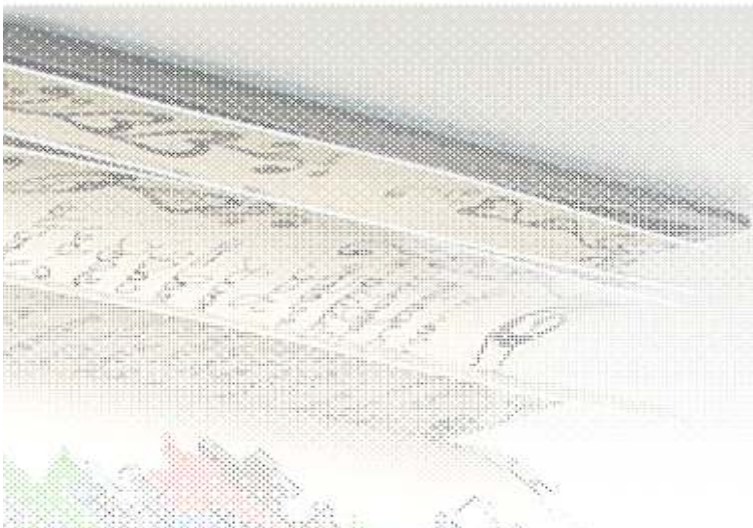




SBS *Interns'*  
**Digest**  
An attempt to share knowledge

By

Interns of  
SBS and Company LLP



**CONTENTS**

FEMA.....	1
POSSESSION OF FOREIGN CURRENCY.....	1
TYPES OF BANK ACCOUNTS MAINTAINED BY NON-RESIDENTS.....	3
INCOME TAX.....	10
KNOW ABOUT ITR-V AND E-VERIFICATION PROCESS.....	10
GRATUITY, LEAVE SALARY AND LTA.....	15
CENTRAL EXCISE.....	22
A PEEP INTO EXCISE LEVY ON PRECIOUS JEWELLERY.....	22
PROJECT FINANCE.....	27
ALTERNATE INVESTMENT FUNDS (AIF).....	27

## FEMA

**POSSESSION OF FOREIGN CURRENCY**

Contributed by Venkata Krishna Rao &amp; Vetted by CA Murali Krishna G |

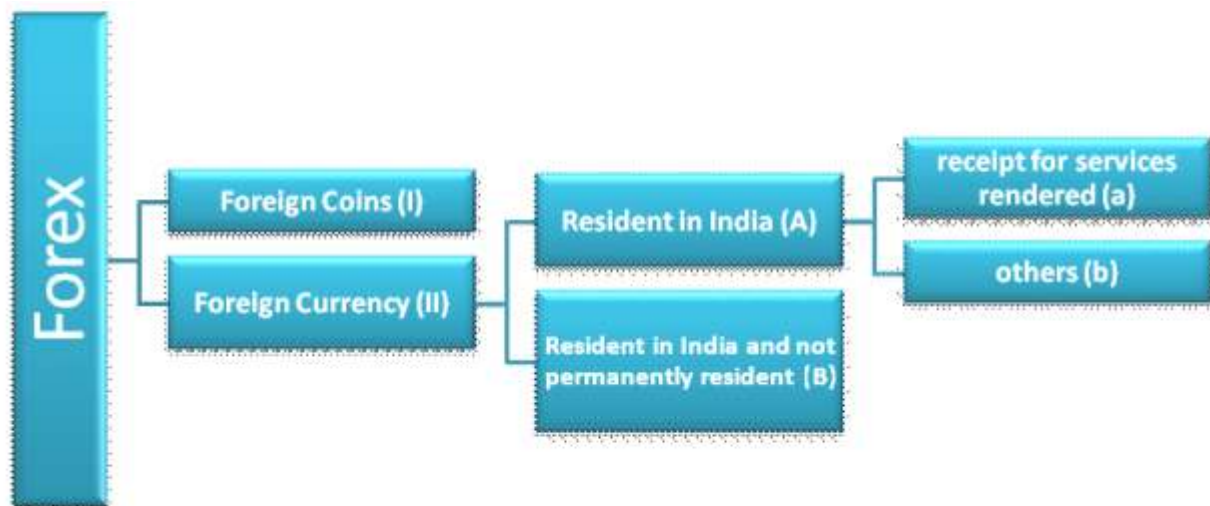
Whether a person being resident in India can accept and possess foreign currency?

Many persons are interested at preserving old currency, new released currency, foreign currency received by them. Few of them possess the foreign currency for some specified purpose. Many times they counter questions regarding eligibility for possession of foreign currency and the permitted limit to which they can possess the foreign currency.

This is an attempt to address those queries at the best possible way with the help of Notification no. FEMA.11/2000-RB dated 3rd May, 2000.

Possession of foreign currency by an authorised person

Reserve Bank, may on application made to it, authorize any person to be known as authorised person to deal in foreign exchange or in foreign securities, as an authorised dealer, money changer or off-shore banking or any others. Authorised Dealers/ Authorised Money Changers/ franchisees may freely purchase foreign currency notes, coins and travellers cheques from residents as well as non-residents. Authorised person may possess foreign currency and coins without any limit.

Possession of foreign currency by a resident other than authorised person

## I. Foreign Coins:

Any person can possess foreign coins without any limit. That is, person can hold foreign coins for uncertain period for uncertain purpose.

## II. Foreign Currency:

Possession of foreign currency by resident is again divided into two categories depending upon whether resident individual is either permanently resident or not.

## A. Resident in India

Any person resident in India may possess foreign currency notes and foreign currency travellers' cheques not exceeding USD 2000 or its equivalent in aggregate if it-

- was acquired by him while on a visit to any place outside India by way of payment for services not arising from any business in or anything done in India, or
- was acquired by him, from any person not resident in India and who is on a visit to India, as honorarium or gift or for services rendered or in settlement of any lawful obligation, or
- was acquired by him by way of honorarium or gift while on a visit to any place outside India, or remains as unspent amount of foreign exchange acquired by him from an authorised person for travel abroad.

### a. Receipt for services rendered

If the foreign exchange due or accrued as remuneration for services rendered, whether in or outside India, or in settlement of any lawful obligation, or an income on assets held outside India, or as inheritance, settlement or gift by a resident individual, then he must surrender the foreign currency so received to Authorised Dealer within seven days from the date of its receipt.

### b. Others

In case, foreign exchange purchased for a specific purpose is not utilized for that purpose, it could be utilized for any other eligible purpose for which drawal of foreign exchange is permitted. However, resident individual has to surrender received / realised / unspent / unused foreign exchange to an Authorised Person within a period of 180 days from the date of return to the India.

### Person resident in India but not permanently resident

A person resident in India but not permanently resident may possess foreign currency without any limit, if such foreign currency was acquired, held or owned by him when he was resident outside India and has brought the same into India. Here, 'not permanently resident' means a person resident in India for employment of a specified duration (irrespective of length) or for a specific job or assignment, the duration of which does not exceed three years.

*Note: -*

1. *The above mentioned limits do not apply to Foreign Exchange in the form of foreign currency of Nepal or Bhutan.*
2. *Foreign Currency means any currency other than Indian Currency*

*This article is contributed by Venkata Krishna Rao B, Intern of SBS and Company LLP. The author can be reached at [venkatakrisnab@sbsandco.com](mailto:venkatakrisnab@sbsandco.com)*

## FEMA

**TYPES OF BANK ACCOUNTS MAINTAINED BY NON-RESIDENTS**

Contributed by Supriya & Vetted by CA Murali Krishna G |

NRI is a word which attracts the attention of the RBI, FEMA and other foreign regulations. Before going to know the various types of Accounts maintained by NRI we just have a glance at when a person will be called as Non-Resident.

The word Non-Resident has been defined differently in various Acts, as far as FEMA is concerned Section 2 of the FEMA, 1999, in order to understand the definition of Non-Resident, one has to understand the definition of Resident. A person will be called as Resident if he resides in India for more than 182 days in the Previous Financial Year,

- A. But while computing the residence the following are not included:
  - I. Who has gone out of India or stays outside India, in either case:
    - a. For or on taking employment outside India
    - b. For carrying on outside India business or vocation outside India, or
    - c. For any other purpose, in such circumstances as would indicate his intention to stay outside India for any uncertain period
  - II. Person who has come to or stays in India, in either case, otherwise than:
    - a. For or on taking up employment in India, or
    - b. For carrying on in India a business or vocation in India, or
    - c. For any other purpose, in such circumstances as would indicate his intention to stay in India for any uncertain period
- B. Any person or Body Corporate registered or incorporated in India
- C. An office, branch or agency outside India owned or controlled by a person resident outside India
- D. An Office, branch or agency outside India owned or controlled by a person resident in India

As per the Foreign Exchange Management (Deposit) Regulations, 2016 that no person Resident in India shall accept any deposit from, or make any deposit with, a person resident outside India.

RBI has given few Exemptions to the above mentioned provision which are as follows:

- I. An authorised dealer may accept deposit from a non-resident Indian under the following schemes:
  - (i) Non-Resident (External) Rupee Account Scheme (NRE Account), specified in Schedule 1
  - (ii) Foreign Currency (Non-Resident) Bank Account Scheme, (FCNR(B) Account) specified in Schedule-2
  - (iii) Non-Resident (Ordinary) Rupee Account scheme specified in Schedule-3

- II. Any person resident outside India having a business interest in India may open, hold and maintain with an authorised dealer in India, a Special Non-Resident Rupee Account (SNRR Account) specified in Schedule-4
- III. Resident or Non-Resident acquirers may, subject to the terms and conditions specified in Schedule-5, open, hold and maintain Escrow Account with the Authorized Dealer. And other few exemptions has been prescribed by RBI.

Let us learn a bit deeper into the schemes formulated by RBI under which an authorized dealer can accept deposits.

#### Non-Resident (External) Rupee Account (NRE Account):

The Non-Resident (External) Rupee Account NR(E)RA scheme, also known as the NRE Account scheme, was introduced in 1970

1.	Eligible persons	Non-Resident Indians (NRI's) & Persons of Indian Origin (PIO's), also called Overseas Citizens of India (OCI)
2.	Types of Accounts	Savings, Current, Recurring Deposit or Fixed Deposit etc.
3.	Denominated Currency	Indian Rupees (INR)
4.	Rate of Interest	As prescribed by RBI from time to time

#### Permitted Credits:

1. Proceeds of remittances to India in any permitted currency.
2. Proceeds of personal cheques drawn by the account holder on his foreign currency account and of travellers cheques, bank drafts payable in any permitted currency including instruments expressed in Indian rupees for which reimbursement will be received in foreign currency, deposited by the account holder in person during his temporary visit to India.

Note: provided the authorised dealer/ bank is satisfied that the account holder is still resident outside India, the travellers' cheques/ drafts are standing/ endorsed in the name of the account holder and in the case of travellers' cheques, they were issued outside India.

3. Proceeds of foreign currency/ bank notes tendered by account holder during his temporary visit to India

#### Provided:

- The amount was declared on a Currency Declaration Form (CDF), where applicable
- the notes are tendered to the authorised dealer in person by the account holder himself and the authorised dealer is satisfied that account holder is a person resident outside India.



4. Transfers from other NRE/FCNR(B) accounts.
5. Interest accrued on the funds held in the account.
6. Current income in India due to the account holder, subject to the payment of applicable taxes in India
7. Maturity or sale proceeds of any permissible investment in India which was originally made by debit to the account holder's NRE/ FCNR (B) account or out of the remittances received from outside India through banking channels.
8. Refund of share/ debenture subscriptions to new issues of Indian companies or portion thereof, if the amount of subscription was paid from the same account or from other NRE/ FCNR (B) account of the account holder or by remittance from outside India through banking channels.
9. Refund of application/ earnest money/ purchase consideration made by the house building agencies/ seller on account of non-allotment of flat/ plot/ cancellation of bookings / deals for purchase of residential/ commercial property, together with interest, if any (net of income tax payable thereon), provided the original payment was made out of NRE/ FCNR(B) account of the account holder or remittance from outside India through banking channels and the authorised dealer is satisfied about the genuineness of the transaction
10. Any other credit if covered under general or special permission granted by Reserve Bank

#### Permitted Debits:

1. Local Disbursements
2. Remittances outside India
3. Transfer to NRE/ FCNR(B)/NRO accounts of the account holder or any other person eligible to maintain such account
4. Investment in shares/ securities/ commercial paper of an Indian Company or for purchase of immovable property in India provided such investment/ purchase is covered by the regulations made, or the general permission/ special permission granted by RBI
5. Any other transaction if covered under general or special permission granted by RBI.

#### Others:

#### Change of Residential Status:

In case if the Non-Resident becomes Resident then the

1. NRE account will be re-designated as resident's account
2. Funds held in the accounts may be transferred to the Resident Foreign Currency (RFC) accounts(if the person is eligible for maintaining such RFC Account)

If the account holder is only on a short visit to India, the account may continue to be treated as NRE account even during his stay in India

#### Tax Exemption:

Income from the interest on balances standing to the credit of NRE Accounts is exempt from Income Tax.

Note: These accounts need to be opened by Non-Resident Account holder but not by the holder of Power of Attorney in India.

#### Foreign Currency (Non- Resident) Account (Banks) –FCNR(B) Account:

1.	Eligible persons	Non-Resident Indians (NRI's) & Persons of Indian Origin (PIO's) & Overseas Citizens of India (OCI)
2.	Types of Accounts	Term Deposit (Recurring Deposits are not accepted under FCNR (B))
3.	Denominated Currency	Permitted currency as per Regulation 2(v) of FEMA 14/2000-RB dated May 3, 2000
4.	Rate of Interest	As prescribed by RBI from time to time

#### Introduction:

- FCNR(B) scheme was introduced with effect from May 15, 1993 to replace the then prevailing FCNR(A) scheme introduced in 1975
- In FCNR (A) Scheme the foreign exchange risk was borne by RBI and subsequently by the Govt. of India.
- The FCNR(A) scheme was withdrawn in August, 1994 in view of its implications for the central bank's balance sheet and quasi-fiscal costs to the Government.
- The minimum maturity period of the deposit under the FCNR(B) was Six months initially, later it has been raised to 3 years and from July 26, 2005 banks were allowed to accept the deposits upto a maximum maturity period of 5 Years.

#### These accounts can be opened only with the below mentioned funds:

- Funds remitted from outside India through banking channels (Convertible Foreign Exchange)
  - Funds received in rupees by debit to the account of a NRE account maintained with the Authorized dealer in India
  - Funds which are repatriable nature in terms of the regulations made by RBI
  - Transfer of Funds from existing NRE/ FCNR (B) Accounts
- Earlier the deposits under FCNR(B) was permitted to be accepted only in Pound Sterling, US Dollar, Japanese Yen, EURO, Canadian Dollars & Australian Dollars. With Effect from October 19, 2011 banks were permitted to accept the FCNR(B) deposits in any permitted currency.



In case if the depositor desires to make a deposit in FCNR(B) other than the designated currency then the Authorised Dealers may undertake fully covered SWAP in that currency against the desired designated currency.

### Maturity of Deposit

The deposits should be accepted under the Scheme for the following maturity periods

- (a) One year and above but less than Two years
- (b) Two years and above but less than Three years
- (c) Three years and above but less than Four Years
- (d) Four years and above but less than Five Years
- (e) Five Years only

### Permissible Debits/ Credits:

All Debits/ Credits permissible in respect of NRE Accounts shall be permissible in respect of FCNR(B) Accounts.

### Conversion of FCNR(B) Accounts to Other Accounts & Vice-Versa

#### RFC

- The depositor can convert the amount in the FCNR(B) into RFC Account even before the maturity of the Deposit and the banks should pay interest at its discretion at the time of conversion subject to the condition that the rate of Interest should not exceed the rate payable for the deposits held under RFC Account Scheme.
- Penal provisions will not apply in case of premature conversion of balances held in FCNR(B) deposits into RFC Accounts by Non- Resident Indians on their return to India

#### NRE

- Conversion of FCNR(B) into NRE deposits or vice-versa before the maturity is subject to the penal provisions applicable to the premature withdrawal.
- Transfer of funds from existing NRE accounts to FCNR(B) accounts and vice versa, of the same account holder, is permissible without the prior approval of Reserve Bank of India.

### Manner of Payment of Interest:

- Interest on balances held in these accounts may be paid half-yearly or on an annual basis as desired by the depositor.
- Interest may be credited to a new FCNR (B) account or an existing/ new NRE/ NRO account in the name of the account holder, at his option.

### Other Points:

- Repatriation of funds in foreign currencies is permitted.
- The facility of Opening and maintaining FCNR(B) Accounts by Overseas Corporate Bodies which are owned directly or indirectly to the extent of at least 60 % by NRI's and overseas trusts in which at least 60 per cent of the beneficial interest is irrevocably held by such persons (OCBs) has been withdrawn with effect from September 16, 2003.

Non-Resident Ordinary Rupee Account (NRO Account):

1.	Eligible persons	Any Person resident outside India
2.	Types of Accounts	Current, Savings, Recurring or Fixed Deposits
3.	Denominated Currency	Indian Rupees

Note: Opening of NRO account requires approval in the following cases:

1. Individuals/ entities of Pakistan nationality/ ownership
2. Entities of Bangladesh Ownership
3. Individuals of Bangladesh Nationality may be allowed to open NRO account without the approval subject to satisfying itself that the individuals hold a valid visa and valid residential permit issued by FRO/ FRRO
  - Post offices in India may maintain savings bank accounts in the names of persons resident outside India subject to the same terms and conditions as are applicable to NRO accounts.

## Permissible Credits:

- Proceeds of remittances received in any permitted currency from outside India through banking channels or any permitted currency tendered by the account-holder during his temporary visit to India or transfers from rupee accounts of Non-resident banks
- Legitimate dues in India of the account holder
- Transfers from other NRO accounts
- Any amount received by the account holder in accordance with the rules or regulations made under the Act

## Permissible Debits:

- All local payments in rupees including payments for investments subject to compliance with the relevant regulations made by the Reserve Bank.
- Remittance outside India of current income in India of the account holder net of applicable taxes.
- Transfers to other NRO accounts.
- Settlement of charges on International Credit Cards issued by authorised dealer banks in India to NRIs or PIOs, subject to the limits for repatriation of balances held in NRO accounts specified in regulation 4(2) of Foreign Exchange Management (Remittance of Assets) Regulations, 2016

## Note:

- Balances in NRO accounts are eligible for remittance outside India only with the general or specific approval of RBI .
- Funds received by the way of remittance from outside India in Foreign Exchange which have not lost their identity as remittable funds will only be considered by RBI for remittance outside India.

- An account being opened by a foreign tourist visiting India, with funds remitted from outside India in a specified manner or by sale of foreign exchange brought by him to India, authorised dealers may convert the balance in the account at the time of his departure to the Foreign Currency for payment to the account holder provided that the account has maintained for a period not exceeding 6 months and the account has not been credited with any local funds apart from the interest accrued thereon.

#### Change in Residential Status:

- If any Non-Resident having NRO account return to India for taking up the employment, or for carrying on business or vocation or for any other purpose indicating his intention stay in India for an uncertain period then the NRO account will be designated as resident rupee account.
- Where the account holder is only on a temporary visit to India, the account should continue to be treated as non-resident during such visit.
- If any resident person leaves India for any country (other than Nepal or Bhutan) for taking up employment or for carrying on business or vocation or for any other purpose indicating his intention stay in India for an uncertain period then his existing account could be designated as a Non-Resident Ordinary Account (NRO)

---

*This article is contributed by Supriya N, Intern of SBS and Company LLP. The author can be reached at [supriyan@sbsandco.com](mailto:supriyan@sbsandco.com)*

## INCOME TAX

**KNOW ABOUT ITR-V AND E-VERIFICATION PROCESS**

Contributed by Sai Krishna &amp; Vetted by CA Saran Kumar U |

- I. What is ITR-V: ITR-V stands for Income Tax Return-Verification. It is an acknowledgement confirming that the data mentioned in the Income Tax Return has been transmitted electronically to the Income Tax Department of India (herein after referred to as "ITD").
- II. What happens if an Individual doesn't verify the data transmitted to ITD: The ITD will not treat the data valid unless it is verified by the Individual.
- III. Downloading ITR-V: After successful filing of Income Tax Return, the ITD will mail the ITR-V to the e-mail ID mentioned in the Income Tax Return. Alternatively, individuals can download it from <https://www.incometaxindiaefiling.gov.in/> after login.
- IV. How to download ITR-V: Follow the below mentioned steps in order to download ITR-V by log-in into ITD's e-Filing portal.

1. Go to <https://www.incometaxindiaefiling.gov.in/>;



2. Log in with e-filing user ID and password;

Login

User ID *	<input type="text"/>
Password *	<input type="password"/>
Captcha Code	<input type="text"/>
Image	
Enter the number as in above image *	<input type="text"/>
	<input type="button" value="Login"/> <a href="#">Forgot Password?</a>
<a href="#">New Users? Register Now</a>   <a href="#">Resend Activation Link</a>	
 e-Filing Login Through NetBanking	

In the case of Individuals, User ID should be their Permanent Account Number ("PAN"). Once enters PAN as user ID, then DOB field will appear. DOB should be as per the PAN.

3. Go to e-Filed Returns/Forms under My Account;



4. Click on Acknowledgement number for the respective Assessment Year ("A.Y.");

PAN	A.Y.	ITR/Form	Filing Date	Filing Type	Filed By	Ack. No.	Status
	2014-15	ITR-1	31/03/2016	Original			ITR-V received
	2015-16	ITR-1	31/08/2015	Original		815	ITR Processed
	2013-14	ITR-1	25/02/2015	Revised			ITRV received after due date
	2013-14	ITR-1	20/02/2015	Revised			ITR Processed
	2013-14	ITR-1	26/07/2013	Original			Return Uploaded

5. Click on ITR-V / Acknowledgement; and

PAN	ITR/Form	Assessment Year
	ITR-1	2015
Filing Type	Acknowledgement Number	
Original		15

Date	Activity / Status	Downloads / Status Description
31/08/2015	Return Uploaded	ITR-V / Acknowledgement XML ITR/Form
25/01/2016	ITRV received after due date	Receipt
04/03/2016	ITR processed refund determined and sent out to Refund Banker	-

Note: Watch the detailed video tutorial about downloading ITR-V  
<https://www.youtube.com/chairreturnonline>.

- V. Password of ITR-V: ITR-V is password protected PDF format file. To open PDF enter PAN in lower case and date of birth in DDMMYYYY format without any space between the PAN and Date fields. For example if PAN is ABCPA1234A and date of birth is November 17, 1985 then the password will be abcpa1234a17111985.
- VI. Verifying the Income Tax Return: After downloading ITR-V every Individual is having two options to verify the data:
- A. Verifying the Income Tax Return by sending it to CPC, Bengaluru: After downloading ITR-V individuals can send a signed copy of ITR-V to CPC, Bengaluru for verification of data within 120 days from the date of transmitting the data electronically. Before sending the ITR-V one must check that the following requirements are ensured:
- 1) The Capacity should be mentioned as Individual;
  - 2) Sign the ITR-V;
  - 3) In case your return is filed by a Tax Return Preparer (TRP), the details of TRP (identification number, name) and signature of TRP should be mentioned; and
  - 4) ITR-V should be sent to CPC, Bengaluru within 120 days from the date of transmission of data electronically through ordinary post or speed post only.

After ensuring the above requirements send the ITR-V to below mentioned address:

Income Tax Department - CPC,  
Post Bag No - 1,  
Electronic City Post Office,  
Bengaluru - 560100,  
Karnataka.

- B. E-Verification of Income Tax Return:
- 1) What is e-verification: e-verification is a new concept introduced by ITD for easy verification of data provided in the Income Tax Return. It acts as an alternative for sending a signed copy of ITR-V to CPC, Bengaluru. E-verification is introduced on 13th July, 2015 and is applicable from that date. E-verification can be done by the individuals who filed their Income tax return online.
  - 2) Electronic verification code (EVC): EVC means a code generated for the purpose of electronic verification of the person furnishing the return of income as per data structure and standards specified by Principle Director General of Income tax (Systems) or Director General of Income tax (systems). It is a 10 digit alphanumeric code which is valid for 72 hours from the generated time.



VII. E-Verification process: The following are the various modes available for the Individual for e-verification.

A. EVC through registered mobile number and e-mail ID:

1. This option is available to Individuals whose total income is Less than 5 lakh rupees and there is no refund;
2. EVC will be sent to the Mobile number and e-mail ID registered with Income tax department;
3. Individuals have to enter the EVC in the box provided, proceed to submit and the process of e-verification is done.

B. Aadhaar OTP:

1. To generate Aadhaar OTP, individuals PAN and Aadhaar number must be linked;
2. If Aadhaar and PAN are not linked, a popup will appear asking you to link your Aadhaar card and PAN card;
3. The name provided while applying for PAN and Aadhaar card should be matched;
4. After successful linking of Aadhaar and PAN card, Aadhaar OTP will be sent to "Mobile number registered with Aadhaar number";
5. Enter the Aadhaar OTP in the box provided, click on submit and e-verification is done.

C. EVC through Internet Banking:

1. e-verification using this option requires PAN of the individual assessee to be linked to the Bank Account;
2. Upon clicking on EVC – through net banking, a screen with instructions will appear, proceed by clicking on Continue;
3. Now the e-filing account will be logged out and will be directed to a new page where a list of banks which are available for e-verification will appear;
4. Clicking on the bank redirect to the bank's Internet Banking login screen;
5. Login to internet banking;
6. There will be an option for login to Income Tax Website (e-filing) through Internet Banking (different for different banks), click on that option;
7. This will direct to the Income Tax India e-filing website with user logged in;
8. Click on e-verify and then on continue, e-verification is done.

D. EVC using Automated Teller Machine (ATM) of a Bank:

1. e-verification using this option requires PAN of the client to be linked to the Bank Account of user;
2. An Individual can visit the ATM of the bank and e-verify the return by authentication using ATM PIN;
3. On the ATM screen a new option called "Generate EVC" is available (Only available at ATMs of specified banks). Clicking on it will generate an EVC to the registered mobile number.

E. EVC generated by giving bank details:

1. This is a new option notified by the Income tax department on 19th January, 2016 and is applicable from that date;
2. A facility to pre validate Bank Account details is provided to the individuals under Profile settings in the website;
3. Individuals has to provide the following bank account details:
  - a) Bank Account Number;
  - b) Indian Financial System Code (IFSC); and
  - c) Email ID and Mobile number.
4. The details provided by the individual will be validated against the details registered with the bank;
5. If pre validation is successfully completed, individual can opt to "Generate EVC using bank account details".

F. EVC generated using demat account authorisation:

1. This is a new option notified by the Income tax department on 19th January, 2016 and is applicable from that date;
2. A facility to pre validate Demat details is provided to the individuals under Profile settings in the website;
3. Individuals has to provide the following demat account details:
  - a) Demat Account Number;
  - b) Email ID and Mobile number.
4. The details provided by the individual as per e-filing will be validated against the details registered with depository (CDSL/NSDL);
5. If pre validation is successfully completed, individual can opt for "Generate EVC using Demat account details";
6. EVC will be sent to Email ID and/or mobile number verified from CDSL/NSDL.

File your Income Tax Returns online at:  
<https://www.chaireturn.com>

*This article is contributed by Sai Krishna, Intern of SBS and Company LLP. The author can be reached at [saikrishnaa@sbsandco.com](mailto:saikrishnaa@sbsandco.com)*

## INCOME TAX

**GRATUITY, LEAVE SALARY AND LTA**

Contributed by Sameer &amp; Vetted by CA Ram Prasad |

Gratuity

1. Meaning: It is a sum paid by the Employer to his employee during retirement or simply a retirement benefit.
2. Governing law: Gratuity Act 1972.
3. Calculation of Gratuity: As per Gratuity Act 1972 calculation of Gratuity is made in following manner.

## (i) In case of employees covered under Gratuity Act:

In this case gratuity is calculated by multiplying 15 days salary (salary during time of retirement) with number of years worked with the Employer.

Here salary includes Basic Pay+DA. So now the formula can be considered as:

$15/26 * \text{Last drawn salary} * \text{Number of years' service}$ .

Example: If X had worked in an organisation for 20 years 9 months and his last drawn salary is Rs 25000 (Basic+DA) then Gratuity can be computed as follows

Gratuity= $15/26 * 25000 * 21 = 302884$ .

## (ii) In case of employees not covered under Gratuity Act:

In this case gratuity is calculated by multiplying 15 days Average salary with number of years worked with Employer.

Here salary means (Basic+DA+Fixed percentage of commission on turnover) and Average salary means average of previous 10 months of salary from the day of retirement. So now the formula can be considered as follows:

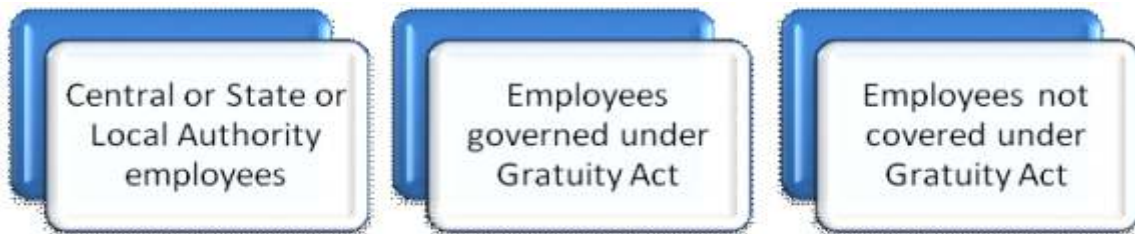
$15/30 * \text{Average salary} * \text{Number of years' service}$

Example: If X had worked in an organisation for 22 years 3 months and his last drawn salary is Rs 35000 (Basic + DA + Fixed percentage of Commission on turnover) then Gratuity can be computed as follows

Gratuity= $15/30 * 35000 * 22 = 385000$ .

#### 4. Taxability of Gratuity: As per Sec 10(10) of the Income Tax Act 1961.

For this purpose, Employees are categorised into 3 types. They are as follows:



- (i) In case of Central or State or Local Authority employees any retirement benefit gratuity paid is wholly exempted from tax.
- (ii) In case Employees covered under Gratuity Act: In this case the least of the following is exempted from tax and remaining is taxable.
  - (a)  $\frac{15}{26} \times \text{Last drawn salary} \times \text{Number of completed year service or part thereof in excess of 6 months}$
  - (b) Actual Gratuity received
  - (c) 10,00,000

Here, Salary means Basic Pay+DA.

Example: X an employee of ABC Ltd receives Rs 6,50,000 as gratuity. He retires after completing a service of 15 years 8 months. At the time of retirement his salary was 30,000.

Solution: As per the above provision taxability is

- (a)  $\frac{15}{26} \times 30000 \times 16 = 2,76,923$
- (b) Actual gratuity received = 6,50,000
- (c) 10,00,000

Least of the above is 2,76,923 which is exempted from tax.

So Gratuity taxable =  $6,50,000 - 2,76,923 = 3,73,077$

- (iii) In case Employees not covered under Gratuity Act: In this case the least of the following is exempted from tax and remaining is taxable.
- (a)  $15/30 \times \text{Average salary} \times \text{Number of years' service}$
  - (b) Actual Gratuity received
  - (c) 10,00,000

Here, Salary means Basic Pay+DA+Fixed percentage of commission on turnover.

Average salary means average of previous 10 months of salary from preceding the month of retirement.

And Number of years' service doesn't mean Number of completed years of service.

Example: X an employee of ABC Ltd receives Rs 7,50,000 as gratuity. He retires after completing a service of 15 years 8 months and average monthly salary of 10 months immediately preceding the retirement is 45,000.

Solution: As per the above provision taxability is

- (a)  $15/30 \times 45,000 \times 15 = 3,37,500$
- (b) Actual gratuity received = 7,50,000
- (c) 10,00,000

Least of the above is 3,37,500 which is exempted from tax.

So Gratuity taxable =  $7,50,000 - 3,37,500 = 4,12,500$ .

Note:

- (i) Gratuity is taxable under the head "Income from Salary" on Due or Receipt basis.
- (ii) Where Gratuities are received by an employee from more than one employer in the same previous year or different years, the aggregate maximum amount of Gratuity exempt from tax cannot be more than 10 lakhs.

Leave salary:

- 1) Chargeability: Sec 10(10AA) of the Income tax act, 1961.
- 2) Meaning: Generally different leaves are available to the employees which can either be utilised or may remain unutilised. Such unutilised leaves may be accumulated and may be encashed at the time of retirement or leaving the job. Such encashment of leaves is said to be Leave salary.
- 3) Tax treatment: Taxability of leave salary depends upon whether leave is encashed at the time of job or at the time of retirement. Further employees are classified into two types i.e. Government employees and Non-Government employees.
  - a) Leave salary availed during continuity of employment: It is chargeable to tax for both Government & Non-Government employees.
  - b) Leave salary availed during retirement or leaving the job:
    - i) For Government employees: It is fully exempted from tax under sec 10(10AA)(i)
    - ii) For Non-Government employees: In case of Non-Government employees (including an employee of Local authority or public sector unit undertaking) leave salary is exempted from tax on the basis of least of the following:
      - (1) Leaves standing to the credit of the employees during the time of retirement or leaving the job (See Note 1) X Average monthly salary (See Note 2)
      - (2) 10 X Average monthly salary
      - (3) Amount specified by the government Rs 3,00,000
      - (4) Leave encashment received during the time of retirement.

*Note 1:* Calculation of leaves standing to the credit of an employee at the time of retirement or leaving the job is as follows:

Step (a): Find out the duration of service in number of years (Ignore fraction of year)

Step (b): Find out the number of leaves availed for each year (Maximum of 30 leaves)

Step (c): Find out the earned leave actually taken or encashed (in number of days) during the time of service

The computation is as follows:

$$\boxed{[\text{Step (a)} \times \text{Step (b)} (\text{minus}) \text{Step (c)}] / 30}$$

*Note 2:* "Salary" means Basic + DA + Fixed percentage of commission on turnover. "Average Salary" means average of the 10-month salary immediately preceding the retirement.



## 4) Flow chart to know taxability:

Points to be remembered:

1. Where leave salary is received by Non-Government employee from two or more employers may be in same or different years then the maximum amount of exemption under section 10(10AA)(ii) during the life time of the concerned employee cannot exceed Rs 3,00,000.
2. Salary paid to the legal heirs of the deceased employee in respect of leaves outstanding to the credit of the employee during the time of his death is not taxable as salary.

Examples:

- 1) Mr X an employee of Central government retires on Feb,28 2015 and receives Rs 5,00,000 as cash equivalent of earned leaves. Is 5,00,000 is taxable?  
Solution: As Mr X is a Government employee, leave salary of Rs 5,00,000 is wholly exempted from tax.
- 2) Mr X an employee of Central government retires on Feb,28 2014 and receives Rs 5,00,000 as cash equivalent of earned leaves. He joined Non-government organisation on 1st April, 2014. Is 5,00,000 is exempted?  
Solution: Yes, as Mr X received the Leave salary as Government employee, Rs 5,00,000 is exempted from tax.

- 3) Mr X retires on Sep 30th, 2014 from a private sector company after completing a service of 32 years. As per the company's rule he is entitled to 24 days leave for each completed year of service. He has availed 120 leaves while in service. He had already encashed 300 leaves in 2010-11. The balance was encashed in 2014-15 @ 10,000 p.m. Salary for the period from Oct 2013-Mar 2014 was 15,000 p.m. and from April 14 to Sep 30 2014 was 16,000 p.m. Find the amount of leave salary exempted from tax.

Solution: As per the problem X is a Non-Government employee and he had availed leave salary at the time of retirement. So, it is taxable.

As per the above provisions least of the three is exempted from tax:

Leaves standing to the credit of the employees during the time of retirement or leaving the job  
(See Note 1) X Average monthly salary (See Note 2) =  $15.6 \times 15,600 = 2,43,360$

$10 \times \text{Average monthly salary} = 15,600 \times 10 = 1,56,000$

Amount specified by the government Rs 3,00,000

Leave encashment received during the time of retirement =  $[32 \times 24 \text{ (minus) } 300] / 30 \times 10,000 = 1,56,000$ .  
Lower of the above is 1,56,000. So the whole leave salary is exempted from tax.

Note 1:

Step (a): service in number of years = 32 years

Step (b): Number of leaves availed for each year (Maximum of 30 leaves) = 24 days

Step (c): Earned leave actually taken or encashed (in number of days) during the time of service = 300

So finally leaves credited at the time of retirement are  $[32 \times 24 \text{ (minus) } 300] / 30 = 15.6 \text{ months}$

Note 2: Average salary = Average of salary from 1st Dec-2013 to 30th Sep-14 = 15,600  
 $(15,000 \times 4) + (16,000 \times 6) / 10 = 15,600$

### Leave Travel concession or Assistance

1. Meaning: LTA is the remuneration paid by the employer to the employee for his travel in the country with his family or alone.
2. Taxability: Sec (5) of the Income tax act 1961.
3. Amount of Exemption:
  - (i) Where journey is performed by Air: Amount of air economy class fare of the National carrier by the shortest route or the actual amount spent, whichever is less.
  - (ii) Where journey is performed by Rail: Amount of Air conditioned first class rail fare by the shortest route or the amount spent, whichever is less.

- (iii) Where the places of origin of journey and destination are connected by rail and journey is performed by any other mode of transport: Amount of Air conditioned first class rail fare by the shortest route or the amount spent, whichever is less.
- (iv) Where the places of origin of journey and destination are not connected by rail
  - (a) Where a recognised public transport system exists: First class or deluxe fare by the shortest route or the actual amount spend, whichever is less.
  - (b) Where no recognised public transport system exists: Air conditioned first class rail fare by the shortest route or the amount actually spent whichever is less.
- 4. Meaning of 'Family': The exemption is available in respect of fare for going anywhere in India and Family includes Spouse and children (Step child or adopted child) of the employee. It also includes parents, brothers, sisters who are wholly dependent upon the employee.
- 5. Number of Children: The exemption is available only for 2 children born after 1 October 1998. However for children born before 1 October 1998 this condition is not applicable and also in respect of multiple births after one child i.e. children born out of multiple birth after the first child will be treated as "One child".

Example: If X had 5 children out of which 2 are born before 1 October 1998, 1 is born in June-2000 and remaining 2 are born as multiple births in 2004 then for total of 5 children the exemption is available.
- 6. Number of journeys: The exemption is available for 2 journeys in a block of 4 calendar years commencing from 1986. If an Assessee had not availed travel concession or assistance during any of the specified 4 years, then this exemption can be claimed in the first calendar year of the next block.
- 7. Exemption is based upon actual journey: The exemption is available only upon the actual expense incurred for the journey i.e. if no journey then no exemption.
- 8. No exemption is available if the family members are travelling separately without the employee who is not in leave.
- 9. Employees have to furnish evidence of the expenditure being claimed as deduction on account of LTC, HRA etc., to their employer based on which the employer will compute TDS liability u/s 192, vide notification number 30/2016 dated 29/04/2016.

*This article is contributed by Md Sameer Hussain, Intern of SBS and Company LLP. The author can be reached at [sameerh@sbsandco.com](mailto:sameerh@sbsandco.com)*

## CENTRAL EXCISE

**A PEEP INTO EXCISE LEVY ON PRECIOUS JEWELLERY**

Contributed by Priya Singh &amp; Vetted by CA Manindar K |

## Introduction:

With the decision of Government to charge excise duty on jewellery, now consumers have to pay more in purchasing these items. On the other side, huge protests are undertaken by the Jewellers on the premise that the smooth flow of their business would be disturbed by Central Excise department officials' frequent visits and roving enquiries. Let us analyse the impact of excise duty and the consequential compliance requirements

## Meaning and scope of "Articles of jewellery":

As per the meaning given under Central Excise Tariff Act, 1985, the articles of jewellery means the following;

1. Any small object of personal adornments.  
Examples: rings, bracelets, necklaces, brooches, ear-rings, watch-chains, fobs, pendants, tie-pins, cuff-links, dress-studs, religious or other medals and insignia.
2. Articles of personal use of a kind normally carried in the pocket, in the handbag or on the person.  
Examples: cigar or cigarette cases, snuff boxes, cachou or pill boxes, powder boxes, chain purses or prayer beads
3. These articles may be combined or set (that is with natural or cultured pearls, precious or semi-precious stones).
4. However, these articles do not cover articles in which precious metal is present as minor constituents, for example, monograms, ferrules

Excise duty is applicable on articles of jewellery which is covered under tariff item 7113 of Central Excise Tariff Act, 1985. Levy is applicable on articles of gold, platinum whether or not studded with diamonds and other precious metal stones. Silvery jewellery studded with diamonds and other precious stones are also covered within the ambit of the levy. However plain silver jewellery which are not studded with diamonds or any other precious stones are exempt from excise duty. Thus excise duty is applicable on all types of jewellery except plain silver jewellery i.e. not studded with diamonds or any other precious stones.

## Salient features of the levy:

Excise duty is on the act of manufacture of excisable goods. The duty is payable by manufacturer at the rate specified on the value of these goods. Though duty is applicable on manufacture of excisable goods, the same shall be payable at the time of removal of the goods from factory.

In case of jewellery sector, any person who manufactures jewellery on his own would be considered as manufacturer and accordingly liable to pay excise duty. Sometimes, the retailer may get their jewellery manufactured through artisans/gold smiths by supplying them the raw gold. This is called manufacture on job work basis.

Central Excise Rules, 2002 contains a specific rule relating to Jewellery sector i.e. Rule 12AA. In terms of this rule, in case where the jewellery is manufactured on job work basis, the principal manufacturer (retailer) shall be responsible to obtain registration under central excise, maintain accounts, pay excise duty and comply with other requirements of the Central Excise law. The job workers, who are mostly unorganised and in large scale are completely relieved from all types of compliance under central excise;

The duty levy is made effective from 01.03.2016 onwards where excise duty is payable on manufacture of jewellery by opting for any one of the following options;

- Pay duty @ 1% of the value without availing CENVAT credit on inputs and capital goods or
- Pay duty @ 12.5% of the value by availing CENVAT credit on inputs and capital goods

The CENVAT credit of service tax paid on input services can be claimed under both the options;

**Small Scale Industry Exemption:**

Small scale manufactures are entitled to claim relief from excise duty, provided their turnovers are within the specified limit. The criteria laid down for jewellery manufacturers are as follows;

- i. In previous Financial year, the aggregate value of clearance of jewellery (excluding plain silver jewellery) for home consumption does not exceed 12 crores, and;
- ii. In current financial year, exemption is given for first clearance of articles of jewellery for home consumption up to a value of Rs. 6 crores.

The exemption is also subject to certain other conditions viz. no Cenvat credit shall be availed on inputs and a certificate from a Chartered Accountant certifying the turnover shall be obtained. This is an optional exemption. A manufacturer may choose to pay excise duty on all clearances by availing CENVAT credit.

**Valuation:**

The excise duty can be paid at 1% or 12.5% at the option of manufacturer. The duty is payable at the time of removal of such goods from the workshop. So, the value shall be determined at the time of clearing goods from workshop in accordance with the provisions of Central Excise Act, 1944. The method of valuation would depend upon the nature of removal of jewellery from workshop.

*Jewellery directly sent from workshop to Customer's location:* In certain cases the jewellery may be manufactured upon customer's order. In such cases, the transaction value i.e. the price at which such goods are sold to the said customer shall be considered as the value of excisable goods.

*Showroom and workshop are at the same location:* Certain jewellers may operate their business by having showroom and workshop at the same location. In such cases, the removal of jewellery from the manufacturer's location (factory or workshop) is said to have taken place only when the jewellery is removed from showroom upon sale to customers. In these circumstances, the transaction value can be considered as value of jewellery and accordingly excise duty is required to be paid.

*Jewellery manufactured at workshop is removed to showroom for sale:* Whenever excisable goods are removed from workshop (factory) to a showroom (depot), the value of any excisable goods removed from workshop (factory) shall be based on 'Normal Transaction Value' of such goods as prevailing at a showroom (depot).

Normal transaction value is price at which greatest quantity of similar goods are sold at the depot/showroom at the time nearest to the time of removal of excisable goods from Factory. Let us understand this concept with a practical example.

Example: On 10th March 2016, five gold chains of a particular design are removed from workshop to showroom. On 9th March, 2016, the said gold chains are sold to three customers in the following manner.

Customer	Quantity	Price per gold chain (Rs.)
A	1	50,000
B	2	47,000 (Total 94,000)
C	3	45,000 (Total 1,35,000)

On 12th of April 2016, all the five gold chains are sold to customers at a price of Rs. 52,000 each.

As discussed above, 'Normal Transaction Value' is the price at which greatest quantity is sold at the showroom at the time when goods are removed from workshop. In the above example, gold chains are removed from workshop on 10th March 2016. At the time nearest to this point i.e. 9th March, 2016, gold chains of that particular design are sold to three customers. The highest quantity sold is three in case of customer 'C'. The price at which those chains are sold to customer 'C' is the 'Normal Transaction Value' i.e. Rs 45,000 per chain.

As five chains are removed from workshop to Showroom, the value of these goods shall be valued at Rs 2,25,000 (45,000\*5). Excise duty payable is to be calculated at 1% or 12.5% of this value. As stated in the above example, on 15th April, 2016 these gold chains are sold to customers at a higher price of Rs. 52,000 each. This action will not increase the amount of excise duty payable on those gold chains.

On the other hand, it has been stated by CBEC vide Circular No. 1021/9/2016-CX dated 21.03.2016 that Principal Manufacturer can value the excisable goods on the basis of first sale invoice value. Under the existing Central Excise Law, there is no concept of valuing excisable goods on the basis of First sale invoice. Also, there is no explanation given as to what is first sale invoice value, whether it is the price adopted for first invoice raised during a day or otherwise. What would be the position if there is no such sale happening at the showroom on the day the Jewellery is removed from workshop?

In the humble opinion of paper writer, Circular of CBEC can only clarify the legal position existing and it cannot lay down a law on its own in contrary to the existing law laid down by Parliament/Central Government. In view of this reason, the legality of the said circular is questionable.

*Jewellery manufactured by job worker and sent to retailer:* As discussed above, in terms of Rule 12AA of Central Excise Rules, 2002, the retailer (principle manufacturer) is the person responsible to pay excise



duty with respect to jewellery manufactured by job worker. In view of this rule, the goods can be brought to the showroom of the retailer from job worker's workshop without paying any excise duty. Excise duty is required to be paid on these goods at the time of removal from showroom. Accordingly, transaction value shall be considered as value of the jewellery.

#### Registration:

Manufacturers of jewellery having the requirement to pay excise duty are required to get themselves registered with Central Excise department. The registration shall be taken online in Form-A1 in the ACES website [www.aces.gov.in](http://www.aces.gov.in) under Central excise. Normally, a manufacturer is required to obtain registration for each of his manufacturing units separately. The jewellery manufacturer has given the benefit of obtaining registration for a single premise though manufacturing is undertaken at multiple locations. This is called centralised registration. This benefit is available only upon maintaining records relating to all the other units at the place for which centralised registration is sought for.

#### Invoice System:

Excisable goods should be cleared from factory only under the cover of an invoice signed by owner of the factory or authorised signatory. This should be issued in triplicate. Original copy is for Customer/Consignee, duplicate copy shall be issued to the transporter or anyone who is moving the jewellery from workshop to any other intended location and triplicate will be retained by manufacture for records. The standard invoice should include the following details;

- Excise Registration number
- Name and address of the consignee
- Description and classification of goods (7113)
- Quantity and value of goods, rate and amount of excise duty
- Time and date of removal from workshop or job-workers place.
- Mode of transport including vehicle No.

#### Record Maintenance:

Normally, a manufacturer of excisable goods has to maintain the following minimum records for the purpose of Central excise;

- Daily Stock Account (for brevity, DSA) – Rule 12 of the Central Excise Rule, 2002 directs manufacturer to maintain the DSA where the manufacturer should keep the record of description/particulars of goods manufactured, opening and closing balance, quantity removed, assessable value, duty charged on that value and amount of duty actually paid etc. Hence, DSA keeps the records of stock (finished and work-in-progress) on daily basis.
- Raw Material Input Register – This is a register required to be maintained at the workshop for all excisable goods purchased and used in manufacture of finished goods. It records the type of raw materials used for making of jewellery, opening and closing balance, inputs purchased, inputs used, the amount of duty paid on the same etc.
- CENVAT Credit Register – This register is required to be maintained in order to claim CENVAT Credit of inputs, capital goods and input services. This record is required to be maintained separately unit wise and goods wise. This register records the duty/tax paid on inputs, capital goods and input services for

making of both exempted (plain silver jewellery) and taxable goods (silver studded with gems/diamonds etc.). It also indicates the balance of credit availed, utilised and the liability of output tax etc.

- **Job Work Register:** This a register which keeps records of the kind of goods manufactured on job-work basis, inputs sent to job-workers, credit availed, jewellery manufactured at job-worker's premise, goods cleared directly to customer's place etc.

However, if the jewellery manufacturer is maintaining records under VAT and/or Bureau of Indian Standards or any other private records giving details about the daily usage of stocks, raw materials, job work and the CENVAT credit balance is sufficient under Central Excise.

#### Payments:

Rule 8 of Central Excise Rules, 2002 requires the manufacturer to make payment of excise duty by 6th of the month following the month in which clearances are made irrespective of whether the actual duty being collected from the buyer or not.

However, manufacturer whose turnover in the previous financial year is less than 12 crores, shall be entitled to make payment by 6th of the month following the quarter in which clearances are made. For the month of March/ quarter ending March, the payment has to be made by 31st March.

#### Returns:

The manufacturers of jewellery are obligated to file periodical returns by 10th of the following month in the applicable forms as discussed hereunder

- Form ER-8 – This is applicable to manufacturers who have chosen the option of paying excise duty @ 1% without credit has to file returns in Form ER-8 monthly, by 10th of the immediately following month.
- Form ER-1 – This is applicable to a manufacturer paying excise duty on monthly basis at 12.5% by availing CENVAT credit on inputs. Such manufacturers are required to file their monthly return in Form ER-1 by 10th of the immediately following month.
- Form ER-3 – This is applicable to manufacturers who are entitled to claim SSI concessions and accordingly making quarterly payments. It is not required to avail the SSI concessions. They are given the facility of filing returns once in every quarter in Form ER-3 by 10th of the immediately following quarter.

#### Conclusion:

Before parting, jewellery sector is one of its kind sector involving huge number of retailers, job workers operating in an unorganised way. Considering this, a high level committee has been constituted to make suitable recommendations for implementation of excise levy on this sector. Report of the committee is awaited. However, this initiative has not relieved the jewellers from paying excise duty during the interim period. Further, the committee has invited recommendations/suggestions from trade. Thus a small effort has been made to disseminate the various aspects of excise levy and compliance requirements on jewellery sector.

*This article is contributed by Priya Singh, Intern of SBS and Company LLP. The author can be reached at [priyas@sbsandco.com](mailto:priyas@sbsandco.com)*

## PROJECT FINANCE

**ALTERNATE INVESTMENT FUNDS (AIF)**

Contributed by Jhansi &amp; Vetted by CA Rajesh D |

## What is Fund?

A fund is a pooled investments collected from the group of investors which can be incorporated as a business entity by way of Trust, Company, Limited Liability Partnership, Partnership, Body Corporate and the entity is governed by the Manager.

These funds are regulated by SEBI under Securities Exchange Board of India (Alternative Investment Funds) Regulations 2012.

## What is Alternate Investment Funds?

As per Section 2(1)(b) of Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012

- Alternative Investment Funds is defined any fund incorporated in India as LLP, Company, Body Corporate, Partnership, Trust by pooling the investments from India or Foreign and invest the funds as defined in accordance with the Investment policy.
- But Investment made not in accordance with the provisions Securities and Exchange Board of India (Mutual Funds) Regulations, 1996, Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 or any other regulations of the Board to regulate fund management activities.

## Types of Funds

- Open Ended – It is a type of fund where investors can redeem their investments at any point of time i.e. before the closing of the fund also.
- Closed Ended – It is a type of fund where investors can redeem their investments only at the time of closing of the fund.

## Categories of AIF

- Category I: Category I of AIF, shall invest the funds in start-up/ early stage ventures/ SMEs/ Social Ventures/ Infrastructure or other sectors or areas which the government or regulators would consider socially and economically desirable.
- Category II: Category II of AIF, which does not fall under Category I and III and which does not undertake leverage or borrowing other than to meet day-to-day operational requirements and as permitted in these regulations.
- Category III: Category III of AIF, which employs complex trading strategies and may employ leverage including through investment in listed or unlisted derivatives.

## Eligibility Criteria

- There are different types of eligibility criteria for an LLP, Company, Body Corporate & Trust.
- The manager is required to have interest in the fund of not less than 2.5% of the fund corpus or Rs.5 Crore whichever is lower for Category I & II.
- For a category III fund, the manager must have interest of 5% of the fund corpus or Rs.10 Crores whichever is lower.
- Declare the tenure of the funds, investor, objective & style of investment strategy in the registration process for proper decision making to the investors.
- The fund shall inform to SEBI whether the investors have other funds registered with SEBI.

## Registration of AIF:

- From the commencement of the regulations, no entity or person shall act as an AIF unless he has obtained a certificate of registration from the Board (SEBI).
- The funds registered as Venture Capital Fund under SEBI (Venture Capital Fund) Regulations, 1996 shall continue to be regulated by the said regulations till the existing fund or scheme managed by the fund is wound up and such funds shall not launch any new scheme after notification of these regulations.
- Any entity referred in sub-regulation (1) who fails to make an application for grant of certificate within the period specified therein shall cease to carry on activity as on AIF.
- AIF shall seek registration on one the following category: Category I, Category II, Category III
- An application for grant of certificate shall be made for any of the categories as specified in sub-regulation (4) in Form A as specified in the First Schedule to these regulations and shall be accompanied by a non-refundable application fee as specified in Part A of the Second Schedule to these regulations to be paid in the manner specified in Part B thereof.
- The Board shall take into account requirements as specified in these regulations for the purpose of considering grant of registration.
- Without prejudice to the powers of the Board to take any action under the Act or regulations made there under, the certificate of registration shall be valid till the AIF is wound up.
- The Board may, in the interest of the investors, issue directions with regard to the transfer of records, documents or securities or disposal of investments relating to its activities as an Alternative Investment Fund.
- The Board may, in order to protect the interests of investors, appoint any person to take charge of records, documents, securities and for this purpose, also determine the terms and conditions of such an appointment.

There are 209 Alternative Investment Funds registered under SEBI as on 31st March, 2016. Some of them are as follows:

S.No.	Name of the Alternative Investment Fund	Category
1	UtthishtaYekkum Fund	Category – I (Venture Capital Fund)
2	Indiaquotient Investment Trust	Category – I (Venture Capital Fund)
3	Sarbe partners Trust	Category – II
4	Real Estate Opportunities Trust	Category – II
5	Forefront Alternative Investment Trust	Category – III
6	DICCI Trust	Category – I (SME Capital Fund)
7	IIFL Opportunities Fund	Category – III
8	Incube Connect Fund	Category – I (Social Venture Fund)
9	L&T Infrastructure Fund	Category – I (Infrastructure Fund)
10	Ankur Capital Fund	Category – I (Angel Fund)

Below is the link for the list of Alternative Investment Funds:

[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1461124238814.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1461124238814.pdf)

#### Investment Conditions

The following are the investment conditions for all categories of AIF:

- AIF can invest in the securities of the companies incorporated outside India subject to the conditions and guidelines as may be stipulated by RBI from time to time.
- Category I & Category II of AIF shall invest not more than 25% of the corpus in one Investee Company.
- Category III shall invest not more than 10% of the corpus in one investee company.
- Co-Investment in an investee company by a manager or sponsor shall not be in terms more favourable as than issued by any other AIF.
- AIF shall not invest in its associates except with the approval of 75% of the investors by value of their investment in AIF.
- Un-Invested funds may be invested in mutual funds, bank deposits and other liquid assets of high quality such as Treasury Bills, CBLOs (Collateralized and Lending Obligation), Commercial Papers, Certificate of Deposit, etc. till the deployment of the funds of AIF.
- AIF may act as a Nominated Investor under clause (b) of sub-regulation (1) of regulation 106N of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.
- Notwithstanding the above conditions the board may specify some additional conditions for specific category of AIF under sub-regulation (1) under this regulation.

## Investment Conditions for each Category:

Category of Fund	Investment Conditions
Category I	<ol style="list-style-type: none"> <li>1. Shall invest in investee companies/ venture capital/ special purpose vehicle/ LLP/ partnerships or in units of other AIF as specified in the regulation.</li> <li>2. May invest in units of Category I of AIF of sub – category but cannot invest in the units of Fund of Funds.</li> <li>3. Shall not borrow funds directly or indirectly or engage in any leverage except meeting temporary funding requirement by satisfying the following all conditions: Not more than 30 days, Not more than 4 occasions in a Year, Not more than 10% corpus.</li> <li>4. In addition, AIF Regulations may also prescribe a set of investment conditions in respect of each sub-category under Category I AIFs.</li> </ol>
Category II	<ol style="list-style-type: none"> <li>1. Shall invest primarily in unlisted investee co. or in units of other AIFs as specified in the Placement Memorandum.</li> <li>2. May invest in the units of Category I &amp; Category II but cannot invest in the units of Fund of Funds.</li> <li>3. May engage in the hedging subject to the guidelines as prescribed by SEBI.</li> <li>4. Shall not borrow funds directly or indirectly or engage in any leverage except meeting temporary funding requirement by satisfying the following all conditions: Not more than 30 days, Not more than 4 occasions in a Year, Not more than 10% corpus</li> </ol>
Category III	<ol style="list-style-type: none"> <li>1. May invest in securities of listed or unlisted investee companies or derivatives or complex or structured products.</li> <li>2. May invest in the units of Category I or II but they should invest solely in such units and shall not invest in units of other fund of funds.</li> <li>3. May engage in leverage and borrow subject to consent from the investors in the fund and subject to a maximum limit, as may be specified by the Board.</li> <li>4. shall be regulated through issuance of directions regarding areas such as operational standards, conduct of business rules, prudential requirements, restrictions on redemption and conflict of interest as may be specified by the Board.</li> </ol>



### Investment Conditions for all categories:

1. AIF can invest in the securities of the companies incorporated outside India subject to the conditions and guidelines as may be stipulated by RBI from time to time.
2. Category I & Category II of AIF shall invest not more than 25% of the corpus in one investee company.
3. Category III shall invest not more than 10% of the corpus in one investee company.
4. Co-Investment in an investee company by a manager or sponsor shall not be on terms more favorable than those offered to other AIF.
5. AIF shall not invest in its associates except with the approval of 75% of the investors by value of their investment in AIF.
6. Un-Invested funds may be invested in mutual funds, bank deposits and other liquid assets of high quality such as Treasury Bills, CBLOs(Collateralized and Lending Obligation), Commercial Papers, Certificate of Deposit, etc. till the deployment of the funds of AIF.
7. AIF may act as a Nominated Investor under clause (b) of sub-regulation (1) of regulation 106N of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.
8. Notwithstanding the above conditions the board may specify some additional conditions for specific category of AIF under sub-regulation (1) under this regulation.

### Placement Memorandum

A memorandum containing the details of the private placement which may be necessary for the investor for the informed decision making on whether to invest in AIF with the board and shall be filed with the board within 30 days prior to launch of scheme with the fees as may be prescribed in the second schedule. Payment of fees shall not require for the first launch of scheme.

Below is the link for the SEBI (AIF) Regulations, 2012

[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1337601524196.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1337601524196.pdf)

*This article is contributed by Jhansi D, Intern of SBS and Company LLP. The author can be reached at [jhansid@sbsandco.com](mailto:jhansid@sbsandco.com)*

© All Rights Reserved with SBS and Company LLP



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

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

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

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

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

*Bengaluru:* B104, RIRCO, Santosh Apartments, Wind Tunnel Road, Murugeshpalya, Old Airport Road, Bangalore – 560017, Karnataka.

---

### Disclaimer:

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

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

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