, not all the provisions for which amendments have been made in the Amendment Act, have been notified, the Central Government has vide commencement notification Dated: 29.05.2015, had notified 29.05.2015, as the appointed date for coming in to force of the Sections 1 to 12, 15 to 23 of the said Amendment Act.

The Amendments under the Companies (Amendment) Act, 2015, predominantly hover over the aspect of "ease of doing business". Subsequent to the coming in to force of the Amendment Act, the Central Government has also altered the relevant Rules and has notified the relevant Amendment rules, pursuant to the Amendment Act.

A couple of amendments in the Amendment Act, are for incorporating some provisions, which were erroneously left out in the respective provisions of the Companies Act, 2013, but included in the Rules framed thereunder the respective section.

| Sl. No | Section(s) under the CA, 2013, amended | Section No. in the Amendment Act | Existing provision in the Section/Clause in the CA, 2013 | Amendment relating to | Remarks/Comments |
|--------|--|----------------------------------|--|--|--|
| 1 | Amendment to Section 2 (68), (71) and Section 11 | 2 and 4 | Section 2(68), (71) – As per the definition, a Private Company to have a minimum paid-up capital of Rs.1 Lakh and Public Company to have minimum paid-up capital of Rs.5 lakhs. | Section 2 (68), (71) - Deletion of the requirement as to Minimum Capital i.e., Rs. 1 Lakh for Private Companies and Rs. 5 Lakhs for Public Companies. | Now a company can be incorporated with paid-up capital of Rs.1/-, may be. |
| | | | Section 11 – Declaration as to receipt of the minimum paid-up capital from the subscribers. | Section 11 – Omitted. | No requirement of filing commencement of business declaration. |

| Sl. No | Section(s) under the CA, 2013, amended | Section No. in the Amendment Act | Existing provision in the Section/Clause in the CA, 2013 | Amendment relating to | Remarks/Comments |
|--------|--|----------------------------------|--|---|--|
| 2 | Amendment to sections 9, 12, 22, 46 and 223. | 3, 5, 6, 7 and 18 | <p>Section-9-Company to have Common Seal.</p> <p>Section-12-Company to have its name engraved in legible characters on its seal;</p> <p>Section-22-Execution of Bills of Exchange, authorisation to execute under the Common Seal.</p> <p>Section-46-Issue of Certificates (Share/Debenture) to be issued under the Common seal of the Company.</p> <p>Section -223-nspectors report to be authenticated by the Common Seal of the Company.</p> | Amendment as to making common seal optional , and consequential changes for authorisation for execution of documents for companies having no Common Seal. i.e., authorisation shall be made by Two Directors or 1 Director and 1 CS, if the Company has CS | |
| 3 | Insertion of new Section 76A | 8 | No section | Section – 76 A - Punishment for deposits accepted in violation of the provisions of the said Act; | <p>Penalty:</p> <p>On Company: To refund the deposit with interest + Fine not less than Rs.1 Cr and upto Rs. 10 Cr.</p> <p>On every Officer: 7 years imprisonment or fine not less than Rs. 25 Lakhs and upto Rs. 2 crores or with both + if proved that punishment if the violation is committed knowingly, under Section 447.</p> |

| Sl. No | Section(s) under the CA, 2013, amended | Section No. in the Amendment Act | Existing provision in the Section/Clause in the CA, 2013 | Amendment relating to | Remarks/Comments |
|--------|---|----------------------------------|--|--|--|
| 4 | Amendment to Section 117 (3) (g) | 9 | 117 (3) (g) – Resolutions passed in pursuance of Section 179 (3) are to be filed with the Registrar of Companies. | Amendment to prohibit public inspection of Board resolutions filed in the Registry. | Board Resolution cannot to be inspected by others. Further, the many items as prescribed under the relevant rules have also been considerably Omitted by the relevant amendment Rules |
| 5 | Amendment to sub-section (1) of section 123 | 10 | No proviso in the Principal Act | Amendment to include provisions for writing off past losses/depreciation before declaring dividend for the year | Erroneously missed out in the Principal Act, but was given as an amendment to the relevant rules made under the section. |
| 6 | Amendment to sub-section (6) of section 124 | 11 | Section 124 (6) - All shares in respect of which unpaid or unclaimed dividend has been transferred under sub-section (5) shall also be transferred by the company in the name of Investor Education and Protection Fund along with a Statement. | for the words, brackets and figure “unpaid or unclaimed dividend has been transferred under sub-section (5) shall also be”, the words “dividend has not been paid or claimed for seven consecutive years or more shall be” shall be substituted; Amendment so as to rectify the requirement of transferring equity shares for which unclaimed/unpaid dividend has been transferred to the Investors Education and Protection Fund even though subsequent dividend(s) has been claimed and paid. | |

| Sl. No | Section(s) under the CA, 2013, amended | Section No. in the Amendment Act | Existing provision in the Section/Clause in the CA, 2013 | Amendment relating to | Remarks/Comments |
|--------|---|----------------------------------|---|--|------------------------------|
| 7 | Amendment to sub-section (3) of section 134 and sub-section (12) of section 143 | 12 and 13 | 134 (3)(ca) – New provision – Details as to the frauds as reported by the Auditor to be included in the Directors report. 143 (12) – reporting of Fraud by the Auditor | Disclosures to be made in the Board's Report; Alteration to incorporate enabling provisions to prescribe thresholds beyond which fraud shall be reported to the Central Government. Below the threshold, it will be reported by the Auditor to the Audit Committee. | Some relief to the Auditors. |
| 8 | Amendment to clause (iv) of sub-section (4) of section 177 | 14 | New proviso to Section 177 (4) (iv) – giving powers to Audit Committee. | Inclusion of proviso, empowering Audit Committee to give omnibus approvals for Related party transactions on annual basis, subject to conditions as may be prescribed. | |
| 9 | Amendment to Section 185 of | 15 | New sub-sections 185 (1) (c) & (d) – These subsections were earlier included in the rules | Alteration to provide for exemption for loans/ guarantees/securities by a Company to its wholly owned subsidiaries and guarantees/securities given by a company to its subsidiaries for the loans availed by it from Banks/FI. | |

| Sl. No | Section(s) under the CA, 2013, amended | Section No. in the Amendment Act | Existing provision in the Section/Clause in the CA, 2013 | Amendment relating to | Remarks/Comments |
|--------|---|----------------------------------|--|--|------------------|
| 10 | Amendment to sub-section (1) of section 188 | 16 | <p>188 (1) – Requirement of prior approval of the members by way of special resolution for transactions with the related party.</p> <p>188 (3) – Requirement of special resolution for transaction by the Director or employee with the Company.</p> | <p>Alteration for replacing 'special resolution' with 'resolution' for approval of Related party transactions by non-related shareholders;</p> <p>to exempt related party transactions between holding companies and wholly owned subsidiaries (WOS) whose accounts are consolidated.</p> <p>Relaxed to ordinary resolution.</p> | |
| 11 | Amendment to sub-section (6) of section 212 | 17 | 212 (6) – Releasing of accused on bail. Many sections were covered | Alteration to remove the repetition of sections, which attract punishment for fraud under Section 447 | |
| 12 | Amendment to Sub-Section (1) of Section 248 | 19 | 248 (1) -Power of Registrar to remove the name of the Company from the Register of Companies | Alteration as to removal of Clause (b) of Subsection (1) of Section 248- As to receipt of minimum subscription and filing of commencement of business with ROC. | |
| 13 | Amendment to sub-section (4) of section 419 | 20 | 419 (4) -Powers of the president of the NCLT to constitute benches for disposal of cases as to rehabilitation, restructuring, reviving or winding up of companies | Alteration as to deletion of the word Winding-up , so as to enable the, taking-up cases relating to winding-up by 2-member Bench instead of a 3-member or a larger Bench. | |

| Sl. No | Section(s) under the CA, 2013, amended | Section No. in the Amendment Act | Existing provision in the Section/Clause in the CA, 2013 | Amendment relating to | Remarks/Comments |
|--------|--|----------------------------------|---|---|------------------|
| 14 | Amendments to sections 435 and 436 | 21 and 22 | <p>435 (1) – establishment of special courts for trial of offences.</p> <p>436 (1) – Offences triable by Special Courts</p> | <p>Earlier no limit was mentioned in the respective sections, now, the amendment provides for Special Courts to try only offences carrying imprisonment of two years or more.</p> <p>And all other offences shall be tried, as the case may be, by a Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous company law.</p> | |
| 15 | Amendment to Section 462 | 23 | 462 – Power of Central Government to exempt certain class of companies from provisions of the Act. | Amendment to Sub-Section (2) of Section 462, as to the manner of placing the notifications issued by the CG pursuant to Section sub-section (1). The content of Sub-section has been altered and divided in to new Sub-Section (3) & (4). | |

This article is contributed by CS Phanindra DVK, an Associate to SBS and Company LLP, Chartered Accountants. The author can be reached at phanindra@sbsandco.com

TECHNICAL SESSIONS:

| S.No. | Event | Date | Speaker | Venue |
|-------|--------------------------------------|----------------|-----------------------------|-----------|
| 1 | Chaireturn - In and Out | 12th June 2015 | CA Saran Kumar U | SBS - Hyd |
| 2 | An Overview on Secretarial Standards | 19th June 2015 | CS Phanindra DVK | SBS - Hyd |
| 3 | Overview of Agriculture Land Ceiling | 26th June 2015 | Syslex Law Firm | SBS - Hyd |
| 4 | Issues in CENVAT Credit | 3rd July 2015 | CA Sri Harsha & CA Manindar | SBS - Hyd |



Service tax vis-à-vis SEZ CA Sri Harsha



Recent amendments of Rules, under Companies Act, 2013 CS Phanindra DVK



Make in India - Labour Laws



Make in India - Labour Laws

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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, Vijayamahal 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

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