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By

SBS and Company LLP
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INTERNATIONAL TAXATION

DRAFT FOREIGN TAX CREDIT (FTC) RULES

Contributed by CA Suresh Babu |

Background:

With globalization, International Trade is growing at a rapid pace. There are several aspects which the parties to a transaction consider while transacting international trade. One of them being Income tax. Clarity with regard to the Income tax exposure in the Resident Country and the other Country is of paramount importance to the parties to survive and be competitive in today's world. Countries of the world fully acknowledge the above fact and have therefore devised ways to ensure clarity with regard to taxing rights over a particular transaction. However, in certain circumstances it may be the case that the tax is levied twice on a particular stream of income which gives rise to "Double Taxation".

There are two types of Double Taxation, namely:

- Economic Double Taxation and
- Juridical Double Taxation

Economic Double Taxation occurs where two different persons are subjected to tax in respect of the same amount of income or capital. It may arise, for example, where an amount is paid by person A to person B which is treated as taxable income of B while not being allowed as deduction in the hands of A.

Juridical Double Taxation occurs as a result of imposition of comparable taxes by two (or more) Countries on the same tax payer in respect of the same income for identical periods. Juridical Double Taxation may, inter alia, occur in the following circumstances:

- Where two Countries subject the same person to tax on his or her worldwide income. This would take place if both the Countries under their respective domestic regulations treat the taxpayer as their resident.
- Where the two Countries (Country R and Country S) subject the same person, not being a resident of either Country, to tax on income derived from, or capital owned in, one of the Country. This may happen, for example where the non-resident has a permanent establishment in Country R through which he earns interest from Country S.
- Where a resident of Country R derives income from, or owns capital in, Country S and both the Countries levy tax on such income or capital.

The tax structure of a developing country like India is an important factor in deciding its growth potential. For example, it can act as a stimulant for inflow of foreign fund, foreign technology, exports, etc. Accordingly, it makes prudent sense to devise means to avoid double taxation. A very important means of avoiding double taxation is by entering into a Double Tax Avoidance Agreement (DTAA) between the two transacting countries. Many tax related problems arising out of typical characteristics of international trade are solved or settled by DTAA. For example, the types of Juridical Double Taxation explained above can be mitigated, respectively by:

- Determining residential status of a tax payer (article 4 of DTAA)
- Applying mutual agreement procedure
- Laying down ways of eliminating double taxation (Article 23 of DTAA provides for Exemption method and credit method)

India - FTC Developments:

The Indian Tax Laws (ITL) provide for relief from juridical double taxation of income of Indian residents through a double taxation avoidance agreement (DTAA) or, in the absence of a DTAA, through unilateral relief as specified in the ITL. The mechanism provided in the DTAA/ITL provides the broad parameters and, presently, there are no specific rules available in respect of the framework/manner for granting FTC in India. In 2015, the ITL was amended to empower the CBDT to make rules in this behalf.

The Indian Income-tax Act, 1961 (the Act) under clause (ha) of sub-section (2) of section 295 provides that the Central Board of Direct Taxes (CBDT) may prescribe rules specifying the procedure for the granting of relief or deduction, as the case may be, of any income-tax paid in any country or specified territory outside India, under section 90 or section 90A or section 91, against the income-tax payable under the Act.

In 2013, a Committee was set up by CBDT to suggest the methodology for grant of Foreign Tax Credit (FTC) after examining the various issues related to it. After due consideration of the issues raised by various stakeholders, the Committee submitted its report. The draft rules for grant of Foreign Tax Credit are uploaded on the website of the Department at www.incometaxindia.gov.in for comments from stakeholders and general public.

Draft FTC rules :

1. **FTC to Residents in the year of assessment of income:** An assessee being a resident shall be allowed a credit for the amount of any foreign tax paid by him in a country or specified territory outside India, by way of deduction or otherwise, in the year in which the income (corresponding to the foreign tax paid) corresponding to such tax has been offered to tax or assessed to tax in India, in the manner and to the extent as specified in this rule.
2. **Foreign tax - Defined:** Foreign tax would mean the taxes covered under the applicable DTAA and, in other cases, the taxes covered under the double tax relief provisions of the Act. Where the foreign tax paid has been disputed in any manner by the taxpayer, such foreign tax would not qualify for FTC.
3. **FTC set off to be allowed against Tax, Surcharge and cess:** FTC would be allowed against the amount of Indian income tax, as well as surcharge and cess payable under the ITL. No credit shall be allowed against any sum payable by way of interest, fee or penalty.

4. Computation of FTC:

- Conversion rate: Foreign tax paid in foreign currency shall be converted into Indian currency by applying “telegraphic transfer buying rate” on the date when such foreign tax was paid or deducted.
- Maximum credit: FTC shall be restricted to the lower of tax payable under the ITL on such income or the foreign tax paid on such income
- Source-by-source approach: FTC shall be computed separately for each source of income arising from a particular jurisdiction.

5. MAT or AMT: In a case where minimum alternate tax (MAT) or alternate minimum tax (AMT) is payable under the Act, FTC shall be allowed against such MAT/AMT in the same manner as is allowable against normal tax payable under the ITL. However, Where the amount of foreign tax credit available against the tax payable under the provisions of section 115JB or 115JC exceeds the amount of tax credit available against the normal provisions, then while computing the amount of credit under section 115JAA or section 115JD in respect of the taxes paid under section 115JB or section 115JC, as the case may be, such excess shall be ignored.

6. Documentation to be furnished for claiming FTC:

- (i) Certificate from the tax authority of a country or specified territory outside India specifying the nature of income and the amount of tax deducted therefrom or paid by the assessee. However, in a case where the foreign tax is deducted at source, the assessee may furnish a certificate of tax deducted from the person responsible for deduction of such tax;
- (ii) Acknowledgement of online tax payment or bank counter foil or slip or challan for tax payment where the payment of foreign tax has been made by the assessee; and
- (iii) A declaration that amount of foreign tax in respect of which credit is being claimed is not under any dispute.

Concluding thoughts:

Though this is a significant development and should be looked at as a positive move from the CBDT/Government, the FTC rules to be finalized, may need to provide further clarity on the certain other aspects, illustratively, calculation of underlying tax credit and tax sparing credit, option to carry forward excess FTC as envisaged by certain DTAA's of India. Further, the source-by-source approach would typically result in increased compliance burden and leads to sub-optimal availability of credit.

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INCOME TAX

ASSESSMENT ON DECEASED ASSESSEE

Contributed By CA Ram Prasad |

"Only two things are certain in life: Death and taxes- Benjamin Franklin".

We all agree with the above quote. Death will certainly put end to so many issues but not tax issues! In this article, we shall understand the assessment proceedings pertaining to a deceased assessee with the help of judgment of Honourable High Court in the case of CIT vs. M Hemanathan.

The background of the case is that the Department even though they had notice of death of the assessee, proceeded to initiate revision proceedings against the deceased assessee.

The issue before the Honourable High Court of Madras is whether the proceedings initiated against the deceased assessee are valid when the legal heir has participated in the proceedings?

Facts of the case:

Assessee filed the return of income and the return was processed under Section 143(1) of the Act. Later the assessee case was selected for scrutiny and notice under Section 143(2) issued. A refund order was passed after taking into account the information submitted by the assessee.

After two years of passing assessment order, the CIT issued a notice under Section 263. The show cause notice was addressed to the assessee. Three months before the issue of show cause notice the assessee has passed away.

The show cause notice returned with the endorsement "assessee deceased". This fact was informed by the ITO to the Commissioner. Thereafter department served the same show cause notice to the son of the deceased assessee through messenger. Son participated in the proceedings through authorised representative.

Pursuant to show cause notice the case was remitted back to the assessing officer for passing a fresh order. The assessing officer passed an order raising the demand for payment of tax.

Son (legal heir) preferred an appeal against the order passed under Section 263 to the Tribunal. The appeal is allowed by the Tribunal holding that the order U/S 263 against a deceased person is null. Department has filed an appeal against the order of the Tribunal before Honourable High Court.

Department Contention:

- The Tribunal was wrong in setting aside the order under Section 263 as null as it was passed against a deceased person as the legal heir participated in proceedings;
- Though the notice was issued on the deceased person it was served on the legal heir and legal heir participated in the proceedings. Therefore, the provisions of section 292BB will apply;
- As per the provisions of section 159(2) legal representative will be deemed to be an assessee.

High Court Verdict:-

- Any proceedings initiated against the deceased person is a nullity. Law permits the proceedings to continue after the death of the assessee provided they initiated when he was alive and not otherwise.
- The purpose of issue of notice is to make the person aware of the nature of the proceedings. Once the nature of proceedings is made known and understood by the assessee, he should not be allowed to take advantage of certain procedural defects. The provisions of section 292BB cannot be invoked where the very initiation of proceedings is against deceased person.
- Provisions of section 159(1) would apply to a case where a liability has already crystallized. In this case the very initiation of proceedings was done after the death of the assessee. Despite the known fact that the assessee had passed away the department chose to pursue very same notice and hence department can't take the advantage of Section 159(2)(b).
- As the notice issued against deceased person the provisions of section 159(3) are not applicable.
- The very initiation of the proceedings against the deceased person and the continuation of the same despite having noticed the factum of death of the assessee, cannot be approved.

Remarks:

As the notice was issued in the name of the deceased assessee the proceedings are null. There is distinction between a case where proceedings are initiated against person, who is alive, but continued after his death and a case where proceedings are initiated against a deceased person himself. Former case is valid as per the Act while later is null.

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SERVICE TAX

CONSTRUCTION SERVICES TO GOVERNMENTAL AUTHORITY— PATNA HIGH COURT WIDENS THE SCOPE OF EXEMPTION

Contributed by CA Harsha & CA Manindar |

Certain infrastructural construction services provided by any person to Government, local authority and Governmental authorities are being exempted from service tax under entry 12 of Notification 25/2012-ST dated 20.06.2012. The said entry is reproduced as under;

"12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);

(c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;

(d) canal, dam or other irrigation works;

(e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or

(f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65 B of the said Act "

(Note: With effect from 01.04.2015, the entries (a), (c), (f) are omitted and by entry 12A exemption is restored with respect to these entries but only for contracts entered into prior to 01.04.2015)

The exemption under the above reproduced entry is applicable if the services are provided to Government or Local authority or Governmental authority. The term 'Governmental authority' for the purpose of this exemption is given under clause (s) of Part II (Definitions) of the Notification 25/2012-ST dated 20.06.2012. The same is reproduced as under;

"Governmental authority" means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W of the Constitution

In view of the above reproduced definition, the following conditions are required to be cumulatively satisfied in order to consider a particular authority as "governmental authority"—

- *It shall be a board, or an authority or any other body established by Government*
- *with 90% or more participation by way of equity or control by Government and*
- *set up by an Act of the Parliament or a State Legislature*
- *to carry out any function entrusted to a municipality under article 243W of the Constitution.*

Thus the above definition of 'Governmental authority' has restricted scope and does not include various bodies/authorities like government companies, boards, authorities that are established and owned by Government by means of a gazette notifications and are not separately setup by an Act of Parliament and State Legislature.

In view of this legal anomaly, the definition has been amended by Notification 2/2014-ST dated 30.01.2014 with a view to include within its ambit, the entities which are established by Government but are not necessarily setup by an Act of Parliament or State legislature. The amended definition is reproduced as under;

"governmental authority" means an authority or a board or any other body;

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by Government,

with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution;

In the recent Finance Budget, 2016, it is proposed vide clause 156 to introduce a new section 101 in Finance Act, 1994 to refund service tax if any paid based on the previous restrictive definition of 'Governmental authority' for the canal or irrigation works undertaken prior to 30.01.2014; The TRU Circular F.No.334/8/2016-TRU dated 29/02/2016, which was issued to clarify the proposed budget changes, has made the following observation;

"K. Service Tax exemption to canal, dam or other irrigation works with retrospective effect:

- a) Definition of Governmental authority was amended with effect from 30.01.2014 so as to exempt services provided by way of construction, erection, maintenance, or alteration etc. of canal, dam or other irrigation works provided to entities set up by Government but not necessarily by an Act of Parliament or a State Legislature. However, services provided prior to 30.01.2014 to such bodies remained taxable. The benefit of exemption is proposed to be extended to the said services provided during the period from the 1st July, 2012 to 29.01.2014."*

Thus the scope and intent of the above amendment in the definition of 'Governmental authority' is with a view to allow exemption benefit to those entities established by Government but not so by way of an Act of Parliament or State legislature.

Recently, the Patna High Court in the case of ShapoorjiPaloonji and Company Limited vs. CCE, 2016-TIOL-556-HC-Patna-ST had the occasion to interpret the scope and ambit of the above amended definition of 'Governmental authority'. The facts of this case are that the petitioner company was appointed by IIT,

Patna to construct their academic building. It was undisputed that IIT, Patna was setup by an Act of Parliament i.e. Indian Institute of Technologies Act, 1961. The petitioner company had initially collected service tax and paid. However, C&AG after conduct of their audit pointed that the petitioner company need not pay service tax for construction undertaken to the IIT. The petitioner applied for refund and the same was rejected.

The petitioner claimed refund on the interpretation that in order to come within the ambit of 'Governmental authority', it is sufficient that the same is set up by an Act of Parliament or State Legislature. The condition as to 90% or more participation by way of equity or control and to carry out any function entrusted to a municipality under 243W of the Constitution are not applicable for those entities that are set up by an Act of Parliament or State Legislature. The said conditions are applicable only for the second clause of the definition i.e. authority or body established by Central Government.

The Patna High Court heard the parties and came to the conclusion that no service tax is required to be paid by the petitioner for the reason that IIT falls within the ambit of 'Governmental authority'. The relevant para is reproduced as under;

"The Governmental authority as defined in the notification dated 30th January, 2014, means an authority or board or any other body set up by an Act of Parliament or State Legislature. The provisions contained in sub-clause(i) and sub-clause(ii) of clause 2(s) are independent dis-junctive provisions and the expression "90% or more participation by way of equity or control to carry out any function entrusted to a municipality under Article 243W of the Constitution" is related to sub-clause (ii) of clause 2(s) alone. The clause (i) is followed by ";" and the word "or". Therefore each of the sub-clauses is independent provision." (para 11)

In view of the above observation of Patna High Court, Governmental authority would include any authority or body set up by an act of Parliament or State Legislature. It also includes any authority or body established by Government with 90% or more participation by way of equity or control to carry out any function entrusted to a municipality under Article 243W of the Constitution.

Based on the interpretation of Patna High Court, any authority or body established under an act of Parliament or State legislature would come within the ambit of 'Governmental authority'. This would be so even if Government is not holding 90% or more equity or controlling interest and such institutions are not entrusted with functions covered under Article 243W. These include institutions like LIC, IRDA, SEBI, ICAI etc. Thus any construction services of the nature specified under entry 12 to these entities would be entitled to exemption;

Before parting, as discussed above, by taking into cognizance the reasons/purpose behind the amendment to the definition of 'Governmental authority' coupled with clarification given by TRU on the scope of the amendment, the Revenue is not open to such wide interpretation of the term 'Governmental authority' as upheld by Patna High Court. Nevertheless the view of Patna High Court has opened the Pandora's Box with respect to service tax applicability on the infrastructural construction works undertaken.

FEMA

COMPOUNDING OF OFFENCES BY RBI - UNDER FOREIGN EXCHANGE MANAGEMENT ACT, 1999

Contributed by CA Murali Krishna |

Foreign Exchange Management Act, 1999 (hereinafter referred to as "FEMA") which has replaced the erstwhile the Foreign Exchange Regulation Act, 1973 is a big leap in the management of Foreign Exchange Reserves of the Country. The erstwhile regime of approvals has been replaced with automatic approvals and principle of management by exception.

Since the law is of Economic Legislation and any violation/ non-compliance of the law affects the country as a whole, such non-compliance invites hefty penalties and the offender is liable for monetary Penalties. In order to give the opportunity to the offender to rectify the offence, FEMA has provisions to opt for Compounding of Offences.

In this article an attempt is made to dwell upon the concept of Compounding of Offences under FEMA.

Penalties under FEMA

As per Section 13 of FEMA, the following are the penalties for offences under FEMA

1. Where the amount involved in the offence is quantifiable, 3 times of the amount involved
2. Where the amount involved in the offence is not quantifiable, Upto Rs. 2,00,000/-

In case where the offence is continuing one, an additional penalty upto Rs. 5,000/- per day of continuing default/ offence.

In addition to the monetary penalty, the subject property of the offence, can also be confiscated by the Government

What is Compoundable Offence:

A criminal act in which a person agrees not to report the occurrence of a crime or not to prosecute a criminal offender in exchange for money or other consideration.

The purpose of Compounding of offences under FEMA is to minimize the transaction costs, while taking severe view of malafide, wilful and fraudulent transactions.

Compounding of Offences by RBI

As per Section 15 of the FEMA read with Foreign Exchange Management (Compounding Proceedings) Rules, 2000 read with Master Direction No. 4/2015-16, dated January 1, 2016 (updated from time to time), RBI can compound the following nature and types of offences

1. Matters covered under Section 6, 7, 8 & 9 of FEMA
2. Matters covered under FEM (Current Account Transactions) Rules, 2000 except the offences covered under Section 3(a) of FEMA

Compounding Authorities of RBI

The following is the authorisation matrix of RBI officers for compounding of Offences

Rank of the Officer	Sum Involved of the Offence (INR)
Assistance General Manager	< 1 Million
Deputy General Manager	>= 1 Million and < 4 Million
General Manager	>= 4 Million and < 10 Million
Chief General Manager	>= 10 Million

Provided that no contravention shall be compounded unless the amount involved in such offence is Quantifiable.

Delegation of powers to Regional Offices of RBI

RBI has delegated the powers of compounding to the officers of Regional Offices, if the nature of offence is covered under the below table:

FEMA Regulation	Brief Description of Contravention
Paragraph 9(1)(A) of Schedule I to FEMA 20/2000-RB dated May 3, 2000	Delay in reporting inward remittance received for issue of shares. (ARF)
Paragraph 9(1)(B) of Schedule I to FEMA 20/2000-RB dated May 3, 2000	Delay in filing form FC-GPR after issue of shares.
Paragraph 8 of Schedule I to FEMA 20/2000-RB dated May 3, 2000	Delay in issue of shares/refund of share application money beyond 180 days, mode of receipt of funds, etc.
Paragraph 5 of Schedule I to FEMA 20/2000-RB dated May 3, 2000	Violation of pricing guidelines for issue of shares.
Regulation 2(ii) read with Regulation 5(1) of FEMA 20/2000-RB dated May 3, 2000	Issue of ineligible instruments such as non-convertible debentures, partly paid shares, shares with optionality clause, etc.
Paragraph 2 or 3 of Schedule I to FEMA 20/2000-RB dated May 3, 2000	Issue of shares without approval of RBI or FIPB respectively, wherever required.
Regulation 10A (b)(i) read with paragraph 10 of Schedule I to FEMA 20/2000-RB dated May 3, 2000	Delay in submission of form FC-TRS on transfer of shares from Resident to Non- Resident.
Regulation 10B (2) read with paragraph 10 of Schedule I to FEMA 20/2000-RB dated May 3, 2000	Delay in submission of form FC-TRS on transfer of shares from Non-Resident to Resident.
Regulation 4 of FEMA 20/2000-RB dated May 3, 2000	Taking on record transfer of shares by investee company, in the absence of certified form FC-TRS.

The powers to compound the contraventions above have been delegated to all Regional Offices (except Kochi and Panaji) and FED, CO Cell, New Delhi respectively without any limit on the amount of contravention. Kochi and Panaji Regional offices can compound the contraventions for amount of contravention below Rupees Ten Million. The contraventions of Rupees Ten Million or more under the jurisdiction of Panaji and Kochi Regional Offices and all other contraventions of FEMA will continue to be compounded at Cell for Effective Implementation of FEMA (CEFA), Foreign Exchange Department, Reserve Bank of India, Central Office, Mumbai, as hitherto.

The compounding proceeding may be initiated in any of the following manner:

1. Based on the Memo issued by the Authorised Dealer (Bank)
2. Based on the Memo issued by the RBI
3. *suo motoby* the applicant itself

The application need to be made in prescribed format along with prescribed fee of Rs. 5,000/- to the respective Compounding Authority.

The compounding application need to be disposed off by the Compounding Authority within 180 days of its receipt. If the applicant desires the RBI gives the opportunity of being heard.

No subsequent compounding application can be made for next three years from the date of disposal of previous application, related to same offence.

Authors Comments

The real benefit of compounding is that it gets rid of being chased/adjudicated by the regulatory authorities, gives peace of mind, reduction of monetary penalties etc. Also the offence stands cured from the date of its inception, as if no offence is taken place.

The amount paid under compounding proceedings is treated as Fees and is allowable business expenditure u/s 37 of Income Tax Act, 1961, whereas the amount paid under regular adjudication proceedings is treated as Penalty and is ineligible business expenditure.

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COMPANIES ACT

THE COMPANIES AMENDMENT BILL, 2016 [BILL 73 of 2016] – A REVIEW- PART-1

Contributed by CS Phanindra |

The provisions of the Companies Act, 2013, came in to force with effect from 12.09.2013, and out of the 470 sections, 282 sections are in force, mostly effective from 01.04.2014. The rest of the sections are still to be notified.

Within a period of 15 months of the commencement, on the pretext of ease of doing business in India, and to overcome some practical difficulties as to implementation of the provisions, some amendments were proposed to the Companies Act, 2013, and accordingly, the Companies Amendment Act, 2015, came in to force, and 29.05.2015 was the appointed date for coming in to force of the Sections 1 to 12, 15 to 23, and 14.12.2015, as the commencement date for Section 13 and 14 of the said Amendment Act.

Even after the above amendment, there were a lot of provisions which required amendments/relaxations, and accordingly the Ministry had come with 4 notifications Dt:05.06.2015, giving exemptions/relaxation from the applicability of various provisions of the Act to Government Companies, Private Companies, Section 8 Companies and Nidhi Companies.

To sort out any further difficulties, the Ministry had constituted a Corporate Law Committee, to obtain opinion from the various sections in the industry and recommend amendments to the Act. The Committee submitted its report on 01.02.2016.

Based on the recommendation of the Corporate Laws Committee, the Ministry had come up with an Amendment Bill with nearly 86 amendments, and the said bill was introduced in the Lok Sabha on 16.03.2016. The bill was referred to the parliamentary standing committee on 12.04.2016. The committee is to submit its report within a period of 3 months.

Sl. No.	Section(s) under the CA, 2013, amended/Altered /Inserted	Clause No. in the Amendment bill	Proposed amendment relating to	Remarks/Comments/penalty
1.	Amendment to Section 2 (6), (28), (30), (41), (46), (49), (51), (57), (71), (76), (85), (87), (91)	2	<p>(6)-Associate Company- Inclusion of an explanation to the definitions of associate company, to include the basis of control for joint venture.</p> <p>(6)-Associate Company- Inclusion of an explanation to the definitions of associate company, to include the basis of control for joint venture.</p> <p>(30)-Debentures- Inclusion of proviso to the debentures definition, so as not to term certain instruments as debentures, i.e., instruments under CH-III-D of the RBI act, and other instruments as may be prescribed by the CG in consultation with RBI.</p> <p>(41)- Financial Year- inclusion of the word associate company in the proviso to the financial year definition to make an application to the Tribunal to follow different financial year, than of the other associate company/holding/subsidiary company, for the sake of consolidation of a/cs</p> <p>(46)- Holding Company - inclusion of a proviso stating that for this clause, "<u>Company</u>" includes <u>any Body Corporate</u>.</p> <p>(47) – The definition <i>interested director</i> omitted</p> <p>(51)-KMP- inclusion of clause expanding the scope of officers under the definition of key managerial personnel, (Officers under full time employment, not more than 1 level below the directors, and designated as KMP by the Board.)</p>	<p>Amendment/inclusion to remove ambiguity.</p> <p>Amendment/inclusion to remove ambiguity.</p> <p>Exemption proposed to be given to some companies</p> <p>Amendment/inclusion to remove ambiguity.</p> <p>Amendment/inclusion to remove ambiguity.</p> <p>Expanding the scope of applicability, for ease of operations and also to fix up responsibilities.</p>

Sl. No.	Section(s) under the CA, 2013, amended/Altered /Inserted	Clause No. in the Amendment bill	Proposed amendment relating to	Remarks/Comments/penalty
			<p>(57)-Networth-inclusion to the definition of net worth, so as to include the debit and credit balances of P&L account.</p> <p>(71) – Public Company - punctuation correction to the definition of Public Company.</p> <p>(76)-related party – expanding the scope of related party under the head “body corporate”, an investing company or the venturer of the company.</p> <p>(85)-Small Company- The maximum prescribed limit of paid-up capital stands increased from Rs. 5 crores to Rs.10 Crores.</p> <p>Change in the wordings as to the P&L account requirement. i.e., “last P&L account” to “P&L of immediately preceding FY”</p> <p>The turnover to be prescribed by the govt, is proposed to be increased from 20 crores to 100 crores.</p> <p>(87)- subsidiary company- amendment to alter the holding of more than 51 % in the “voting power” rather than “total share capital”.</p>	<p>Amendment/inclusion to remove ambiguity.</p> <p>Amendment/inclusion to remove ambiguity.</p> <p>Expanding the scope of applicability</p> <p>Expanding the scope of applicability. Cushion to Govt to prescribe the limit upto Rs. 10 crores.</p> <p>Amendment/inclusion to remove ambiguity. Expanding the scope of applicability. Cushion to Govt to prescribe the turnover limit upto Rs. 100 crores.</p> <p>Amendment as to basis of subsidiary, from as a percentage of share capital to “voting power”</p>

Sl. No.	Section(s) under the CA, 2013, amended/Altered /Inserted	Clause No. in the Amendment bill	Proposed amendment relating to	Remarks/Comments/penalty
			<p>To omit the proviso to the definition. Proviso not notified till now.</p> <p>To omit explanation (d) regarding "Layer".</p> <p>(91)-turnover- a new definition substituting the existing definition.</p>	Amendment/inclusion to remove ambiguity of the earlier turnover definition.
2.	Amendment to section 3.	3	A new Section 3(A) is proposed in connection with, if the minimum number of members are reduced in a Public Company/Private Company to what is prescribed under the Act i.e., 7 & 2 respectively, and the company carries on the business for a period of more than 6 months, then for the debts for the said period, the said members shall be severally liable and they may be sued severally.	New provision to fix liability on the members of for the debts by non-complying companies.
3.	Amendment to Section 4 (Memorandum)	4	<p>Amendment of Section 4(1)(c) to allow companies an unrestricted object clause, to engage in any lawful act or activity, rather than fixed objects.</p> <p>Amendment to Section 4(5) as to the validity of the name from 60 days to 20 days, from the date of allotment</p> <p>Insertion of new sub-sections (6A) and (6B) regarding the model Memorandum of Association.</p>	<p>Welcome amendment.</p> <p>The same is not welcome, as the period is too short.</p> <p>Will result in creation of uniformity in the documentation.</p>

Sl. No.	Section(s) under the CA, 2013, amended/Altered /Inserted	Clause No. in the Amendment bill	Proposed amendment relating to	Remarks/Comments/penalty
4.	Amendment to Section 7- Incorporation of Company	5	Amendment to Section 7(1)(c) in connection with the requirement for incorporation of a company. To replace the obtaining of affidavit from subscribers and directors and to replace the same with declarations from them with reference to incorporation of company.	Will result in simplification of the incorporation process.
5.	Section 12- Registered office	6	Amendment of Section 12 (1) as to requirement of having Registered office by a company within 30 days of incorporation from the present 15 days. Amendment of Section 12 (4) as to increase of time frame within which the change in registered office to be intimated to ROC, increased from 15 days to 30 days.	Welcome amendment increasing the time lines for intimation to ROC.
6.	Section 21-Authentication of documents	7	Amendment to include even an employee of the company to authenticate the documents for and on behalf of the Board, in addition to KMP and other officer.	Will result in ease of operations.
7.	Section – 26 – Matters to be disclosed in prospectus	8	Omission of sub-clauses (a) & (b) of Section 26(1), and inclusion of new clause in its place, in connection with the contents of the prospectus with respect to information and reports on financial information. Post the amendment, the information shall be in such manner, as specified by SEBI in consultation with Central Government. Further, amendment also provides that till the new requirements are specified by SEBI, the existing requirements as per SEBI act, shall apply.	Probably simplification of information/Data.

Sl. No.	Section(s) under the CA, 2013, amended/Altered /Inserted	Clause No. in the Amendment bill	Proposed amendment relating to	Remarks/Comments/penalty
8.	Section 35- Civil Liability for mis-statement in prospectus.	9	New Clause- Insertion to include a sub-clause to hold experts liable for their statements made by them forming part of the prospectus, and to provide immunity to Directors from liability, as the directors had relied on the statements made by the experts, and do not result in misstatement by director himself.	Burden on professionals to be more cautious while giving statements /certifications in prospectus.
9.	Section 42 – Private Placement	10	<p><u>Replacement with new section</u></p> <p>Offer letter to be issued to selected persons, not exceeding 50 or such high number as may be prescribed, in a financial year, whose names are to be recorded by the Board.</p> <p>Private placement offer does not carry renunciation right.</p> <p>Offer to more than the prescribed number will amount to public offer and compliance of section 23 is to be done.</p> <p>Amounts to be received through Cheque/DD or other normal Banking channels.</p> <p>Allotment to be done within 60 days from the receipt of money, and filing to be completed within 15 days of allotment and only after that monies can be used.</p> <p>If return not filed with ROC within 15 days, then the Company, the promoters, Directors shall be liable for penalty of Rs.2,000/- for each day, during which the default continues but not exceeding Rs.25,00,000/-, for each default.</p>	Compliance will become very complicated.

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			<p>If, allotment not in compliance with the provisions, then the Company, the promoters, Directors shall be liable for penalty of equalling to amounts raised or Rs.2 Crores which ever is lower. Company to refund the amounts with in 30 days of the order imposing the penalty.</p> <p>Any offer not made in compliance with the provisions of the Section shall be deemed to be public offer and all the provisions of SCRA & SEBI Act, shall be applicable.</p>	
10.	Section - 47 – Voting Rights	11	Amendment as to inclusion of section 188(1), in the restriction of voting rights, in addition to the existing Section 43 and Section 50.	Amendment/inclusion to remove ambiguity.
11.	Section - 53 – Issue of Shares at Discount	12	<p>Amendment of a grammatical error.</p> <p>Insertion of a new Sub-section 2(A) permitting issue of shares at a discount to creditors pursuant to settlement/restructuring scheme under directions/regulations specified by RBI under RBI Act or the Banking regulation Act.</p>	Welcome amendment.
12.	Section – 54 – Issue of Sweat Equity Shares	13	Deletion of Section 54 (1) (c), the requirement being the company could issue sweat equity shares only after completion of 1 year from the date the company was eligible to commence business	Welcome amendment, relaxing the period, thereby allowing the companies to issue sweat equity shares, without any limitation of period.

Sl. No.	Section(s) under the CA, 2013, amended/Altered /Inserted	Clause No. in the Amendment bill	Proposed amendment relating to	Remarks/Comments/penalty
13.	Section – 62 – Further issue of Share Capital	14	<p>Section 62(1) (c), is proposed to be amended to include the compliance of the Chapter III i.e., Section 42 and such other conditions as may be prescribed.</p> <p>Insertion as to the mode of dispatch of Rights issue offer letter. "Courier or any other mode having proof of delivery", is proposed to be included.</p>	Welcome amendment.
14.	Section 73 - Deposits	15	<p>Amendment to increase the amounts to be deposited in the deposit repayment reserve account, from 15 % to 20 % of the deposits maturing during the following financial year. Amount to be deposited on or before 30 of April each year.</p> <p>Omission as to requirement of deposit insurance.</p> <p>Amendment of one of the condition to accept deposits, as to stricter certification from the company side that it has not committed any default in repayment of deposits and where defaults have taken place, the company has made good the default, and a period of 5 years has lapsed since the date of making good the default.</p>	Welcome amendment in the interest of the depositors.
15	Section 74- Repayment of Deposits accepted before commencement of the Act	16	Amendment as to the term of repayment of deposits accepted under the old act, from 1 year to 3 years of the commencement of the new act or on or before expiry of the period for which the deposits were accepted, whichever is earlier.	Relief to some companies, who had obtained deposits under the old act.

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16.	Section 76 A - Punishment for contravention of section 73 or section 76.	17	Amendment as to the increase of the minimum fine on the company for non-compliance of the deposit rules either at the time of taking the deposit or its repayment, then the minimum fine shall be Rs. 1 Crore or two times of the deposit accepted, whichever is lower, and the maximum fee Rs.10 Crores.	Welcome amendment in the interest of the depositors.
17.	Section 77 – Duty to Register Charges	18	Insertion of a new proviso after the existing 3rd proviso to Section 77 (1), providing non-applicability of the section for some charges, as may be prescribed in consultation with RBI.	Welcome amendment.
18.	Section 78 – Application for registration of Charge	19	Amendment of the section in line with Section 77, to include the period of filing of 30 days.	No comment
19.	Section – 82 – Satisfaction of Charge	20	Amendment to provide time lines for filing of satisfaction of Charge by the Company or Charge holder with in a period of 300 days of satisfaction of the charge, and upon payment of additional fees, as may be prescribed.	Welcome amendment, because, now, we need to approach for condonation if delayed more than 30 days.
20.	Section 89 – Beneficial interest	21	Insertion of a new Sub-section (10), to section 89 which defines the term “beneficial interest” for the purposes of Section 89 and Section 90.	Welcome amendment defining the term, thereby making it more clear.
21.	Section 90 – Investigation of beneficial ownership of shares in certain cases.	22	The existing Section 90 to be substituted with a new section and in a much more detailed way detailing who has to give notice of having beneficial ownership and who is not required, maintenance of register and other incidental matters, and the heading of the Section to be renamed as “Register of significant beneficial owners in a company”.	Welcome amendment in order to have a control as to who are the real owners of the company, and who are acting/representing them in disguise and the reason for the same.

Sl. No.	Section(s) under the CA, 2013, amended/Altered /Inserted	Clause No. in the Amendment bill	Proposed amendment relating to	Remarks/Comments/penalty
22.	Section 92 – Annual Return	23	<p><u>Omission of provisions relating to</u></p> <p>(i) information as to indebtedness of the company.</p> <p>(ii) Names, address and other details of the FII.</p> <p>CG to prescribe Abridged form of Annual Return to OPC and small company.</p> <p>Annual Return need not be part of the Board Report, but the same shall be placed in the website of the company, if any, and a web-link to be provided in the Board’s Report.</p>	Welcome amendment, since, it will reduce the time of preparing duplicate documents.
23.	Section 93 – Filing of return with ROC in case of change in promoters stake	24	The section is proposed to be omitted, and accordingly, the requirement of filing MGT-10, by a listed company, whenever, there is increase or decrease of 2 % or more in the shareholding position of promoters and top ten shareholders of the company in each case, will no longer be required.	Welcome change. Because the company any how files return to Stock Exchanges.
24.	Section 94	25	<p>Omission of the requirement that prior intimation/service of the Special resolution to keep the registers or copies of return is to be given.</p> <p>Insertion of a proviso that Government may prescribe that certain registers, index, return shall not be available for inspection or copies of the same can be obtained.</p>	Welcome amendment in the interest of company operations and ease of doing business.

Sl. No.	Section(s) under the CA, 2013, amended/Altered /Inserted	Clause No. in the Amendment bill	Proposed amendment relating to	Remarks/Comments/penalty
25.	Section 96 – Annual General Meeting	26	Insertion of proviso enabling unlisted companies to hold their AGM any place in India, subject to consent in writing or through electronic mode from all the members in advance.	Welcome amendment.
26.	Section 100 – Calling of Extra-Ordinary General Meetings	27	Pursuant to rule 18 of Companies (Management and Administration Rules), 2014, EGM of a company can be held only India. The proposed amendment provides that EGM of a Company other than a WOS of a company incorporated out side India, shall be held in India i.e., EGM of WOS of a company incorporated out side India, can take place outside India.	Welcome amendment in view of the practical difficulties faced by the companies.
27.	Section 101 – Notice of meeting	28	Insertion of a proviso relating to hold of AGM & EGM at shorter Notice after obtaining consent from 95 % shareholders, entitled to vote at the meeting in case of company having capital and in case of no share capital then with the consent of the members holding not less than 95 % of the voting power.	Removal of ambiguity as in the principal act, there was no mention as to AGM or EGM, but only as GM
28.	Section 110- Postal Ballot	29	Insertion of a Proviso to Section 110 (1) to conduct the meeting in the form of a general meeting and not by postal ballot, and pass the resolutions through electronic voting.	Welcome amendment. It will reduce the expenditure and waste of stationery.
29.	Section 117 – Resolutions and agreements to be filed	30	Amendment (reduction) of the minimum penalty for non filing of resolutions with ROC: On the company: from Rs.5 Lakhs to Rs.1 Lakh Every Officer: From Rs.1 Lakh to Rs.50,000/-.	Welcome amendment.

Sl. No.	Section(s) under the CA, 2013, amended/Altered /Inserted	Clause No. in the Amendment bill	Proposed amendment relating to	Remarks/Comments/penalty
			<p>The requirement of filing of various resolutions that are required to be done have been omitted, except for voluntary winding up petition and resolutions passed under Section 179(3) (which any how is not applicable to private companies pursuant to the exemption notification Dt:05.06.2015)</p> <p>Insertion of a proviso that the clause shall not be apply to a resolution passed by Banking company for grant of loans or providing security, in its ordinary course of business.</p>	Reduction in filings.

Note:

1 Lakh = 100,000; 10 Lakhs = 1 Million; 1 Crore = 10 Millin; 10 Crore = 100 Million; 100 Crore = 1 Billion

Since there are many amendments proposed , due to paucity of space, we will bring up other amendements in the subsequent bulletins.

This article is contributed by CS Phanindra. The author can be reached at phanindra@sbsandco.com

TECHNICAL SESSIONS:

S.No.	Event	Date	Speaker	Venue
1	Detailed Analysis on Place of Provision of Service Rules, 2012	13/05/2016	CA Sri Harsha	SBS - Hyd
2	A Peek into MSME Advantages	20/05/2016	CA Rajesh D	SBS - Hyd
3	Internal Financial Control over Financial Reporting	27/05/2016	CA Sandeep D	SBS - Hyd
4	Incisive Analysis of Exemptions under Service Tax- Part -3	03/06/2016	CA Manindar K	SBS - Hyd

Note:

The timings for the above events shall be from 17:30 hrs to 19:30 hrs. We request the recipients of "SBS Wiki" who are interested to attend the above events to send confirmation of your participation two days in advance to make appropriate arrangements. The relevant material will be hosted at slideshare shortly after the session. The link to download is <http://www.slideshare.net/Team-SBS>



A Peep into Trading Mechanism of Stock Exchanges Companies (Amendment) Bill, 2016 - CS Phanindra - CA Murali Krishna G

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