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Digest
An attempt to share knowledge

By

**Interns of
SBS and Company LLP**

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AUDIT**SA-250 – CONSIDERATION OF LAWS AND REGULATIONS IN AN AUDIT OF FINANCIAL STATEMENTS**

Contributed by G. Madhulika & Vetted by CA Sandeep Das |

• Introduction:

- This Standard on Auditing (SA) is effective from 1st April, 2009 and mainly deals with the auditor's responsibility to consider laws and regulations in an Audit of Financial Statements.
- It is not applicable to other assurance engagements in which the auditor is specifically engaged to test and report separately on non-compliance with specific laws and regulations.
- According to this SA, non-compliance means an act of omission or commission by the entity, either intentional or unintentional, which are contrary to the prevailing laws or regulations.



- Objective of the auditor is to:
 - i. Perform specific audit procedures to identify the instances of non-compliance which have a direct impact on the financial statements;
 - ii. To obtain sufficient appropriate audit evidence regarding the laws and regulations which have a direct impact on the Financial Statements;
 - iii. To respond appropriately to non-compliance or suspected non-compliance with laws and regulations identified during the audit.

• Impact on the Financial Statements:

- The provisions of laws and regulations may either have a direct or an indirect effect on the reported amounts and disclosures on the financial statements.
- Non-Compliance may result in fines, penalties, litigations or other consequences for the entity that may have a material effect on the financial statements.



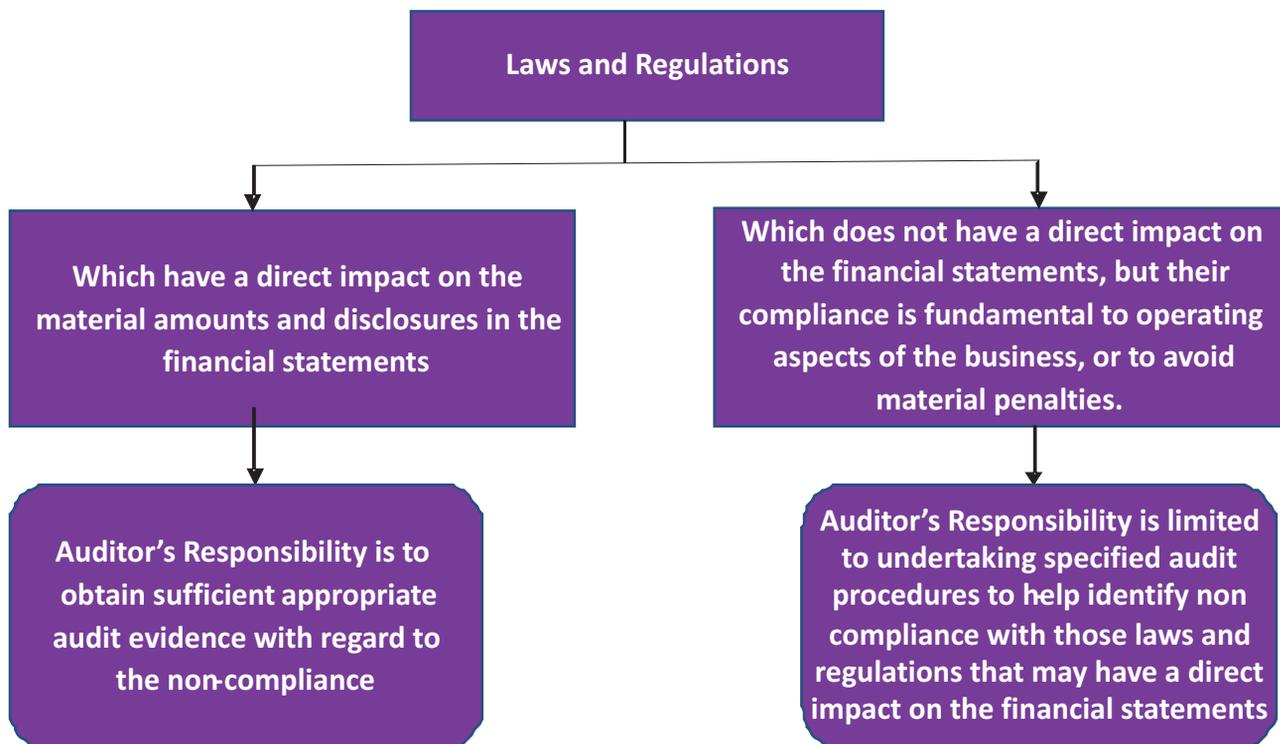
• **Responsibility for compliance with Relevant Laws and Regulations:**

- It is the responsibility of the management, with the oversight of Those Charged with Governance (TCWG) to ensure that the entity’s operations are conducted in accordance with the applicable laws and regulations.

• **Auditor’s Responsibility:**



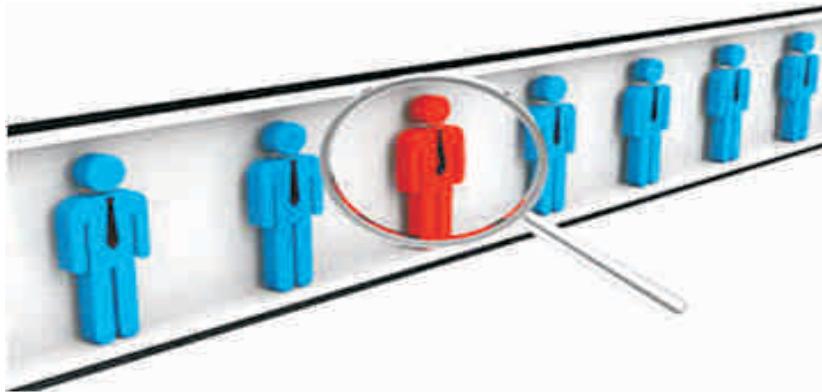
- Identify material misstatement in the Financial Statement due to non-compliance (However auditor is not responsible for preventing non-compliance and cannot be expected to detect non-compliance relating to all laws and regulations);
- To obtain reasonable assurance that the financial statements as a whole are free from material misstatements, whether caused due to fraud or error;
- This SA distinguishes the auditor’s responsibilities in relation to compliance with two different categories of laws and regulations as follows:



- **Auditor's Consideration for Compliance with Relevant Laws and Regulations:**

- The auditor shall obtain a general understanding of the following:
 - i. The legal and regulatory framework applicable to the entity or sector in which the entity operates;
 - ii. Entity's compliance with the relevant framework.
- The auditor shall obtain sufficient appropriate audit evidence regarding compliance with other laws and regulations generally recognized to have a direct impact on the determination of material amounts and disclosures in the financial statements;
- Auditor shall perform the following audit procedures to identify the instances of non compliance:
 - i. Inquiry with the management; and
 - ii. Inspecting, correspondence, if any, with the relevant licensing or regulatory authorities.
- To maintain professional skepticism throughout the audit;
- Obtain a written representation as per SA 580, from the management stating that all the instances of non-compliance or suspected non-compliance with laws and regulations have been disclosed to the auditor.

- **Audit Procedures to be performed when Non-Compliance is Identified or Suspected:**



- If the auditor is aware of the information concerning an instance of non-compliance or suspects a non-compliance, the auditor needs to obtain:
 - i. An understanding of the nature of the act and the circumstances under which it has occurred;
 - ii. Further information to evaluate the possible effect on the Financial Statements.
- If the auditor suspects that there may be a non-compliance, the auditor shall discuss the matter with the management, TCWG and also obtain external confirmation.
- In case to obtain sufficient appropriate audit evidence relating to non-compliance cannot be obtained, the auditor shall evaluate the lack of sufficient appropriate audit evidence on the auditor's opinion.

- **Reporting of Identified or Suspected Non-Compliance:**

- Reporting to Those Charged with Governance:



- Unless all those TCWG are involved in the management of the entity and are not aware of the matters involving identified or suspected non-compliance already communicated by the auditor, the auditor shall communicate with TCWG relating to non-compliance that comes to auditor's attention during the course of audit, other than the matters that are clearly inconsequential.
- If, in the auditor's judgment, the non-compliance is believed to be intentional and material, the auditor shall communicate the matter to those charged with governance as soon as practicable.
- If the auditor suspects that management or those charged with governance are involved in non-compliance, the auditor shall communicate the matter to the next higher-level authority of the entity, if it exists, such as an audit committee or supervisory board.
- Where no higher-level authority exists, or if the auditor believes that the communication may not be acted upon or is unsure as to the person to whom to report, the auditor shall consider the need to obtain legal advice.

- **In Audit Report:**



- i. If the auditor concludes that the non-compliance has a material effect on the financial statements and has not been adequately reflected in the financial statements, the auditor shall, in accordance with SA 705 (Modifications to the Opinion in the Independent Auditor's Report), express a qualified or adverse opinion on the financial statements.
- ii. If the auditor is unable to obtain sufficient and appropriate audit evidence to evaluate whether non-compliance may have material effect on the financial statements, or is likely to have or occurred, the auditor shall express a qualified opinion or disclaim an opinion on the financial statements on the basis of a limitation on the scope of the audit in accordance with SA 705.
- iii. If the auditor is unable to determine whether non-compliance has occurred because of limitations imposed by the circumstances rather than by management or those charged with governance, the auditor shall evaluate the effect on the auditor's opinion in accordance with SA 705.

➤ **Regulatory and Enforcement Authorities:**

- i. If the auditor has identified or suspects non-compliance with laws and regulations, the auditor shall determine whether the auditor has a responsibility to report the identified or suspected non-compliance to parties outside the entity.

• **Documentation:**



The auditor shall document the identified or suspected non-compliance with the laws and regulations and the results of discussion with the management and those charged with the governance and other parties outside the entity.

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DIRECT TAX**ICDS II – VALUATION OF INVENTORIES**

Contributed by C. Murali Krishna & Vetted by CA Madhusudhan

General Pointson ICDS:

- ICDS was made applicable from FY 2016-17 (i.e. A.Y 2017-18) as per Notification S.O.892(E) dated 31.03.2015
- However,It is not for the purpose of maintenance of books of accounts.

Applicability:

- To those Assesses who are maintaining Books of Accounts under Mercantile system.
- Having Income under head Profits and Gains of Business or Profession and Income from Other Sources.

In the following cases ICDS is not applicable,

- To those Assesses who are maintaining Books of Accounts under Cash system (or)
- Individual or HUF who are not required to get their Books of Accounts audited u/s 44AB of the Act.

In the case of conflict between the provisions of the Income-tax Act, 1961 ('the Act') and the ICDS, the provisions of the Act shall prevail to that extent.

Non-Compliance

Non-Compliance with ICDS can be ground for an assessing officer to complete the Assessment under "Best Judgment Assessment" under Section 144.

Scope of ICDS-II:

This Income Computation and Disclosure Standard shall not be applied for valuation of inventories, in following cases:

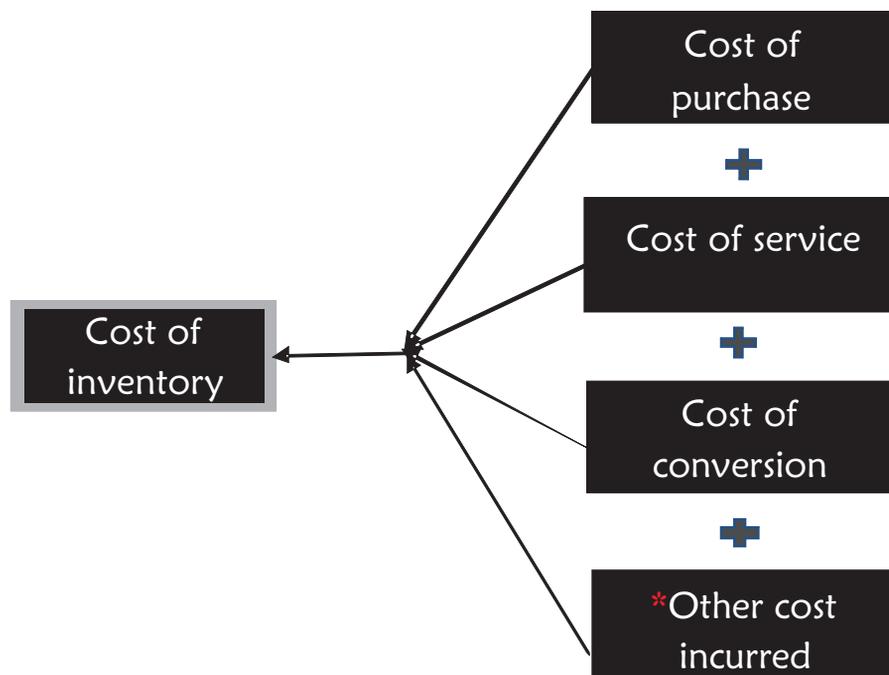
- Work-in-progress arising under 'construction contract' including directly related service contract which is dealt with by the ICDS-III (Construction contracts).
- Work-in-progress which is dealt with by other ICDS.
- Shares, debentures and other financial instruments held as stock-in-trade which are dealt with by the ICDS-VIII (Securities).
- Inventories of livestock, agriculture and forest products, mineral oils, ores and gases to the extent that they are measured at **Net Realisable Value**.
- Machinery spares, which can be used only in connection with a tangible fixed asset and their use is expected to be irregular, shall be dealt with ICDS-V (Tangible Asset).

Definitions:1. Inventories are assets:

- a. Held for sale in the ordinary course of business;
- b. In the process of production for such sale;
- c. In the form of materials or supplies to be consumed in the production process or in the rendering of services.

Measurement of Inventory:

- “Inventories shall be valued at cost, or net realisable value, whichever is lower”.

Cost of Inventories:

*Other Costs incurred in bringing the inventories to their present location and condition.

➤ **Costs of Purchase:**

- The costs of purchase shall consist of purchase price including duties and taxes, freight inwards and other expenditure directly attributable to the acquisition. Trade discounts, rebates and other similar items shall be deducted in determining the costs of purchase.

Method	Description
<u>Inclusive Method</u>	Inclusive Method means a method for calculating the Income under Profit or Gain from Business or Profession by including duties and taxes (i.e. including recoverable)
<u>Exclusive Method</u>	Exclusive Method means a method for calculating the Income under Profit or Gain from Business or Profession by excluding duties and taxes (which are recoverable in nature).

Accordingly, if an exclusive method is followed for the purpose of valuation of inventory as per Accounting Standards, the tax payer would be required to prepare the memorandum account to demonstrate that vis a vis inclusive method, it is tax neutral. For a detailed understanding refer below Example.

Format for calculation of cost of purchases:

Particulars	Amount
Purchase price	xx
Add: Duties and Taxes (no exclusion of CENVAT)	xx
Add: Freight inward and other expenses directly attributable to acquisition	xx
Less: Trade discounts, rebates and similar items	xx
Cost of purchase	xx

Example:

M/S Varuchitwaja Associates has purchased 4 items of Rs.3,00,000/- (Exclusive of GST @ 5%) During the year. GST on purchase @ 5%. 3 are sold @ Rs.4,20,000/- per item. GST on sales @ 5%.

Exclusive Method: (as per AS/Ind AS)

P&L a/c for the Financial Year 20XX – 20XX

Particulars	Qty	Rate	Amount	Particulars	Qty	Rate	Amount
To Purchases	4	3,00,000	12,00,000	By Sales	3	4,20,000	12,60,000
				By Closing stock	1	3,00,000	3,00,000
To Profit a/c			3,60,000				
			15,60,000				15,60,000

Inclusive Method: (As per ICDS)**P&L a/c for the Financial Year 20XX – 20XX**

Particulars	Qty	Rate	Amount	Particulars	Qty	Rate	Amount
To Purchases	4	3,15,000	12,60,000	By Sales	3	4,41,000	13,23,000
				By Closing stock	1	3,15,000	3,15,000
To GST Paid on sales			*63,000	By Input Tax utilised on COGS			*45,000
To Profit a/c			3,60,000				
			16,83,000				16,83,000

*Total Output Tax = 4,20,000 * 3 * 5% = 63,000
 ITC of GST on COGS = 3,00,000 * 3 * 5% = 45,000

Instead of Revising whole Profit and Loss statement, we can prepare a simple memorandum account having particulars of Impact on Profit (i.e. Increase / Decrease).

Increase / Decrease in Profit as per ICDS (memorandum account):

S. No	Particulars	Increase in Profit	Decrease in Profit
1	Increase in Cost of Purchases	-	60,000
2	Increase in Sales	63,000	-
3	Increase in Value of Inventory	15,000	-
4	Tax paid on Sales	-	63,000
5	Input Tax utilised on COGS	45,000	-
	Total	1,23,000	1,23,000

➤ Costs of Services:

- The costs of services shall consist of labour and other costs of personnel directly engaged in providing the service including supervisory personnel and attributable overheads.

➤ **Costs of conversion:**

- The costs of conversion of inventories shall include costs directly related to the units of production and a systematic allocation of fixed and variable production overheads that are incurred in converting materials into finished goods.
 - ⇒ Fixed production overheads shall be those indirect costs of production that remain relatively constant regardless of the volume of production.
 - ⇒ Variable production overheads shall be those indirect costs of production that vary directly or nearly directly, with the volume of production.

Other Costs:

- Other costs shall be included in the cost of inventories only to the extent that they are incurred in bringing the inventories to their present location and condition.

- Interest and other borrowing costs shall not be included in the costs of inventories, unless they meet the criteria for recognition of interest as a component of the cost as specified in the Income Computation and Disclosure Standard on borrowing costs i.e ICDS-IX.

Exclusions from the cost of Inventories:

In determining the cost of inventories in accordance with above, the following costs shall be excluded and recognised as expenses of the period in which they are incurred, namely:-

- Abnormal amounts of wasted materials, labour, or other production costs;
- Storage costs, unless those costs are necessary in the production process prior to a further production stage.
- Administrative overheads that do not contribute to bringing the inventories to their present location and condition. For eg: office rent, staff salaries, travelling expenses etc.,
- Selling costs. For eg: Sales commission, Packing charges etc.,

Formulas for cost of inventories–

Cost Formulae is used for allocation of cost to the units.

Specific identification of cost:

‘Specific identification of cost’ means specific costs are attributed to identified items of inventory

- That are not ordinarily interchangeable; and
- Goods or services produced and segregated for specific projects

shall be assigned by specific identification of their individual costs.

“Judgement is required to decide whether the items of inventory are ordinarily interchangeable or not”.

Eg: For Inventory of Arts and Sculptures, Medical pharmacy etc Specific identification of cost method is used.

Example:2

Date	Units purchased	Units sold	Balance
April 01	1000 units @ Rs.2		1000 units
April 12	3000 units @ Rs. 2.2		4000 units
April 17		2000 units	2000 units
April 30	1000 units @ 2.4		3000 units

The 3,000 units in the inventory on April 30 is composed of 500 units from purchases made on April 01, 1,500 units from purchases made on April 12 and 1,000 units from purchases made on April 30.

Cost of Inventory under Specific identification method will be:

Date	Units	Cost per unit	Total cost
April 01	500	Rs. 2.00	1,000
April 12	1500	Rs. 2.20	3,300
April 30	1000	Rs. 2.40	2,400
Total	3000		6,700

Cost of inventories, other than the inventory dealt with in above para, shall be assigned by using the First-in First-out (FIFO), or weighted average cost formula.

First-in First-out Formula:

- The FIFO formula assumes that the items of inventory which were purchased or produced first are consumed or sold first, and consequently the items remaining in inventory at the end of the period are those most recently purchased or produced.

Example:3

Date	Units purchased	Units sold	Balance
April 01	1000 units @ Rs.2		1000 units
April 12	3000 units @ Rs. 2.2		4000 units
April 17		2000 units	2000 units
April 30	1000 units @ 2.4		3000 units

Cost of Inventory under FIFO method will be:

Date	Units	Cost per unit	Total cost
April 12	2000	Rs. 2.20	4,400
April 30	1000	Rs. 2.40	2,400
Total	3000		6,800

Cost of Inventory = 6,800

Weighted Average Cost Formula:

- Under the weighted average cost formula, the cost of each item is determined from the weighted average of the cost of similar items at the beginning of a period and the cost of similar items purchased or produced during the period. The average shall be calculated on a periodic basis, or as each additional shipment is received, depending upon the circumstances.

Example:4

Date	Units purchased	Units sold	Balance
April 01	1000 units @ Rs.2		1000 units
April 12	3000 units @ Rs. 2.2		4000 units
April 17		2000 units	2000 units
April 30	1000 units @ 2.4		3000 units

Cost of Inventory under Weighted Average Cost method will be:

Date	Units	Weighted Avg cost per unit	Total cost
April 30	3000	Rs. 2.23	6,700
Total	3000		6,700

$$\frac{2000 \times 2.15 + 1000 \times 2.4}{3000} = \text{Rs. } 2.23$$

$$\frac{1000 \times 2 + 3000 \times 2.2}{4000} = \text{Rs. } 2.15$$

Cost of Inventory = 6,700

The formula used shall reflect the fairest possible approximation to the cost incurred in bringing the items of inventory to their present location and condition.

Techniques for the measurement of the cost of inventories, such as;

- Standard costs take into account normal levels of consumption of materials and supplies, labour, efficiency and capacity utilisation. They are regularly reviewed and, if necessary, revised in the light of the current conditions.
- The retail method can be used in the retail trade for measuring inventories of large number of rapidly changing items that have similar margins and for which it is impractical to use other costing methods. The cost of the inventory is determined by reducing from the sales value of the inventory, the appropriate percentage gross margin. The percentage used takes into consideration inventory, which has been marked down to below its original selling price.

Net Realisable Value(NRV):

NRV mean's an estimated selling price in the ordinary course of business less the estimated costs of completion and the estimated costs necessary to make the sale.

Eg: An Entity have purchased 1000 items of a products @ Rs. 4 and at the end of the year 50 items where left and the market value (estimated price) for the same is Rs. 5 and Packing charges will incur to make the sale is Rs. 1.5 per product.

Cost of Inventory will be:

Lower of Cost and Net Realisable value i.e.

Cost = 50 * Rs. 4 = Rs. 200

NRV = (50 * Rs. 5) – (50 * Rs. 1.5) = Rs. 175

Therefore, Cost of Inventory is Rs. 175.

- Net realisable value shall be based on the most reliable evidence available at the time of valuation. The estimates of net realisable value shall also take into consideration the purpose for which the inventory is held. The estimates shall take into consideration fluctuations of price or cost directly relating to events occurring after the end of previous year to the extent that such events confirm the conditions existing on the last day of the previous year.

Value of opening inventory:

The value of the inventory as on the beginning of the previous year shall be:

- the cost of inventory available, if any, on the day of the commencement of the business when the business has commenced during the previous year; and
- the value of the inventory as on the close of the immediately preceding previous year, in any other case.

Change of Method of Valuation of Inventory

“The method of valuation of inventories once adopted by a person in any previous year shall not be changed without reasonable cause”

Disclosure requirements

- The accounting policy adopted in measuring inventories including cost formulae used;
- Total carrying amount of inventories and its appropriate classification; and
- Where Standard Costing has been used as a measurement of cost, details of such inventories and a confirmation of the fact that standard cost approximates the actual cost.

Comparison Between ICDS 2, AS-2 and Ind AS-2

Particulars	As per ICDS 2	As per AS-2	As per Ind AS 2
Cost of services	Included in cost of inventories	No specific mention in AS-2	No Specific mention in Ind AS 2
Exclusive vs inclusive method of accounting	Value of inventories to include all taxes and duties, whether recoverable in future or not.	Value of inventories to exclude duties and taxes recoverable in the future	-
Other costs includible in the value of inventories	ICDS 2 does not specifically exclude distribution cost in the value of inventories	AS-2 excludes distribution costs in the value of inventories	Ind AS similar in this respect.
Value of Inventory at the beginning of the previous year	<u>New business</u> -Cost at the day of commencement of business <u>Continuing business</u> – value of closing inventory at the end of preceding previous year.	There is no such specific provision	-
Valuation of Inventory – Interest and other borrowing costs	Interest and other borrowing charges shall be inventoried as per ICDS –9	Usually, not covered in AS-2	Usually, not covered in Ind AS-2
Valuation of inventories in certain case of dissolution	Notwithstanding whether business is discontinued or not, the inventory on the date of dissolution shall be valued at the net realisable value.	No such provision	Notwithstanding whether business is discontinued or not, the inventory on the date of dissolution shall be valued at the net realisable value.

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FEMA

DOWNSTREAM INVESTMENT UNDER FEMA

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Introduction:

Foreign Investment in to India comprises of both direct foreign investment from non-residents and indirect investments through resident Indian entities having such direct foreign investment. Indirect Foreign Investment is often referred to as **“Downstream Investment (DI)” under FEMA.**

Background and Regulatory Framework:

Department of Industrial Policy and Promotion (“DIPP”), Ministry of Commerce and Industry, Government of India issues Press Notes (“PN”) from time to time to pronounce the FDI Policy of the Central Government. Prior to 2009, there were no clear and concise rules on Downstream Investment. There were only some rules for Telecom, broadcasting, insurance and infrastructure service sectors prior to 2009. DIPP issued press notes in February 2009 bringing in the concept of DI for the first time. Thereafter DIPP has issued Press notes 2 (2009 Series), 3 (2009 Series), both dated 13th February 2009, and 4 (2009 Series), dated 25th February, 2009 bringing more clarity on DI and also provided guidelines on calculation of Indirect Foreign Investment. These are now subsumed within the Consolidated FDI Policy. RBI incorporated DIPP’s DI related guidelines in its Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017, commonly known as “FDI Regulations”. In short, DI is governed by DIPP PNs and RBI FDI Regulations.

Definitions:

Downstream Investment:

As per Regulation 14(g) of FDI Regulations, Downstream Investment shall mean investment made by an Indian entity or an Investment Vehicle in the capital instruments or the capital, as the case may be, of another Indian entity.

Indirect Foreign Investment:

As per Regulation-14(i) of FDI Regulations, Indirect Foreign Investment means downstream investment received by an Indian Entity (IE) from:

- i. another Indian entity (IE) which has received foreign investment and
 - a. the IE is not owned and not controlled by resident Indian citizens or
 - b. is owned or controlled by persons resident outside India; or
- ii. an investment vehicle whose sponsor or manager or investment manager
 - a. is not owned and not controlled by resident Indian citizens or
 - b. is owned or controlled by persons resident outside India

Provided no person resident in India other than an Indian entity can receive Indirect Foreign Investment.

Foreign Investment can be made directly in an Indian entity or indirectly through an intermediate Indian entity. Investment by an intermediate Indian entity, which is owned or controlled by Person Resident Outside India into another Indian entity is considered as Downstream Investment (DI). DI rules apply across all levels of downstream investment. DI rules are amongst the most complicated rules. With multiple regulators and multiple laws, it has become a complex subject.



The main principle behind DI is – ***“What can be done directly can be done indirectly. What cannot be done directly cannot be done indirectly.”***

Accordingly, any DI has to comply with all FEMA rules - sectoral caps, conditions or restrictions of FDI policy. This includes capitalisation norms, valuation rules, optionality clauses, etc. Where approvals are required, the same has to be obtained. Thus, even though the transactions may be between Indian entities, if one of them is Indirect foreign investor, FEMA applies.

Important Points:

- (a) ***“Ownership of an Indian company”*** shall mean beneficial holding of more than 50 % of the capital instruments of such company.
- (b) ***“Control”*** shall mean
 - the right to appoint majority of the directors or
 - to control the management or
 - policy decisions including by virtue of their shareholding or management rights or shareholders agreement or voting agreement.
- (c) ***“Company owned by resident Indian citizens”*** shall mean an Indian company where ownership is vested in resident Indian citizens and/ or Indian companies which are ultimately owned and controlled by resident Indian citizens.
- (d) ***“Company controlled by resident Indian citizens”*** means an Indian company, the control of which is vested in resident Indian citizens and/ or Indian companies which are ultimately owned and controlled by resident Indian citizens.
- (e) ***“Company owned by persons resident outside India”*** shall mean an Indian company that is owned by persons resident outside India.
- (f) ***“Company controlled by persons resident outside India”*** shall mean an Indian company that is controlled by persons resident outside India.
- (g) ***“Indian Entity”*** shall mean an Indian Company or an LLP.

Downstream Investment by an LLP:

Downstream investment by an LLP not owned and not controlled by resident Indian citizens, or owned or controlled by persons resident outside India, is allowed in an Indian company operating in sectors where foreign investment up to 100 % is permitted under automatic route and there are no FDI linked performance conditions. Indian entity however cannot borrow and invest such borrowed funds. They can raise debt for their business, but not for further downstream investments.

Conditions for Downstream Investment:

1. The Downstream Investments should have the approval of the Board of Directors as also a Shareholders' Agreement, if any.
2. Downstream investments may be made within foreign equity levels permitted for different activities under the automatic route.
3. The Downstream Investment involving setting up of an Export Oriented Units (EOU)/Software Technology Parks (STP)/Electronic Hardware Technology Parks (EHTP) project or items involving compulsory licensing, SSI reserved items, acquisition of existing stake in an Indian company by way of transfer/ as also buyback shall not be eligible for automatic approval and shall require prior approval of Foreign Investment Promotion Board (FIPB)/Government.
4. Issue/transfer/pricing/valuation of shares shall be in accordance with SEBI/RBI guidelines
5. For the purpose of downstream investment, the Indian entity making the downstream investment shall bring in requisite funds from abroad and not use funds borrowed in the domestic markets. These guidelines were first issued by DIPP in 2009 vide their Press Note 4 and was thereafter incorporated by RBI in FDI Regulations.
6. Downstream investments can be made through internal accruals. Internal accruals mean profits transferred to reserve account after payment of taxes. DIPP issued these guidelines vide Press Note 12 of 2009 and was thereafter incorporated by RBI in FDI Regulations.
7. Further, raising of debt and its utilisation shall be in compliance with FEMA Act, rules or regulations made thereunder.
8. Capital instrument of an Indian company held by another Indian company which has received foreign investment and is not owned and not controlled by resident Indian citizens, or is owned or controlled by persons resident outside India may be transferred to:
 - A person resident outside India, subject to reporting requirements in Form FC-TRS
 - A person resident in India subject to adherence to pricing guidelines
 - An Indian company which has received foreign investment and is not owned and not controlled by resident Indian citizens or owned or controlled by persons resident outside India
9. The first level Indian company making downstream investment shall be responsible for ensuring compliance with the provisions of these regulations for the downstream investment made by it at second level and so on and so forth.
10. The first level company shall obtain a Certificate to this effect from its Statutory Auditor on an annual basis and compliance of these regulations shall be mentioned in the Director's Report in the Annual Report of the Indian company. In case statutory auditor has given a qualified report, the same shall be immediately brought to the notice of the Regional Office (RO) of the Reserve Bank in whose jurisdiction the Registered Office of the company is located and shall also obtain acknowledgement from the RO.

Reporting requirements:

As per Regulation-13.1.11 of FEMA FDI Regulations, 2017 , an Indian company making downstream investment in another Indian company which is considered as indirect foreign investment for the investee company in terms of FDI Regulations, shall intimate the Secretariat for Industrial Assistance, DIPP and file **"Form DI"** within 30 days of such investment and, even if capital instruments have not been allotted along with the modality of investment in new/existing ventures (with/without expansion programme).

With effect from 1st September,2018, an Indian entity or an Investment Vehicle making downstream investment in another Indian entity which is considered as indirect foreign investment for the Indian entity in terms of Regulation 14 of FEMA FDI Regulations,2017 shall file **"Form DI with the Reserve Bank of India (RBI) within 30 days from the date of allotment of capital instruments."**

Consequences of non-reporting:

In case of non-reporting of Foreign Investment received, it shall be treated as a contravention of the provisions made under FEMA. It may be required to compound the contraventions made under FEMA regulations either by suo moto or by notice from RBI. For compounding the contraventions, an application has to be filed with RBI RO as per the prescribed procedure. In some cases of non-reporting, we may be required to submit compounding application to Central Office of RBI.

In case, the company has contravened the provisions, Late Service Fee (LSF) at the rates prescribed can be paid, without opting for compounding.

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FEMA

FEMA UPDATES FOR THE MONTH OF OCTOBER 2018

Contributed by CA Murali krishna |

External Commercial Borrowings (ECB) Policy – Liberalisation**I. Liberal procedures for Oil Marketing Companies (OMCs):**

Under the existing policy, ECB can be raised under Track I and III for working capital purposes from direct and indirect equity holders or from a group company with a minimum average maturity of 5 years. It has been decided, in consultation with the Government of India, to liberalise the provisions and permit public sector OMCs to raise ECB for working capital purposes with minimum average maturity period of 3 or 5 years from all recognized lenders under the automatic route.

Further, the individual limit of USD 750 million or equivalent and mandatory hedging requirements as per the ECB framework have also been waived for borrowings under this dispensation. However, OMCs should have a Board approved forex mark to market procedure and prudent risk management policy for ECBs referred above.

The overall ceiling for such ECBs shall be USD 10 billion equivalent and the said facility will come into effect from the date of this Circular.

For more details, refer Notification No.RBI/2018-2019/54, A.P. (DIR Series) Circular No. 10 dated 3rdOctober, 2018.

II. Amendment to Minimum Average Maturity Period and Recognised Investors paragraphs of ECB Master Direction:

It has been decided in consultation with the Government of India to liberalise few aspects of the ECB policy including policy on Rupee denominated bonds as mentioned below:

As per the extant norms, ECB up to USD 50 million or its equivalent can be raised by eligible borrowers with minimum average maturity period of 3 years. It has been decided to allow eligible ECB borrowers who are into manufacturing sector to raise ECB up to USD 50 million or its equivalent with minimum average maturity period of 1 year.

Presently, Indian banks, subject to applicable prudential norms, can act as arranger and underwriter for RDBs issued overseas and in case of underwriting an issue, their holding cannot be more than 5 per cent of the issue size after 6 months of issue. It has now been decided to permit Indian banks to participate as arrangers/underwriters/market makers/traders in RDBs issued overseas subject to applicable prudential norms.

For more details, refer Notification No. RBI/2018-19/48, A.P. (DIR Series) Circular No. 9 dated 19th September, 2018.

This article is contributed by S. Sunil Reddy, Intern of SBS and Company LLP. The author can be reached at interns@sbsandco.com

GST

GST UPDATES FOR THE MONTH OF OCTOBER 2018

Contributed by Indirect Tax Division |

CIRCULARS**1. NOTIFICATIONS ISSUED UNDER CGST ACT, 2017 REGARDING REFUND TO UIN ENTITIES ARE APPLICABLE TO GST (COMPENSATION TO STATES) ACT, 2017:**

Section 55 of CGST Act, 2017 prescribes for refund of taxes paid by specified International Organizations, Foreign Diplomatic Missions or Consular Posts etc on notified supply of goods or services received by them subject to such conditions as may be prescribed. In this regard, Notification No. 16/2017--Central Tax (Rate) dated 28.06.2017 has been issued. A question was raised whether such entities can claim refund of the Compensation Cess paid on goods or services received by them. It was clarified that vide section 11 of Compensation Cess Act, 2017 that the provisions of CGST Act and SGST Act are applicable in relation to levy and collection of Compensation Cess. Therefore, the notifications issued under CGST Act except those prescribing rates or granting exemptions, are applicable for the purpose of the Compensation Cess Act. Accordingly, the said entities are eligible to claim refund of Compensation Cess also if any paid-on goods or services received by them.

{CIRCULAR NO. 68/42/2018 – GST DATED 05.10.2018}**2. GUIDELINES FOR DEDUCTION AND DEPOSIT OF TDS UNDER GST:**

Every deductor who is required to deduct tax under Sec-51 of the CGST Act, 2017 have to register on common portal as a 'Tax Deductor' and file form GSTR-7 monthly on or before 10th of the succeeding month. He has to issue a certificate to the deductee mentioning therein the contract value, rate of deduction, amount deducted etc. He shall deposit the amount of tax either by way of separate challan for every payment to be made or for a consolidated amount of tax deduction on a weekly, monthly or any periodic manner and shall prepare a bill specifying the details like total amount, net amount payable to the supplier, 2% TDS amount of GST keeping under suspense head. He shall maintain a register in the prescribed format for the amount of tax deducted.

{CIRCULAR NO. 65/39/2018-DOR DATED 14.09.2018}**3. GST ON RESIDENTIAL PROGRAMMES OR CAMPS MEANT FOR ADVANCEMENT OF RELIGION, SPIRITUALITY OR YOGA BY RELIGIOUS AND CHARITABLE TRUSTS:**

According to notification no 12/2017 – Central Tax (Rate) dated 28th of June 2017, the charitable activities mentioned therein performed by an entity registered under Section 12AA of the Income Tax Act, 1961 are exempt. As per the given notification, fee if any collected from the participants to conduct programs relating to advancement of religion, spirituality or yoga are exempt. Sometimes the programs offered are residential and the fee collected would include charges for accommodation, food, drinks. It is clarified that the fee towards accommodation, food, drinks would also be exempt if the predominant activity of such residential programmes is advancement of religion, spirituality and yoga.

{CIRCULAR NO. 66/40/2018-GST DATED 26.09.2018}

4. INSTRUCTIONS FOR PROCESSING OF APPLICATIONS FOR CANCELLATION OF REGISTRATIONS:

Rule 20 of the CGST Rules, 2017 provides that the taxpayer applying for cancellation of registration shall submit the application in GST REG-16 within a period of 30 days of event warranting cancellation. It might be difficult in some cases to identify the exact day on which such event occurs. Hence it is clarified that 30-days deadline may be interpreted liberally and tax payers' application for cancellation of registration shall not be rejected for this reason.

It is also clarified that the cancellation shall be undertaken by the proper officer within 30 days of application except in cases where the form is incomplete or in cases where the cancellation is required because of transfer, merger or amalgamation of business and the new entity has not registered before submission of the application. In these situations, the officer is required to seek explanations with seven working days. If no reasons are received or reasons received are not satisfactory, then application can be rejected by proper officer after giving an opportunity to be heard to applicant.

In terms of Section 29(5) of CGST Act, 2017 read with Rule 20 of CGST Rules, 2017, the tax payer seeking cancellation of registration is under requirement to pay the amount of ITC involved on closing stock of capital goods, inputs, semi-finished goods and finished goods or the output tax payable on such goods whichever is higher. The payment can be made by way of debit to electronic cash or credit ledger. It is clarified that the requirement to pay can also be met after the application for cancellation has been filed at the time of submission of Final Return in GSTR-10.

It is also clarified that the tax payer who has filed the application for cancellation of registration is not required to file periodical returns from the date of registration to the date of application for cancellation if no taxable supplies are undertaken and an undertaking is furnished to this effect.

{CIRCULAR NO. 69/43/2018-GST DATED 26.10.2018}

5. CLARIFICATION ON DEFICIENCY MEMOS ISSUED FOR EXPORT REFUND APPLICATIONS:

It has been previously clarified through Circular No. 59/33/2018-GST dated 04.09.2018 that in case of deficiency memo issued for refund applications filed, the exporter is required to file a fresh application. It was also clarified that once a deficiency memo has been issued against an application for refund, the ITC debited at the time of filing application is required to be re-credited to electronic credit ledger of applicant by using GST RFD-01B. It is now clarified that GST portal does not allow taxpayer to file a fresh refund application for the same period on more than one occasion. Therefore, it is clarified that till such facility is developed in GST portal, taxpayers would be required to submit the rectified refund application manually under earlier ARN (generated at the time of filing the original application) only. It is also clarified that there is no requirement of re-credit of refund amount in cases where a deficiency memo has been issued.

{CIRCULAR NO. 70/44/2018-GST DATED 26.10.2018}

6. CLARIFICATION ON ISSUES RELATED TO CASUAL TAXABLE PERSON AND RECOVERY OF EXCESS ITC DISTRIBUTED BY ISD:

In case of taxpayer seeking registration as a casual taxable person, he is required to estimate the tax liability and deposit the tax in advance as specified in Section 27(2) of CGST Act, 2017. It is now clarified that the amount tax to be deposited should be calculated after considering the duly eligible ITC that might be available to such taxpayer.

As per Section 27 of CGST Act, 2017, the registration of a casual taxable person is operational for a period of 90 days with a provision for extension of same by proper officer for further period not exceeding 90 days. Thus, a taxpayer can operate under casual taxable person registration for a maximum period of 180 days. Various representations have been made that this registration period should be extended beyond 180 days period in cases of long run exhibitions (for a period more than 180 days). It is now clarified that the taxpayer cannot obtain registration as casual taxable person in these cases and he should obtain the registration as normal taxable person. It is also clarified that an allotment letter granting the taxpayer to use the premises for exhibition shall be treated as proof for place of business to grant the registration.

In cases of excess distribution of ITC by an Input Service Distributor, it is now clarified that such excess distributed ITC shall be recovered from recipients along with interest. Penalty shall also be imposed in those cases where the recipient does not come forward voluntarily to reverse or repay such excess distributed ITC. It is further clarified that the Input Service Distributor shall also be liable for a general penalty under Section 122 of CGST Act, 2017.

{CIRCULAR NO. 71/45/2018-GST DATED 26.10.2018}

7. CLARIFICATION ON PROCEDURE TO BE FOLLOWED FOR RETURN OF TIME EXPIRED DRUGS OR MEDICINES:

In case of time expired drugs or medicines, it is a common practice to return the goods by retailer to wholesaler and from there to manufacturer. This circular has been issued to clarify that the returns can be undertaken by following any of the two procedures mentioned therein

Under the first procedure, the stock return shall be considered as fresh supply by recipient returning the stock and thereby issues an invoice for the same at the value at which the goods are originally received. The wholesaler/manufacturer who are in receipt of such return supply shall be eligible to avail Input Tax Credit on the tax levied on such return supply subject to fulfillment of conditions specified in Section 16 of CGST Act, 2017. In case the person returning the goods is a composition tax payer, then the return supply shall be made by issuing a bill of supply and pay the tax that is applicable for composition tax payer. In case the person returning the goods is unregistered person, then the return shall be made without charging any tax by issuing a commercial document.

Under the second procedure, the stock return shall be undertaken by recipient by issuing a delivery challan and the wholesaler/manufacturer may issue a credit note towards the return of stock. If such credit notes are issued not later than September following the end of Financial Year in which supply

was made or date of furnishing of annual return whichever is earlier, then the recipient returning the stock will reduce his GST liability for the month in which such credit notes are received. In cases where the credit notes are issued after the expiry of the above time limit, then the recipient returning the stock cannot reduce the tax liability because of such credit notes.

In cases where such time expired goods returned by wholesaler/retailer are destroyed by manufacturer, then ITC attributable to the manufacture of such goods shall be required to be reversed in terms of Section 17(5)(h) of CGST Act, 2017.

{CIRCULAR NO. 72/46/2018-GST DATED 26.10.2018}

NOTIFICATIONS

8. REVERSE CHARGE MECHANISM UNDER SEC-9(4) IS POSTPONED:

Reverse charge applicability for goods or services procured from unregistered suppliers has been deferred by issuing various notifications from time to time till 30th September, 2018. Now this notification has been issued to defer its applicability till 30th September 2019.

{NOTIFICATION NO. 22/2018- CENTRAL TAX (RATE) DATED 06.08.2018}

9. RATIONALISING THE RESTRICTIONS TO CLAIM REFUND OF IGST PAID ON EXPORTS WHEN GOODS ARE IMPORTED UNDER EOU OR EPCG SCHEME:

Rule 96 of CGST Rules, 2017 prescribes for refund of IGST paid on export of goods. Sub-rule (10) of the said rule prescribed a condition that the exporter of goods should not have procured the goods from a supplier who is availing deemed export benefit or procuring goods at a concessional rate of 0.1% as applicable to a merchant exporter or importing goods under EOU or EPCG scheme. In such cases, the Exporter must compulsorily export the goods under bond or LUT and can claim refund of accumulated ITC on actual basis to the extent of inputs used for exports under Rule 89(4B). Vide Circular No. 45/19/2018-GST dated 30.05.2018, it has been clarified by CBIC that the said restriction is only applicable to those exporters who are receiving goods from those suppliers availing the above said benefits. The restriction is not applicable to exporters who are directly importing the goods under EOU or EPCG scheme. Notification 39/2018-Central Tax dated 04.09.2018 has been issued to apply the said restriction retrospectively to exporter of goods who are importing the goods directly on their own under EOU or EPCG scheme.

This unexpected retrospective amendment denied refund for many of the exporters who have already imported goods under EOU or EPCG scheme and exported their goods by paying IGST. After due representations of the unwarranted hardship, the retrospective applicability of said restriction has been taken away and the said restriction is applicable prospectively from 09.10.2018. Further, the restriction is limited to imports under EOU scheme only and is not applicable to imports under EPCG scheme. Further, Rule 89(4B) is also amended in this context to provide that in cases where exporters have imported goods under EOU scheme, the refund of accumulated ITC can be given to the extent of actual availment of ITC on inputs used for exports.

{NOTIFICATION 53/2018-CENTRAL TAX AND 54/2018-CENTRAL TAX DATED 09.10.2018}

10. EXPANSION OF THE LIST OF HANDCRAFTED GOODS TO GRANT EXEMPTION TO CASUAL TAXABLE PERSON FROM THE REQUIREMENT OF REGISTRATION:

Notification 32/2017-Central Tax read with Notification 8/2017-Integrated Tax grants exemption from the requirement of registration to a casual taxable person engaged in supply of handcrafted goods provided that the aggregate turnover does not exceed twenty lakh rupees. These notifications are now superseded by the below mentioned notifications, which expands the list of handcrafted goods to allow the casual taxable persons dealing with such goods also to claim this benefit. The expanded list of handcrafted goods includes handbags, pouches, purses including jewellery box, wooden frames of painting, photographs, mirrors bangles, beads and small ware, ornamental framed mirrors, glass statutes etc.

{NOTIFICATION NO. 56/2018-CENTRAL TAX & NOTIFICATION NO. 3/2018-INTEGRATED TAX DATED 23.10.2018}

11. DUE DATE TO FILE FINAL RETURN FOR REGISTRATIONS THAT ARE CANCELLED ON OR BEFORE 30th SEPTEMBER 2018:

In terms of Section 45 of CGST Act, 2017, every registered person whose registration has been cancelled shall be required to furnish a final return within three months of the date of cancellation in form GSTR-10. The GST portal has recently enabled with the filing facility of this return. In view of this reason, it is notified that persons whose registrations were cancelled on or before 30th September 2018 are required to file the final return till 31st December 2018.

{NOTIFICATION NO. 57/2018-CENTRAL TAX DATED 26.10.2018}

12. EXTENSION OF DUE DATE TO FILE GST ITC-04 TO 31st DECEMBER 2018

In terms of Rule 45(3), the Principal is required to furnish the details of challans in respect of goods dispatched to a job worker or received from a job worker or sent from one job worker to another during a quarter in GST ITC-04 on or before 25th of the month succeeding the said quarter. Because of the GST portal related challenges, the due dates for filing this form for various quarters has been extended from time to time. It is now notified that the due date to file this form for the period July, 2017 to September, 2018 as 31st December, 2018.

{NOTIFICATION NO. 59/2018-CENTRAL TAX DATED 26.10.2018}

This article is contributed by Indirect Tax Division, Intern of SBS and Company LLP. The author can be reached at interns@sbsandco.com

COMPANIES ACT, 2013**RULES, CIRCULARS, NOTIFICATIONS AND ORDERS ISSUED DURING THE MONTH OF OCTOBER, 2018****RULES**

No Rules were issued during the month.

NOTIFICATIONS**❖ Constitution of National Financial Reporting Authority (NFRA), Dt: 01.10.2018.**

Vide the said Notification, the Central Government has appointed the 1st October 2018 as the date of constitution of National Financial Reporting Authority (NFRA).

http://www.mca.gov.in/Ministry/pdf/ConstitutionNotificationNFRA_04102018.pdf

❖ Commencement of provisions of the Companies Act, 2013, Dt:01.10.2018.

Vide the said Notification, the Central Government has appointed the 1st October 2018 as the date from which the provisions of "Section 132(1)-Constitution of NFRA" and "Section 132(12)-Head Office of NFRA at New Delhi" shall come into force.

http://www.mca.gov.in/Ministry/pdf/CommencementNotifiication_04102018.pdf

❖ Amendment to Schedule III of Companies Act, 2013, Dt 11.10.2018.

Vide the said notification, the Ministry has made amendments to Schedule III in the following areas.

For the complete list of amendments please go through the below provided notification.

http://www.mca.gov.in/Ministry/pdf/NotificationScheduleIII_12102018.pdf

❖ Commencement of provisions of the Companies Act, 2013, Dt 24.10.2018.

Vide the said notification, the Ministry has notified 24th October, 2018 as the date on which, the provisions of Sub-Section (2), (4),(5),(10),(13),(14) and (15) of Section 132 of the Companies Act, 2013 i.e., provisions relating to constitution of National Financial Reporting Authority, shall come into force.

http://www.mca.gov.in/Ministry/pdf/CommencementNotification_24102018.pdf

❖ **Amendment in the Notification no. S.O.831 (E) dated 24th March, 2015, Dt 26.10.2018.**

Vide the Said Notification, the Ministry had made amendment in the Notification number S.O.831 (E) dated 24th March, 2015 by substituting the “Nainital” with the word “Dehradun” in serial number 4.

Further for serial number 16 “Registrar of Companies – Whole State of Telangana” shall be substituted and serial number 25 is inserted “Registrar of Companies – Whole State of Andhra Pradesh”. These shall come into force with effect from 29.10.2018.

http://www.mca.gov.in/Ministry/pdf/notificatioSection454CA26_29102018.pdf

❖ **Establishment of Office of the Registrar of Companies cum Official Liquidator at Dehradun, Dt 26.10.2018.**

Vide the said notification, the Central Government has appointed office of the Registrar of Companies cum Official Liquidator at Dehradun for the Jurisdiction in the whole state of Uttarakhand for the purpose of registration of Companies and discharging the functions under the Companies Act, 2013 in the State of Uttarakhand. This shall come in to force with effect from 29.10.2018.

http://www.mca.gov.in/Ministry/pdf/NotificationROCDehradun26_29102018.pdf

❖ **Establishment of Office of the Registrar of Companies at Vijayawada, Dt 26.10.2018.**

Vide the said notification, the Central Government has appointed office of the Registrar of Companies at Vijayawada for the Jurisdiction in the whole state of Andhra Pradesh for the purpose of registration of Companies and discharging the functions under the Companies Act, 2013 in the State of Andhra Pradesh. This shall come in to force with effect from 29.10.2018.

http://www.mca.gov.in/Ministry/pdf/notificationROCVijayawada26_29102018.pdf

CIRCULARS

❖ **Circular No.9 of 2018, Dt: 05.10.2018: Relaxation of additional fees and extension of last date of in filing of Forms MGT-7 and AOC-4 for the State of Kerala:**

Upon the requests received from various stakeholders stating that due to rains and floods in the state of Kerala, the normal life/work was affected, MCA has decided to relax the additional fees payable (Wherever is applicable) to companies having registered office in the State of Kerala, in respect of filing e-forms AOC-4, AOC-4 (CFS), AOC-4 XBRL and MGT-7 up to 31st December 2018.

http://www.mca.gov.in/Ministry/pdf/GeneralCircularKerala_05102018.pdf

- ❖ **Circular No.10 of 2018, Dt: 29.10.2018: Relaxation of additional fees and extension of last date of in filing of Forms MGT-7 (Annual Return) and AOC-4 (Financial Statements).**

Upon the requests received from various stakeholders seeking extension of time for filing financial statements for the FY ended 31.03.2018, MCA has decided to relax the additional fees payable (Wherever is applicable) in respect of filing e-forms AOC-4, AOC-4 (CFS), AOC-4 XBRL and MGT-7, up to 31st December, 2018.

http://www.mca.gov.in/Ministry/pdf/NoticeAndCircularGC_30102018.pdf

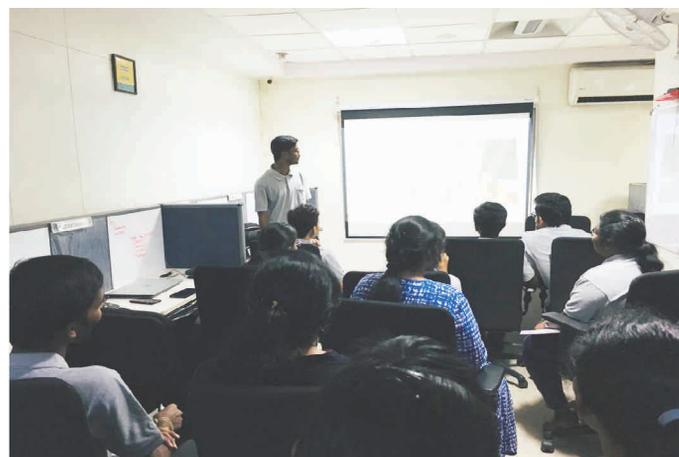
ORDERS

No Orders were issued during the month.

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

SATURDAY SESSIONS

S.No.	Event	Date	Speaker	Venue
1	Standard on Internal Audit 1	01/12/2018	Sarvani.S	SBS - Hyd
2	Agricultural Income, under IT Act, 1961		K. Indu	SBS - Hyd
3	Audit of Bank Guarantees	08/12/2018	Mounika	SBS - Hyd
4	Compounding of Contraventions under FEMA, 1999		Sunil	SBS - Hyd
5	Taxability of High Sea Sales	15/12/2018	Divyasree	SBS - Hyd
6	Assessment Procedures		Kankaraju Sir	SBS - Hyd
7	Setting of SEZ Unit	22/12/2018	Sauchit	SBS - Hyd
8	Audit of High Sea Sales		Raju	SBS - Hyd
9	Valuation in case of stock transfers to Distinct persons, Related persons and Agents - Part I	29/12/2018	Bharadwaja	SBS - Hyd
10	Section - 285BA _ Obligation to furnish statement of financial transaction or reportable account		Murali Krishna	SBS - Hyd

SESSION TIMINGS: 2:30 to 4:30 PM***Compounding of offences - Arun Kumar******ICDS-II - Valuation of inventories - Murali******Know about GSTR-9 - Bharadwaja******SA-250 - Madhulika***



Team SBS

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

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