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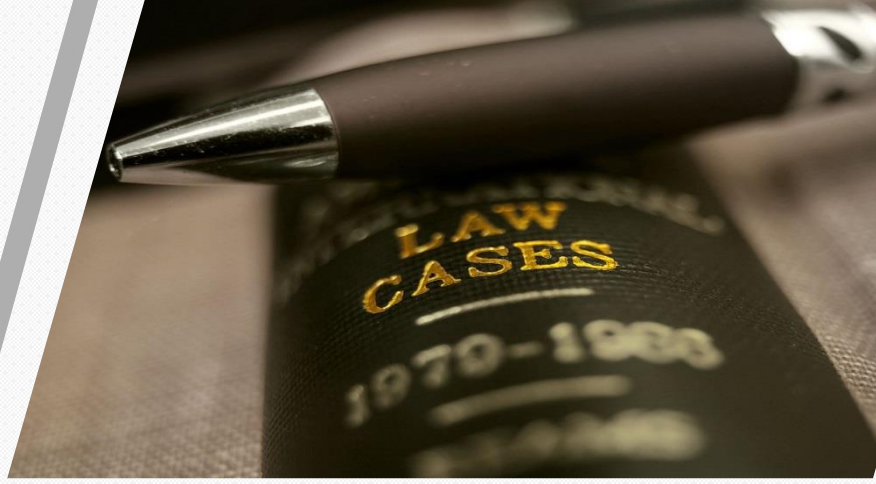
**January - 2018**

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# Direct Tax Case Laws



## Case Law 1

**“Purpose” is the conclusive test for determining nature of subsidy for income tax purposes**

The Supreme Court in the case of Chaphalkar Brothers (the taxpayer) held that subsidy in the form of the concession of entertainment tax to new multiplex complexes is capital in nature.

The Honorable Supreme Court (SC), while upholding few of its earlier judicial precedents held that the character of the receipt in the hands of the taxpayer has to be determined with respect to the purpose for which the subsidy is given. The point of time at which the subsidy is paid is not relevant. The source and the form of subsidy are also immaterial. If the object of the subsidy scheme was to enable the taxpayer to run the business more profitably, then the receipt is on revenue account. On the other hand, if the object of the assistance under the subsidy scheme was to enable the taxpayer to set up a new unit or to expand the existing unit then the receipt of the subsidy was on capital account. Therefore, it is the object for which the subsidy/assistance is given which determines the nature of the incentive subsidy.

The SC observed that the object of the grant of the subsidy was in order that persons

come forward to construct multiplex theatre complexes, the idea being that exemption from entertainment duty for a period of three years and partial remission for a period of two years should go towards helping the industry to set up such highly capital intensive entertainment centers. Also, the fact that the subsidy was not meant for repaying the loan taken for construction of multiplexes cannot be ground to hold that subsidy receipt was on revenue account. If the object of the scheme were to promote cinema houses by constructing multiplex theatres, then irrespective of the fact that the multiplexes have been constructed out of own funds or borrowed funds, the receipt of subsidy would be on the capital account.

**Commissioner of Income-tax-I, Kolhapur v. Chaphalkar Brothers Pune (CIVIL APPEAL NOS. 6511-6514 OF 2012 & OTHER)**

## Case Law 2

**Since assessee did not have PE in India, income earned by it could not be brought to tax in India**

The Mumbai Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of SPE Networks India Inc (the taxpayer) held that an Indian group company of a U.S. company does not constitute a Permanent Establishment (PE) in India under the

# Direct Tax : Case Laws

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India-U.S. tax treaty (tax treaty) as the taxpayer was carrying out its operations i.e., sale of advertisement inventory and distribution of channels from the U.S. and not from India. The taxpayer did not have any office premises or fixed place of business in India at its disposal. The Tribunal observed that none of the employees were based in India through whom the taxpayer could render the services in India. Thus, neither there was a fixed place Permanent Establishment (PE) nor any service PE of the taxpayer in India.

Further, it was observed that since there was nothing on record to establish that the agreements between the parties were not on principal to principal basis and the Indian subsidiary had no authority to conclude contracts on behalf of the taxpayer, there was no agency PE. In fact, owing to the facts of the case, it was concluded that the Indian subsidiary was an independent entity which carried out its own business employing its own capital and bearing connected risks. The revenue earned by the Indian subsidiary was not on behalf of the taxpayer and it was also not subject to any control of the taxpayer as far as conducting of business in India was concerned.

In view of aforesaid, it was concluded that the taxpayer did not have any PE in India and accordingly net revenue received by the taxpayer from the Indian subsidiary was not taxable in India.

**SPE Networks India Inc. Vs Deputy Commissioner of Income Tax (Int. Taxation), Range-2(1) Mumbai (IN THE ITAT MUMBAI BENCH 'L')**

## Case Law 3

**Payment of SAP charges made by assessee to its Associated Enterprises for use of licensed software was liable to tax as 'royalty' in India.**

SMS Iron Technology (P.) Ltd. is a subsidiary of a German company, engaged in the business of supply of metallurgical equipment, consultancy and technical services in design and engineering to ferrous and non-ferrous sectors. The assessee made payments of SAP charges to its Associated Enterprise (AE) for use of licensed software and intranet without deducting tax at source. The Assessing Officer (AO) took a view that said payment amounted to royalty under section 9(1) (vi) as well as under article 12(3) of India-Germany DTAA is liable to tax in India. He thus disallowed payments in question on account of non-deduction of tax at source. The Commissioner (Appeals) confirmed the said disallowance.

The Commissioner (Appeals) asked the assessee to file copies of all agreements related to payment for SAP and intranet charges in order to examine the nature of the transactions in detail, particularly with reference to the provisions of the Indian Income Tax Act and the provisions of the India-Germany DTAA. The agreements were considered relevant for determining whether the amount paid by the assessee is reimbursement of expenditure or not. Tribunal noted that the above agreements despite repeated requisitions were not filed by the assessee before the Commissioner (Appeals). The assessee stated that the agreements are not available at present and

# Direct Tax : Case Laws

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further they were not relevant for deciding the case. In absence of basic details, the contention that the amount of expenditure paid by the assessee to its AE is only reimbursement of expenditure, was not accepted by the Tribunal.

In view of this, the above payment made by the assessee to its associated enterprise was considered chargeable to tax as royalty according to Indian Income Tax Act as well as DTAA. Therefore, on such payment assessee was held liable to have deducted tax at source under the provisions of section 195 at the beneficial rate of 10 per cent provided under the DTAA.

**SMS Iron Technology (P.) Ltd. v. Income-tax Officer, Ward- 2(2), International Taxation, New Delhi [ITAT Delhi Bench 'G']**

## Case Law 4

**Assessee extended loan to its AE, adjustment should be made at average LIBOR rate existing at that time, i.e., at 0.79 per cent, instead of LIBOR + 2 percent**

Hon'ble High Court of Rajasthan in the case of Vaibhav Gems Ltd (the assessee) gave its judgement on questions of law arising from the orders of ITAT. The assessee was in the business of dealing with precious stones. The return of income was furnished declaring a loss which was further selected for scrutiny. On reference to the Transfer Pricing Officer (TPO), adjustment in respect of notional interest income on alleged delay in realization of sale proceeds from

Associated Enterprises (AE) was proposed. It was found that the assessee had extended corporate guarantee and advances to AE for which no charges were levied.

Similarly, based on the Transaction Net Margin Method, adjustment in respect of sales to AE was also proposed.

Before the Hon'ble High Court, the revenue contended that the Tribunal's judgement in reversing the above adjustments and allowing the appeal of the assessee was bad in law and it was a fit case to be decided in favour of the department and the finding of Commissioner (Appeals) should have been accepted.

The High Court settled the issue in favour of the assessee stating that the assessee will be entitled for benefit of average LIBOR rate existing at the time of transaction which was 0.79 per cent and hence addition of adhoc 2 per cent was held not to be proper.

**Commissioner of Income-tax, Jaipur-II Vs Vaibhav Gems Ltd., High Court of Rajasthan**

# Direct Tax: Notifications

# Advance Pricing Agreement

S.no	Notifications
1	<p><b>Press Release Dated 29.12.2017</b></p> <p><b>Indian Advance Pricing Agreement moves forward with signing of three APAs by CBDT in December, 2017</b></p> <p>The Central Board of Direct Taxes (CBDT) has entered into three more Advance Pricing Agreements (APAs) during the month of December, 2017. While two of the Agreements are Unilateral, one is a Bilateral with the United Kingdom. These three APAs pertain to the Electronics, Coal and Insurance sectors of the economy.</p> <p><a href="http://www.incometaxindia.gov.in/Lists/Press%20Releases/Attachments/680/Press-Release-Indian-Advance-Pricing-Agreement-29-12-2017.pdf">http://www.incometaxindia.gov.in/Lists/Press%20Releases/Attachments/680/Press-Release-Indian-Advance-Pricing-Agreement-29-12-2017.pdf</a></p>
2	<p><b>Notification No. 98/2017[F.No.370142/36/2017-TPL] GSR 1527(E) Dated 20.12.2017</b></p> <p><b>CBDT notifies new addresses for delivery/transmission of communication</b></p> <p>CBDT has inserted a new proviso to Rule 127(2) of Income-tax Rules, 1962, hereinafter referred to as Rules, wherein if the communication cannot be delivered/ transmitted to the specified address as already mentioned in the Rules or any other address furnished by the assessee as referred to in first proviso, the communication shall be delivered or transmitted to any of the newly specified addresses.</p> <p><a href="http://www.incometaxindia.gov.in/communications/notification/notification98-2017.pdf">http://www.incometaxindia.gov.in/communications/notification/notification98-2017.pdf</a></p>

# Indirect Tax : Case Laws



## Case Law 1

### **CESTAT upholds refund of service tax mistakenly discharged on reverse charge basis in respect of leasing of tunnel boring machines**

The appellant is a joint venture company between Italian Thai Development Public Limited (ITD) and ITD Cementation India Limited. The appellant was awarded a contract for execution of civil work for DMRC in September 2007 and to execute the said contract, the appellant entered into a lease agreement in November 2007 with ITD Thailand for leasing and importing 4 tunnel boring machines from Thailand. The appellant paid service tax on reverse charge basis under the category of “supply of tangible goods for use” for leasing these tunnel boring machines. They have paid service tax, later they realized that service tax is not liable to be paid on such lease transaction and filed a claim for refund in March 2012. On unjust enrichment it was observed by the Assistant Commissioner that the appellant could not have transferred the burden of service tax to any other party. On appeal, the Commissioner (Appeals) set aside the original order with a direction to the Assistant Commissioner to sanction the refund claim after verifying the relevant documents. Since, even after 4 months of this order, no refund was sanctioned, the appellant approached the Hon’ble Delhi High Court by filing writ-petition. It was held that the lower

authorities fell in error in holding against the appellant on the question of unjust enrichment. No legal or factual justification was found in the case of the department. Accordingly, the order was set aside, and consequential relief was allowed to the appellant.

**M/s. ITD-ITD-CEM Joint Venture Vs. CST, New Delhi [TS-400-CESTAT-2017(DEL)-ST-ITD].**

## Case Law 2

### **No interest where tax discharged according to return as Assessee cannot predict final assessment**

The assessee Indian Oil Corp. Ltd is engaged in distribution of LPG in the State of MP. The only source of purchase within the State is GAIL. Assessee had purchased LPG after payment of full tax under the MPVAT and the tax had been paid as per the books of accounts in time. The Assessing Officer (AO), while passing the assessment order, denied the set-off of input rebate on the amount of VAT paid to GAIL on the ground that GAIL had issued credit notes in favour of assessee due to the price revision by Govt. of India after the invoices were issued. The revision was only in respect of the base price and no credit note had been issued for the VAT element. The AO raised an additional demand inclusive of interest and issued a

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recovery notice for outstanding amount. After approaching the Madhya Pradesh High Court, HC observed that the provision for levy of interest clearly showed that so long as the assessee paid the tax due based on information furnished in the return filed by him, there would be no default on his part to meet the statutory obligation. Therefore, it could not be held that the tax payable by him was not paid to make him liable to interest. HC quashes demand of interest under Madhya Pradesh VAT Act on additional VAT payable consequent to price revision of LPG by Central Govt. after issuance of invoices by supplier. HC remarks that law does not envisage an assessee to predict final assessment and expect him to pay tax on that basis to avoid interest liability. Since assessee had paid tax in terms of return filed in time therefore it cannot be said that tax was not paid in order to make it liable to interest.

**Indian Oil Corporation Limited vs. State of Madhya Pradesh & Others ( TS-388-HC-2017(MP)-VAT)**

## Case Law 3

**Rejection of refund for the lapses on the part of the Revenue not justified**

Service tax was deposited by the assessee with the jurisdictional service tax authorities at Delhi. Post payment of service tax assessee discovered that it has erroneously deposited excess tax with the Authorities. Subsequently, it filed an application for adjustment of the excess amount paid with its liability for Chandigarh registration

account, failing which, the assessee filed a refund application. Revenue rejected the application of refund filed stating it to be time-barred i.e. not filed within the time limits prescribed under law. Aggrieved by the same, assessee filed an appeal with the Commissioner (Appeals) S.T., New Delhi contesting that Revenue never responded to the letters filed by him and also never advised him for filing the proper refund application within the stipulated time frame provided under the statute. Held that the initial letter requesting for transfer / adjustment of excess amount paid to the Chandigarh account should be considered as the application for refund. Further, for the lapses on the part of the Revenue, the assessee should not be held responsible and should not be deprived of its legitimate right to claim refund of service tax as provided under the statute.

**M/s. Kujjal Builders (P) Ltd. Versus Commissioner (Appeals I)S.T., New Delhi [2017 (12) TMI 1312 - CESTAT NEW DELHI]**

## Case Law 4

**Assessee can opt for duty payment basis actual production instead of annual capacity**

The assessee Mahalaxmi Fibres Pvt. Ltd is engaged in manufacturing of man-made fabrics. Excise duty was levied under compounded levy scheme formulated under Section 3A of the Central Excise Act. Under such provision, the excise department would levy duty on the basis of annual production capacity instead of actual production. Subsequently sub-section (4) of Section 3A



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was introduced which gave an option to the manufacturer to apply for the determination of actual production on which basis the excise duty would be payable. Assessee subsequently challenged the very vires of Section 3A of Central Excise Act and simultaneously prayed for permission to opt for payment of duty on basis of actual production and not on annual production capacity. Assessee continued paying tax based on the actual production and clearance of goods. Revenue was of the view that tax should have been paid based on annual production. Being aggrieved by the decision of Revenue the assessee filed a writ petition to the High Court and the assessee contended that the manufacturer covered under the scheme of section 3A enjoys an option either to pay duty on the annual production capacity or on actual production basis. HC opined that when the assessee applied to the Revenue to enable them to pay the duty on actual production and not on annual capacity production, prospectively, the Revenue had to decide such applications and since there was no reason why such applications were rejected. HC quashes order of Commissioner disallowing assessee from availing option of payment of duty basis actual production capacity u/s 3A of Central Excise Act.

**Mahalaxmi Fibers Pvt. Ltd and others v. Union of India and others [TS-397-HC-2017(GUJ)-EXC]**

# Indirect Tax: Notifications



S.no	Notifications
1	<p><b>Notification No. 73/2017-Central Tax, Dated. 29.12.2017</b></p> <p><b>Waiver of late fee payable for failure to furnish the Return in Form GSTR-4</b></p> <p>Central Government waives the amount of late fee payable by any registered person for failure to furnish the return in FORM GSTR-4 by the due date, which is in excess of an amount of Rs 25/- for every day during which such failure continues.</p> <p>Provided that where the total amount payable in the said return is nil, the amount of late fee payable by any registered person, for failure to furnish the said return by the due date, shall stand waived to the extent, which is in excess of an amount of Rs 10/- for every day during which such failure continues.</p> <p><a href="http://www.cbec.gov.in/resources//htdocs-cbec/gst/notfctn-73-central-tax-english.pdf">http://www.cbec.gov.in/resources//htdocs-cbec/gst/notfctn-73-central-tax-english.pdf</a></p>
2	<p><b>Notification No. 74/2017-Central Tax ,Dated. 29.12.2017</b></p> <p><b>Enforcement Date of E-Way Bill</b></p> <p>Central Government appoints the 1st day of February, 2018, as the date from which the provisions of E-way bill shall come into force.</p> <p><a href="http://www.cbec.gov.in/resources//htdocs-cbec/gst/notfctn-74-central-tax-english.pdf">http://www.cbec.gov.in/resources//htdocs-cbec/gst/notfctn-74-central-tax-english.pdf</a></p>
3	<p><b>Notification No.01/2018-Central Tax , Dated 1.1.2018</b></p> <p><b>Rates under Composition Scheme</b></p> <p>A registered person eligible to pay tax under composition scheme, may opt to pay, in lieu of the central tax payable by him, an amount calculated at the rate of:</p> <ul style="list-style-type: none"><li>• Half percent of the turnover in State in case of a manufacturer,</li></ul>

# Indirect Tax: Notifications

S.no	Notifications
	<ul style="list-style-type: none"><li>• Two and a half percent of the turnover in State in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II of the said Act, and</li><li>• Half percent of the turnover of taxable supplies of goods in State in case of other suppliers.</li></ul> <p><a href="http://www.cbec.gov.in/resources//htdocs-cbec/gst/Notification-1-2018-central_tax-English.pdf">http://www.cbec.gov.in/resources//htdocs-cbec/gst/Notification-1-2018-central_tax-English.pdf</a></p>
4	<p><b>Circular No. 27/01/18 - GST Dated 4.1.2018</b></p> <p><b>Manual filing and processing of refund claims</b></p> <ul style="list-style-type: none"><li>• The applications/documents/forms pertaining to refund claims on account of inverted duty structure, deemed exports and excess balance in electronic cash ledger shall be filed and processed manually.</li><li>• Refund claims in respect of zero-rated supplies and on account of inverted duty structure, deemed exports and excess balance in electronic cash ledger shall be filed for a tax period on a monthly basis in FORM GST RFD-01A.</li><li>• Provided in case registered persons having aggregate turnover of up to Rs1.5 crore in the preceding financial year or the current financial year are opting to file FORM GSTR-1, such persons shall apply for refund on a quarterly basis.</li><li>• Refund claim for a tax period may be filed only after filing the details in FORM GSTR-1 for the said tax period.</li><li>• A valid return in FORM GSTR-3B has been filed for the last tax period before the one in which the refund application is being filed.</li><li>• Statement 5B of FORM GST RFD-01A is required to be furnished for claiming refund on supplies declared as deemed exports (Format in Rules).</li><li>• In case of refund claim arising due to inverted duty structure, the following statements - Statement 1 and Statement 1A of FORM GST RFD-01A have to be filled (Format given in Rules).</li></ul> <p><a href="http://www.cbec.gov.in/resources//htdocs-cbec/gst/circularno-27-gst.pdf">http://www.cbec.gov.in/resources//htdocs-cbec/gst/circularno-27-gst.pdf</a></p>

# Legal & Regulatory Notifications



S.no	Notifications
1	<p data-bbox="236 648 555 682"><b>Reserve Bank Of India</b></p> <p data-bbox="236 732 1393 807"><b>Reserve Bank Of India (RBI) updates master direction for reporting under foreign exchange management Act, 1999 (“FEMA”)</b></p> <p data-bbox="236 857 852 891">(RBI Notification dated December 20, 2017)</p> <p data-bbox="236 941 1497 1097">In order to consolidate the requirements for reporting under FEMA with regards to the transactions undertaken by the authorized persons under FEMA and forms required to be submitted, RBI on 20th December 2017 issued the updated Master Directions for reporting under FEMA. Few reporting requirements under the Directions are:</p> <ul data-bbox="236 1147 895 1719" style="list-style-type: none"><li>• FDI in LLPs</li><li>• Money Transfer Service Scheme (MTSS)</li><li>• Rupee Drawing Arrangements (RDA)</li><li>• Liaison Office/Project Office/Branch Office</li><li>• Liberalized Remittance Scheme (LRS)</li><li>• Issuance of Capital Instruments</li><li>• Transfer of Shares</li><li>• Conversion of ECBs into equity</li><li>• ESOPs and sweat equity shares</li><li>• Delays in reporting</li><li>• ADR/GDR</li><li>• ODI</li><li>• KYC</li><li>• FVCI</li></ul> <p data-bbox="236 1771 1225 1805"><a href="https://www.rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=10202">https://www.rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=10202</a></p>

# Legal & Regulatory

S.no	Notifications
<b>2</b>	<p><b>Financial creditors required to submit information to information utilities (IU) as per Insolvency and Bankruptcy Code (IBC)</b></p> <p>(RBI Notification dated December 19, 2017)</p> <p>Pursuant to the provisions of IBC, RBI on 19th December 2017 directed the scheduled banks and other financial institutions to submit financial information and information relating to assets in relation to which any security interest has been created, to an IU registered under the IBBI (Information Utilities) Regulations, 2017. This step clears the air over sharing of information about creditors as required under the insolvency law, as the financial institutions have been hesitant in sharing such details. The Insolvency and Bankruptcy Board of India (IBBI) had issued guidelines for technical standards for information utilities on the 13th December 2017 which also regulate the procedure to be followed by information utilities in storing and sharing details with third parties.</p> <p><a href="https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11189&amp;Mode=0">https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11189&amp;Mode=0</a></p>
<b>3</b>	<p><b>Ministry Of Corporate Affairs</b></p> <p><b>Enactment of the Companies (Amendment) Act, 2017</b></p> <p><b>(Gazette Notification dated 3rd January 2018)</b></p> <p>With a view to remove complexities, improve ease of doing business, strengthen corporate governance standards and prescribe strict action against defaulting companies, the Companies (Amendment) Act, 2017 was passed on the 3rd January 2018 after the President gave his assent. The Companies (Amendment) Bill, 2017 was placed before the Parliament to which the Lok Sabha gave its assent in July 2017 and on 19th December 2017 it was passed by the Rajya Sabha.</p> <p><a href="http://www.nfcg.in/UserFiles/ca-amendment-bill.pdf">http://www.nfcg.in/UserFiles/ca-amendment-bill.pdf</a></p>

# Legal & Regulatory

S.no	Notifications
4	<p data-bbox="229 455 922 494"><b>MCA issues Condonation of Delay Scheme, 2018</b></p> <p data-bbox="229 539 866 578">(MCA Notification dated December 29, 2017)</p> <p data-bbox="229 623 1487 948">Following a sequence of petitions filed with various high courts by directors who were disqualified on account of default by a company in filing annual return or financial statement for a continuous period of three years, MCA has released the Condonation of Delay Scheme, 2018 (CODS). CODS will benefit directors associated with companies which failed to file financial statements or annual returns on the MCA21 online portal for a continuous period of three financial years starting from 2013 as per Section 164(2) of the Companies Act. During the validity of CODS, the DINs of the disqualified directors will be temporarily activated to enable them to file the overdue documents.</p> <p data-bbox="229 993 1487 1113">CODS will come into effect from January 1, 2018, and will remain in force up to March 31, 2018. The CODS will not be applicable to companies which have been stuck off from the register of companies under Section 248(5) of the Companies Act.</p> <p data-bbox="229 1158 1225 1197"><a href="http://www.mca.gov.in/Ministry/pdf/Generalcircular16_29122017.pdf">http://www.mca.gov.in/Ministry/pdf/Generalcircular16_29122017.pdf</a></p>
5	<p data-bbox="229 1242 914 1281"><b>Insolvency and Bankruptcy Board of India (IBBI)</b></p> <p data-bbox="229 1326 1214 1365"><b>IBBI issues guidelines for technical standards for information utilities</b></p> <p data-bbox="229 1410 866 1449"><b>(IBBI Notification dated December 13, 2017)</b></p> <p data-bbox="229 1494 1487 1984">IBBI on 29th September 2017 had released the IBBI (Information Utilities) Regulations, 2017 (the “Regulations”) which were brought into force from 1st April 2017. The Regulations provide a framework for registration and regulation of information utilities (IUs). Regulation 13 provides for laying down of guidelines for Technical Standards for the core services and other services provided by an IU. In consonance with this Regulation 13, the IBBI has issued guidelines for Technical Standards for IUs which came into effect on 13th December 2017. The Technical Standards aim at ensuring and enforcing the reliability, confidentiality and security of financial information which is stored by the IUs. The Regulations recommend that the IUs adopt robust data governance standards to ensure complete integrity of their database. In accordance with Regulation 13 of the Regulations, an IU shall ensure compliance with the below mentioned Technical Standards at all times:</p> <ul data-bbox="229 2029 963 2150" style="list-style-type: none"><li>• standard terms of service;</li><li>• registration of users;</li><li>• unique identifier for each record and each user;</li></ul>

# Legal & Regulatory

S.no	Notifications
	<ul style="list-style-type: none"><li>• submission of information; e. identification and verification of persons;</li><li>• authentication of information;</li><li>• verification of information;</li><li>• data integrity;</li><li>• consent framework for providing access to information to third parties;</li><li>• security of the system;</li><li>• security of information;</li><li>• risk management framework;</li><li>• preservation of information; and</li><li>• purging of information.</li></ul> <p>National E-Governance Services Ltd (NeSL) has been registered as an information utility by the IBBI as on date.</p> <p><a href="http://ibbi.gov.in/webadmin/pdf/legalframwork/2017/Dec/FINAL%20STANDARDS%20GUIDELINES%2013.12.2017_2017-12-13%2021:37:39.pdf">http://ibbi.gov.in/webadmin/pdf/legalframwork/2017/Dec/FINAL%20STANDARDS%20GUIDELINES%2013.12.2017_2017-12-13%2021:37:39.pdf</a></p>
6	<p><b>IBBI notifies insolvency professionals to act as interim resolution professionals or liquidators (recommendation) guidelines, 2017</b></p> <p>(IBBI Notification dated December 15, 2017)</p> <p>IBBI on 15th December 2017 released guidelines for Insolvency Professionals (“IPs”) which have come into effect from 1st January 2018. These guidelines replace the Insolvency Professionals to act as Interim Resolution Professionals (Recommendation) Guidelines, 2017 which were released in May 2017. The Guidelines have been issued in consonance with Section 16(3)(a) and Section 34(4) of the Insolvency and Bankruptcy Code, 2016 (“Code”) IBBI in the new Guidelines has decided to prepare a Panel of IPs for appointment as Interim Resolution Professional (“IRP”) or liquidator and share the said Panel with the Adjudicating Authority (“AA”). The Panel will have a Bench wise list of IPs based on the location of their registered office. The Panel will have a validity of six months and a new Panel will replace the earlier Panel every six months. The Guidelines lay down eligibility criteria for selection of IPs as a part of the Panel. Along with the eligibility criteria, the Guidelines state a scoring mechanism which would be considered for including the eligible IPs in the Panel. IBBI may invite expression of interest from IRPs on regular basis by sending an e-mail to IPs at their email addresses registered with them.</p> <p><a href="http://ibbi.gov.in/webadmin/pdf/legalframwork/2017/Dec/Insolvency%20Professionals%20to%20act%20as%20Interim%20Resolution%20Professionals%20or%20Liquidators%20(Recommendation)%20Guidelines,%202017_2017-12-16%2022:57:23.pdf">http://ibbi.gov.in/webadmin/pdf/legalframwork/2017/Dec/Insolvency%20Professionals%20to%20act%20as%20Interim%20Resolution%20Professionals%20or%20Liquidators%20(Recommendation)%20Guidelines,%202017_2017-12-16%2022:57:23.pdf</a></p>

# Legal & Regulatory

S.no	Notifications
7	<p><b>IBBI notifies IBBI (grievance and complaint handling procedure) Regulations, 2017</b></p> <p>(IBBI Notification dated December 6, 2017)</p> <p>IBBI has notified IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017 on 6th December 2017. The Regulations empower the stakeholders to file a grievance or a complaint against a Service provider under IBC. The Regulations also provide for an objective and transparent procedure for disposal of grievances and complaints by the IBBI. A 'stakeholder' would include debtors, creditors, claimants, service providers, resolution applicants and any other persons having an interest in insolvency, liquidation, voluntary liquidation, or bankruptcy under IBC. The service provider would include insolvency professional agencies, insolvency professionals, insolvency professional entities or information utilities. Stakeholders will have to pay Rs. 2,500 along with the complaint which would be refunded if the complaint is not frivolous in the opinion of IBBI. The complaint is to be filed within forty-five days of the occurrence of cause of action which may be extended by thirty days if the delay is justified.</p> <p><a href="http://ibbi.gov.in/webadmin/pdf/legalframwork/2017/Dec/180723_2017-12-09%2009:59:43.pdf">http://ibbi.gov.in/webadmin/pdf/legalframwork/2017/Dec/180723_2017-12-09%2009:59:43.pdf</a></p>
8	<p><b>Securities and exchange board of India (SEBI)</b></p> <p><b>Disclosure of holding of specified securities and holding of specified securities in dematerialized form</b></p> <p>(SEBI Notification dated December 19, 2017)</p> <p>SEBI issued a circular on 19th December 2017 to amend its Circular No. CIR/CFD/CMD/13/2015 which was issued on November 30, 2015. The circular prescribes the manner of representation of holding of specified securities. As per the circular, the details of the shareholding of the promoters and promoter group, public shareholder and non-public non-promoter shareholder must be accompanied with PAN Number (first holder in case of joint holding). Further, the shareholding of the promoter and promoter group, public shareholder and non-public non-promoter shareholder is to be consolidated based on the PAN and folio number to avoid multiple disclosures of shareholding of the same person.</p> <p><a href="https://www.sebi.gov.in/legal/circulars/dec-2017/disclosure-of-holding-of-specified-securities-and-holding-of-specified-securities-in-dematerialized-form_37028.html">https://www.sebi.gov.in/legal/circulars/dec-2017/disclosure-of-holding-of-specified-securities-and-holding-of-specified-securities-in-dematerialized-form_37028.html</a></p>





## Are We Waiting For A Bigger Cyber Attack To Strike In 2018?

By – Arpan Relan, Asst. Manager – Corporate Legal and Information Technology

IBA

It's the beginning of a new year and talking of cyber security in 2018, it seems like the cyber space has not had a good start. Where a news agency reported that an online portal has been offering sensitive personal details like name, address and phone number by entering any Aadhar number for just Rs. 500, a new Android malware attack named 'Android.banker.A9480' affected numerous Indian banking and cryptocurrency apps which was designed to steal the login credentials of users.

2017, the year gone by also experienced a good number cyber-security breaches and ransomware attacks like 'Petya', 'Wannacry' along with cases of data theft wherein the personal data of 57 million users of "UBER" was compromised. Shockingly, the reason behind the UBER attack was that the hackers were able to gain access to an external server of Amazon Web Services where the data was stored by simply hacking the login credentials of UBER employees.

This brings us to the bigger question, that are we happy with the companies who knowingly or unknowingly compromise our personal data to cybercriminals? And are such companies adequately prepared to thwart such cyber-attacks?

Under Section 72 of the Indian Information Technology Act, 2000 (for brevity, the "Act"), any person who gains access to electronic records and data and discloses such data to another person shall be penalized with imprisonment upto 2 years, or with fine upto Rs. 1 lakh, or both. And under Section 43A of the said Act, if any establishment fails to protect their sensitive personal data shall be liable to pay unlimited damages to the affected persons.

**Read More at:** <http://www.cxotoday.com/story/cyber-security-in-2018-are-we-waiting-for-something-bigger-to-happen/>

# Upcoming Compliances

Date	Compliance
January 10, 2018	Due dates for quarterly furnishing of Form GSTR-1 for the month of July - September by taxpayers with aggregate turnover of up to Rs. 1.5 crore
	Due dates for monthly furnishing of Form GSTR-1 for the month of July - November by taxpayers with aggregate turnover of more than Rs. 1.5 crore
January 14, 2018	Due date for issue of TDS Certificate for tax deducted under section 194-IA in the month of Nov, 2017
January 15, 2018	Due date for furnishing of Form 15G/15H declarations received during the quarter ending December, 2017
January 30, 2018	Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IA in the month of Dec, 2017
January 31, 2018	Intimation under section 286(1) by a resident constituent entity of an international group whose parent is non-resident.
	TDS Return for the quarter ending Dec 31st 2017 in the prescribed format.
February 7, 2018	Due date for deposit of tax deducted /collected at source for the month of Jan 2017
February 10, 2018	Due dates for monthly furnishing of Form GSTR-1 for the month of December by taxpayers with aggregate turnover of more than Rs. 1.5 crore

# Editorial Team

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## About us:

IBA is a leading Financial and legal advisory company with specialization in Assurance, Risk Consulting, Legal, Direct Tax, Indirect Tax(GST) and Corporate Advisory for midsize, SMEs and start-up firms. IBA constitute a young team of path breaking professionals, who believe in creating value through innovation and creativity to provide ultimate client satisfaction. Clients benefit from our fresh thinking, constructive challenge and practical understanding of the issues they face. We aim to alloy a perfect blend of professionalism with high standards of service, in our pursuit of excellence.

Founded in the Year 2003, the company witnessed immense growth from 2 members to currently a 100 members team, with its offices in Delhi, Mumbai and Bangalore and its clients from across states. IBA continues to offer wholesome service experience to boost highly valued client relationships by combining the technical and industry expertise at par with well-placed firms together with a personal commitment to optimize client service.

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