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**Digest**  
An attempt to share knowledge

By

**Interns of  
SBS and Company LLP**

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## INCOME TAX

### ARTICLE ON SECTION 50C OF IT ACT

Contributed by Priyasingh & Vetted by CA Ramprasad |

## ON WHAT SHOULD YOU PAY TAX: ACTUAL SALE PROCEEDS OR STAMP DUTY VALUE ??

### INTRODUCTION

In Real estate sector, it is observed that due to scarcity of accessible land, the value is overpriced as large mismatch of demand and supply subsist in the economy. Such immovable property is sold at handsome price. This also means that the seller should be ready to pay good amount of income tax on such price. To avoid it, there was a common practice in real estate sector, very low price would be disclosed to Registrar and did not show the actual sale price in the official documents during sale/purchase of land or building. In order to catch hold of such incidence of unaccounted money in immovable property like land and building by undervaluing the sale price, Section 50C was introduced in the Income tax laws vide Finance Act 2002.

### SECTION 50C

#### “FULL VALUE OF CONSIDERATION IS STAMP DUTY VALUE “

- The section states that;
- “Where the consideration **received or accruing** as a result of the transfer by an assessee;
- of a **capital asset**, being land or building or both, is less than;
- the **value adopted or assessed or assessable** by any authority of a State Government **for the purpose of payment of stamp duty** in respect of such transfer,
- the value so adopted or assessed or assessable, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer”

*This becomes applicable if the following conditions are satisfied*

1. There should be a transfer of land or building or both (Long term or short term),
2. Such asset can be assessed in terms of Stamp Duty Value.

Till 30.09.2009, only when the sale deed is executed, this section become applicable. However, w.e.f 01.10.2009 through Finance Act, the word “Assessable” was added which means that if the property is transferred as per “Transfer of Property Act , 1882” without registration, still section 50C can be applied.

In such case, Stamp duty value as on the Date of Agreement would be taken as sale consideration despite the fact that the sale deed is not executed.

3. The value adopted by Stamp Valuation Authority would the value adopted for determining Capital Gains.

4. Such gain shall be taxed in the year of transfer. Capital Gains shall be Stamp Duty value less Cost of Acquisition and Cost of Improvement, subject to indexation if it is transferred after 24 months.

The new proviso inserted by Finance Act 2016 w.e.f 01.04.2017 is a rationale step by Income Tax Simplification Committee (Easwar Committee) which removed the hardship of assessee. This amendment compliments the point 2 (above) and resolved the dispute in cases of market value being different as on date of agreement and date of sale deed. This amendment says stamp duty valuation of property on the date of execution of the agreement to sell should be adopted instead of the value on the date of execution of the sale deed if the agreement date and registration dates are different and market value are not same.

### **Reference to Valuation Officer**

“Stamp duty value assessed is more than fair market value”

The sub-section 2 of section 50C says if the Stamp duty value assessed or assessable or adopted exceeds the fair market value and assessee claims the same. The section gives discretion to the AO that he may refer the valuation of capital asset to Valuation officer.

*However, in case of “ITO vs. Aditya Narain Verma (HUF) (ITAT Delhi)” (June 9,2017), the AO did not refer it to valuation officer and the case was presented before Tribunal by CIT(Appeals). The Tribunal held that when the assessee in the present case had claimed before Assessing Officer that the value adopted or assessed by the stamp valuation authority under sub section (1) exceeds the fair market value of the property as on the date of transfer, the Assessing Officer should have referred the valuation of the capital asset to a valuation officer instead of adopting the value taken by the state authority for the purpose of stamp duty. The very purpose of the Legislature behind the provisions laid down under sub section (2) to section 50C of the Act is that a valuation officer is an expert of the subject for such valuation and is certainly in a better position than the Assessing Officer to determine the valuation. Thus, non-compliance of the provisions laid down under sub section (2) by the Assessing Officer cannot be held valid and justified.*

*(The paper writer opined that the assessee can take base of this case to claim for evaluation of Land and building by Valuation expert subject to the jurisdiction of appeal.)*

### **What if the FMV by VO is higher than SDV?**

FMV by Valuation Officer is higher than the Stamp duty value: If the value of Land/building assessed by the Assessing officer (for brevity , “AO”) is higher than the market value and the assessee objects such value. The AO may refer it to Valuation Officer for valuation.

- The AO should take value of land/building as Stamp duty value assessed by him or FMV assessed by Valuation Officer, whichever is lower.

## **TAX IMPLICATIONS IN THE HANDS OF THE BUYER**

### **Section 56 (2) (x):**

The Finance Act ,2017 w.e.f 01.04.2017 has added a new clause which also removed clause (vii) (applicable only up to 31.03.2017). This clause is applicable to  
All assesses who purchases the property,  
At a value less than the Stamp duty value of such property and,  
Such difference is more than Rs. 50,000/- then  
The said difference will be taxable in the hands of the assessee under "Income from other sources".

### **Combination of Section 50C and Section 56 (2)(x)**

This combination is alarming for both buyer and seller. The same transaction of sale/purchase of land or building would be taxed twice (part/full) in the hands of both buyer and seller if the consideration is less than Stamp Duty Value as on Sale deed or Date of Agreement, as the case may be.

It is important that both parties should take care of it while agreeing to such sale/purchase transaction.

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## AUDIT

### INTRODUCTION TO INTERNAL AUDIT

Contributed by Sai Krishna & Vetted by CA Sandeep Das |

#### History of Internal Audit in India:

When the Companies Act, 1956 was operative in India, internal audit wasn't mandatory. During that period, in case of audit of companies mentioned in Para 61 of Companies (Auditor's Report) Order, 2003, the Company Auditor must report on the status of internal audit department in the company. However, the Companies Act, 2013, made internal audit mandatory to specified class of companies in India.

#### Definition and meaning:

- According to the Internal Audit Standards Board of ICAI, internal audit means "an independent management function, which involves a continuous and critical appraisal of the functioning of an entity with a view to suggest improvements thereto and add value to and strengthen the overall governance mechanism of the entity, including the entity's strategic risk management and internal control system."
- The Institute of Internal auditors defines Internal auditing as "an independent, objective assurance and consulting activity designed to add value and improve an organisation's operations. It helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes."
- Internal audit is beyond the financial transactions and is largely concerned with internal control system of the organisation and risk management.



The Internal Audit Standards Board (IASB) was formed by ICAI in the year 2004. In 2006, a total of 18 Standards on Internal Audit (SIA) have been issued by the IASB. Interestingly, none of the standards were made mandatory till date.

#### Why Internal Audit?

Despite external audit, several frauds cropped up in various businesses within the past couple of decades. This enhanced the significance of internal audit in organisations. The expertise of internal auditors helps the organisation in the following areas:

- Assess the effectiveness of internal controls and their implementation;
- Compliance with various laws applicable to the entity;
- Evaluate the reliability and integrity of financial and operational information;
- Provides recommendation for improvement of operations;
- Helps the management in early detection and prevention of fraud and errors.

**Applicability to Companies:**

According to Section 138 of the Companies Act, 2013, the following Companies are required to appoint an internal auditor:

- Every listed Company;
- Unlisted Public Company satisfying any of the following conditions:
  - Outstanding deposits  $\geq 25$  crore rupees at any point of time during the preceding financial year;
  - Paid up share capital  $\geq 50$  crore rupees during the preceding financial year;
  - Outstanding loans / borrowings  $\geq 100$  crore rupees at any point of time during the preceding financial year;
  - Turnover  $\geq 200$  crore rupees during the preceding financial year.
- Private Company satisfying any of the following conditions:
  - Outstanding loans / borrowings  $\geq 100$  crore rupees at any point of time during the preceding financial year;
  - Turnover  $\geq 200$  crore rupees during the financial year.

In the initial year of incorporation, the companies need not appoint internal auditor.

An existing company covered under any of the above criteria shall appoint an auditor within six months of commencement of such section. This Section was made effective from 01-04-2014 and the last date to appoint internal auditor was 01-10-2014.



\$3.8 billion fraud by WorldCom (one of the key telecom companies in USA) was Detected by its Internal audit department in 2002. This resulted in the Second largest bankruptcy in USA at that time.

**Who can do internal audit?**

- Chartered Accountant; or
- Cost Accountant; or
- Any other professional as decided by the Board of directors.

**Conclusion:** Effective Internal Audit enhances the internal controls placed in the organisation and helps the management in early detection and prevention of frauds. This is not only important for larger and medium sized organisations but also may be equally important for smaller entities, as they may face equally complex environments with a less formal, robust organisational structure to ensure the effectiveness of its governance and risk management process.

--- The cost of preventive actions is much less than the cost of corrective actions ---

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**DEBT, EQUITY ADVISORY****MSME PRODUCTS AND ITS BENEFITS**

Contributed by Hemanth &amp; Vetted by CA Rajesh D

In India, the enterprises are classified broadly into two categories:

- a. Manufacturing and
- b. Those engaged in Providing/rendering of services.

Both categories of enterprises have been further classified into micro, small and medium enterprises based on their investment in plant and machinery (for manufacturing enterprises) or on equipment (in case of enterprises providing or rendering services). The present ceiling on investment to be classified as micro, small or medium enterprises is:

**MICRO ENTERPRISE:** An enterprise is micro Enterprise if investment in plant and machinery does not exceed Rs.25 lacs if engaged in manufacturing or production of goods and investment in equipment does not exceed Rs.10 lacs, if engaged in providing of services.

**SMALL ENTERPRISE:** Small enterprise is an enterprise having investment in plant and machinery above Rs.25 lacs but up to Rs.5 crores in case of manufacturing concern and investment in Equipment above Rs.10 lacs but up to Rs.2 crores.

**MEDIUM ENTERPRISE:** Medium enterprise is an enterprise having investment in plant and machinery above Rs.5 crores but up to Rs.10 crores in case of manufacturing concern and investment in Equipment above Rs.2 crores but up to Rs.5 crores in case of service enterprise.

**NOTE:** Investment in plant and machinery and Equipment is the original cost excluding land and building and the items specified by the Ministry of Small Scale Industries.

**MSME Products:****A. FINANCE FOR RECEIVABLES:**

Generally, Banks realize that Financial Health of a Micro Small and Medium Business depends significantly upon the speed with which their receivables are realized. MSME suppliers draw Bills of Exchange on Purchaser companies against supplies made/ services provided by them and the Bills of Exchange are accepted by the Purchaser companies. Wherever Bill of Exchange is not furnished by the large Corporates, based on acceptance on the Invoices and proof of delivery challan/ Goods Received Note, discounting is made as per agreed terms between the Corporates and SIDBI. Financing is provided for Receivables up to 6 months. The cash margin in respect of LCs/Guarantees are relaxed on a case to case basis to Micro and Small Enterprises.

**B. Working Capital loan:**

The minimum net working capital to be provided as margin is reduced to 5% from 6.25 % to all MSEs for assessment of Working capital requirement under “Turn over method” for fund based limits up to Rs. 5 crores.

**C. Loans for the purchase of generator sets:**

Micro and Small Enterprises, facing shortage of power are granted loans on hypothecation of generator sets with reduced Margin of 15%.

**D. Soft loans at concessional rate:**

Soft loans are granted for installation of solar water heating units as per MNRE guidelines. Loans for Solar lighting are available at concessional rate in terms of the offer given by certain manufactures.

**E. Additional need based working capital (WC) demand loan:**

Additional need based WC loan up to 20% of existing fund based limit for all Standard accounts of MSEs having credit facilities up to Rs.10.00 crore are granted. The loan is repayable in one year.

**F. Longer gestation period:**

Longer gestation period between 6 months to 1 year is granted for units where implementation period of the project under finance has been delayed.

**G. Additional credit requirements:**

Additional credit requirements of Micro, Small and Medium Enterprises are reconsidered for all Standard MSME accounts, based on eligibility /necessity. Drawls of full sanctioned limits by all MSMEs are permitted.

**H. Ad-hoc loans:**

Ad-hoc limit for short period not exceeding 180 days for procurement of raw materials are considered for Micro and Small Enterprises, where bulk raw material procurement is required during the season.

**MEME Schemes:****➤ Credit Guarantee Scheme:**

The scheme covers collateral-free credit facility to new and existing micro and small enterprises for loans up to Rs.100 lakh per borrowing unit. The guarantee cover is up to 75 per cent of the credit sanctioned.

**➤ Performance & Credit Rating Scheme:**

The Performance & Credit Rating Scheme for manufacturing MSEs was launched with the objective of assisting the MSEs in obtaining performance-cum-credit rating which would help them in improving performance and also accessing bank credit on better terms if the rating is high. Under the scheme, 75% of the fee charged by the rating agency is reimbursed by the Government subject to a maximum of Rs. 40,000.

**➤ Priority Sector Lending:**

Credit to the MSEs is part of the Priority Sector Lending Policy of the banks. For the public and private sector banks, 40% of the net bank credit (NBC) is earmarked for the Priority Sector. For the foreign banks, however, 32% of the NBC is earmarked for the Priority Sector, of which 10% is earmarked for the MSE sector. Any shortfall in such lending by the foreign banks has to be deposited in the Small Enterprise Development Fund (SEDF) set up by the Small Industries Development Bank of India (SIDBI).

**➤ Marketing Assistance and Technology Upgradation Scheme for MSMEs:**

The scheme aims at improving the marketing competitiveness of MSME sector by improving their techniques and technology for promotion of exports. The objective of this scheme is to identify and encourage those clusters of MSMEs, and make them Export Potential.

**➤ Skill Development Scheme:**

The Ministry of Micro, Small & Medium Enterprises (MSME) promotes the development of micro and small enterprises in the country with the objective of creating self-employment opportunities and upgrading the relevant skills of existing and potential entrepreneurs. By conducting Workshops, Exhibition Stalls, Skill development Fairs etc.

**MSME Benefits:**

- ❑ To encourage the small-scale units, the SEZs are required to allocate 10 per cent space for the small-scale units under the MSMED Act.
- ❑ MSE sector now has greater access to credit as a result of its classification as a priority lending sector. The banks are required to compulsorily ensure that specified percentage of their overall lending is made to priority sectors.

NOTE: The priority sectors include agriculture, small enterprises, retail trade, etc.

- ❑ 20 per cent of the total advances to MSE sector should go to micro (manufacturing) enterprises with investment in plant and machinery above INR 5,00,000 (Rupees Five Lakhs only) and up to INR 25,00,000 (Rupees Twenty-Five Lakhs only), and micro (service) enterprises with investment in equipment above INR 2, 00,000 (Rupees Two Lakhs only) and up to INR 10, 00,000 (Rupees Ten Lakhs only). Lending to medium enterprises is **not considered** to be a priority sector lending.
- ❑ If the performance of Micro and small Industries(MSE) goes well and good, they may get Reduction in Interest rate and in some cases, they may get Waiver in Principal Loan Amount.
- ❑ Government assistance to following domains:
  - A. Soft interventions - Maximum cost of project Rs. 25 lakhs, with Gol contribution of 75% (90% for Special Category States and for clusters with more than 50% women/micro/village/SC/ST units).
  - B. Hard interventions i.e. setting up of CFCs – maximum eligible project cost of Rs. 15 crores with Gol contribution of 70% (90% for Special Category States and for clusters with more than 50% women/micro/ village/SC/ST units).
  - C. Infrastructure Development in the new/ existing industrial estates/areas. Maximum eligible project cost Rs. 10 crores, with Gol contribution of 60% (80% for Special Category States and for clusters with more than 50% women/micro/SC/ST units).
  - D. The Prime Minister's Employment Generation Programme (PMEGP) also provides women entrepreneurs, a subsidy of 10% over and above the general category entrepreneurs in both rural and urban areas, with reduced beneficiary contribution of 5% of project cost as against 10% for general category.

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

**COMPANIES ACT, 2013****RULES, CIRCULARS, NOTIFICATIONS AND ORDERS ISSUED DURING THE MONTH OF SEPTEMBER, 2017****RULES****❖ The Companies (Acceptance of Deposits) Second Amendment Rules, 2017, Dt: 19.09.2017.**

Vide the said amendment rule, the Ministry has substituted the proviso to sub rule (3) of rule 3 in the Companies (Acceptance of Deposits) Rules, 2014 (herein after referred to as the principal rules), to provide that IFSC Public Company and a Private Company may accept from its members monies not exceeding 100% of aggregate of paid up share capital, free reserves and securities premium account and such company shall file the details of monies so accepted to the Registrar in Form DPT-3 (Return of Deposits).

The amendment rule provides for the further specifies the Private Companies to whom the maximum limit for acceptance of deposits from members shall not apply.

The form prescribes for a new Form DPT-3.

[http://mca.gov.in/Ministry/pdf/CompaniesAcceptanceofDepositSecondAmendmentRule\\_22092017.pdf](http://mca.gov.in/Ministry/pdf/CompaniesAcceptanceofDepositSecondAmendmentRule_22092017.pdf)

**❖ The Companies (Restriction on number of layers) Rules, 2017, Dt: 20.09.2017.**

With the commencement of the provisions of the proviso to Section 2 (87) of the Companies Act, 2013, with effect from 20.09.2017, the Ministry has notified the Companies (Restriction on number of layers) Rules, 2017. These shall come into force with effect from 20.09.2017

Vide the said rules, restriction is inserted on having more than two layers of subsidiaries for certain classes of holding companies other a Banking company, NBFC, Insurance company and a Government company.

Every company, other than a company permitted to have more than two layers of subsidiaries, existing on or before the commencement of the rules, which has more than two layers of subsidiaries shall file with the registrar a return in Form CRL-1 within 150 days from the date of publication of these rules in the official gazette.

[http://mca.gov.in/Ministry/pdf/CompaniesRestrictionOnNumberofLayersRule\\_22092017.pdf](http://mca.gov.in/Ministry/pdf/CompaniesRestrictionOnNumberofLayersRule_22092017.pdf)

**CIRCULAR**

- ❖ **Circular No.9: Exemption to certain unlisted public companies from the appointment of independent directors, Dt: 05.09.2017.**

Vide the said circular, the Ministry has clarified the concerns raised by the stakeholders in relation to notification number G.S.R.839(E) dated 5th July, 2017, amending Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 by providing exemption to an unlisted public company which is a joint venture, a wholly owned subsidiary, or a dormant company from appointment of Independent Directors.

Clarification was sought with regard to meaning of Joint Venture, and it is now clarified that "Joint Venture" would mean "a joint arrangement, entered into writing, whereby the parties that have joint control of the arrangement, have rights to the net assets of the arrangement". The usage of the term is similar to that under the Accounting Standards.

[http://www.mca.gov.in/Ministry/pdf/GeneralCircular\\_05092017.pdf](http://www.mca.gov.in/Ministry/pdf/GeneralCircular_05092017.pdf)

- ❖ **Circular No.10: Clarification regarding obligation to comply with the Indian Accounting Standards (Ind AS) and Rule 4 of Companies (Indian Accounting Standards) Rules, 2015, Dt: 13.09.2017.**

Vide the said circular, the ministry has clarified the queries as to implementation of Ind-AS by Holding Companies having Payments Bank or Small Finance Banks, as its subsidiaries.

It was clarified that the Holding Company shall follow the road map for implementation of Ind-AS, if the same is applicable to it, and if the said Holding Company has got Payments Bank or Small Finance Banks, as its subsidiaries, then the subsidiaries shall follow the guidelines as prescribed by RBI. The said subsidiaries have to provide Ind-AS Financials to its holding Company for the purpose of consolidation.

[http://mca.gov.in/Ministry/pdf/CompaniesIndianAccountingStandardsGSR365E\\_14092017.pdf](http://mca.gov.in/Ministry/pdf/CompaniesIndianAccountingStandardsGSR365E_14092017.pdf)

- ❖ **Circular No.11: Clarification regarding the timelines for making applicable/available new Form DPT-3, Dt: 27.09.2017.**

Vide the said Circular, the Ministry has clarified that the new version of Form DPT-3, notified vide amendment rules, and Notification No. GSR 1172(E), Dt:19.09.2017, shall be made available for e-filing after November, 2017, and till then existing e-form DPT-3, as available in the MCA Portal, can be used.

[http://mca.gov.in/Ministry/pdf/GeneralCircular11\\_27.09.2017.pdf](http://mca.gov.in/Ministry/pdf/GeneralCircular11_27.09.2017.pdf)

**NOTIFICATIONS**

- ❖ **Delegation of powers to Regional Directors by Central Government under Section 458 of Companies Act, 2013, Dt: 06.09.2017.**

Vide the said Notification, the Central Government, has delegated its powers and functions vested in it under sub-section (2) of Section 66 "Authority to receive notice of every application made to the Tribunal" to the Regional Directors at Mumbai, Kolkata, Chennai, New Delhi, Ahmedabad, Hyderabad and Shillong.

[http://www.mca.gov.in/Ministry/pdf/Delegationpowers\\_07092017.pdf](http://www.mca.gov.in/Ministry/pdf/Delegationpowers_07092017.pdf)

- ❖ **National Advisory Committee on Accounting Standards, Dt: 20.09.2017.**

Vide the said Notification, the Ministry has changes in relation to the Nominees of the Institute of Cost Accountants of India to the Committee. Further, the period of holding of office increased from One year to Two years.

[http://www.mca.gov.in/Ministry/pdf/NACAS\\_22092017.pdf](http://www.mca.gov.in/Ministry/pdf/NACAS_22092017.pdf)

- ❖ **Effective date on which proviso to clause (87) of section 2 of the said act shall come into force, Dt: 20.09.2017.**

Vide the said Notification, the Ministry has notified the 20th September, 2017 as the effective date in connection with the proviso to clause (87) of Section 2 of Companies Act, 2013 i.e., proviso relating to layers of subsidiaries.

[http://www.mca.gov.in/Ministry/pdf/CommencementNotification\\_22092017.pdf](http://www.mca.gov.in/Ministry/pdf/CommencementNotification_22092017.pdf)

No orders were issued during the month of September, 2017.

*These updates are contributed by Arun and vetted by CS Phanindra of SBS and Company LLP, Chartered Accountants. For any queries, please reach at [phanindra@sbsandco.com](mailto:phanindra@sbsandco.com)*

**SATURDAY SESSIONS**

S.No.	Event	Date	Speaker	Venue
1	Depository Receipts	14/10/2017	Arun	SBS - Hyd
2	Introduction to Bitcoin		Uday Kumar	SBS - Hyd
3	Filing of income tax returns	21/10/2017	Madhulika	SBS - Hyd
4	SEZ APR		Prudhvi	SBS - Hyd
5	Deposit accounts maintained by Non-Residents	28/10/2017	Supriya	SBS - Hyd
6	How to file GSTR-3B		Bharadwaja	SBS - Hyd
7	Capital gains- Exceptions to year of chargeability	04/11/2017	Harini	SBS - Hyd
8	Peer Review		Prudhvi	SBS - Hyd

**SESSIONTIMINGS: 2:30 to 4:30 PM*****Audit of Fixed Assets - Deepthi******GST POP Rules - Bhavani******Introduction to Internal Audit - Prudhvi******Overview of FDI - Sunil***



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