

IBA INTERNATIONAL
BUSINESS ADVISORS

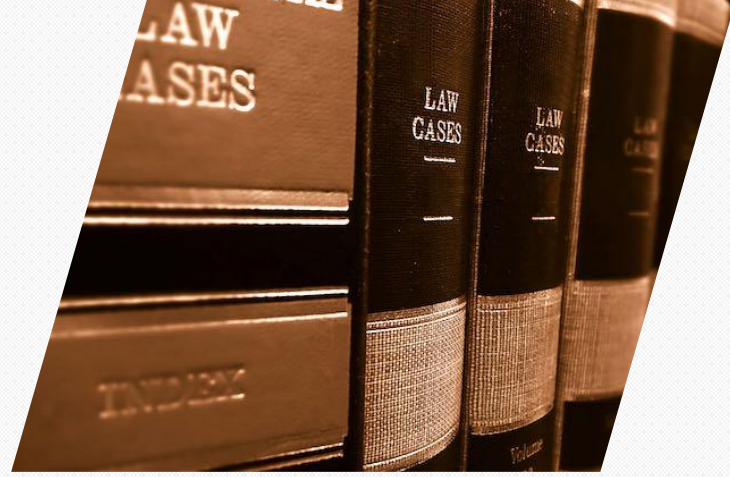
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October - 2018

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Direct Tax Case Laws



Case Law 1

High Court of Gujrat: Where AO initiated reassessment proceedings on basis of information supplied by Investigation Wing that assessee received accommodation entries in form of share capital and share premium from paper/shell companies, validity of said proceedings deserved to be upheld.

MSK Real Estates (P.) Ltd. v. Deputy Commissioner of Income Tax, Central Circle-1 [2018] 95 taxmann.com 241 (Gujarat)

During AY 2010-11, the assessee did not file its return. Subsequently, a search was conducted in case of Madhav Group of cases, Vadodara at the business premises of Madhav Infra Projects Limited. In course of search, certain documents were seized showing that assessee had received share application money and share premium from various companies. The Investigation wing of department provided information that those companies were paper/shell companies involved in providing accommodation entries in form of share capital, share premium, unsecured loans etc. On basis of aforesaid information, the AO initiated reassessment proceedings in case of assessee. The main objection raised by assessee was that entire share application and share premium money was received by the assessee on or before 31-3-2009. No amount having been received after 4-2009, no taxing event fell within the period relevant to the assessment year 2010-11 The AO rejected assessee's objection. The HC opined that since the assessee had not

file its return and the Investigation Wing had collected material to suggest assessee obtained accommodation entries, reopening of the assessment would be ordinarily permissible. Furthermore, mere receipt of the share application money was not enough. Unless shares are allotted, such amount would remain with the company and cannot be appropriated. Hence, the ruling was made in favour of revenue.

Case Law 2

High Court Delhi: Where pursuant to issuance of re-assessment notice, assessee itself accepted that original return filed by it was incorrect for reason that assessee had failed to disclose income earned by way of royalty and fee for technical service and, accordingly, declared additional income, impugned reassessment was justified

Samsung Electronics Co. Ltd v. Deputy Commissioner of Income tax (Int. Tax)

[2018] 97 taxmann.com 637 (Delhi)

A survey was conducted in the premises of the Indian subsidiary, SIEL of the assessee foreign company, SECL(SK). During the course of survey, it was found that SIEL was in the business of manufacturing and trading of consumer electronics. These items were manufactured under the technical assistance of the present (sic. parent) company for which the parent company received fees for technical services. The parent company SECL(SK) was not paid any royalty for use of its brand name 'SAMSUNG' by the subsidiary company.

Direct Tax : Case Laws

Thus, income of assessee foreign company in the form of royalty had escaped assessment. Further, during post survey proceedings, statements of JSS President & CEO of the Indian company was recorded. It was observed that he was also head of South West Asia operations of the parent company. Thus, he was representing not only SIEL but also SECL(SK) in his capacity as South West Asia head. A close analysis of these statements further revealed that the Indian company's office was being used as place of management for South Asia operations by SECL(SK), therefore, the Indian company would constitute Permanent Establishment of the assessee parent company under article 5(2)(a) of the DTAA and a part of income from sales in South Asian countries should be attributed to SECL(SK). A perusal of records showed that the assessee had not filed its return of income in India for assessment year 2008-09.

On appeal, the Tribunal observed that the manufacturing royalty/FTS received by the assessee from the Indian subsidiary as reflected in the tax returns filed by the SIEL was not reported by the assessee, and it was only in the returns filed in response to the notices issued under section 148, such an income was reported. The assessee admitted the fact that it did not declare this income in the original return of income. Thus, reassessment was justified.

Case Law 3

High Court of Gujrat: Where Assessing Officer reopened assessment on ground that unsecured loans given to assessee company were subsequently converted into share capital with premium and, thus, provisions of section 68 were attracted, in view of fact that advances were squared up on same

date and nothing remained outstanding at end of day, impugned reassessment proceedings deserved to be quashed

Gujrat Television (P.) Ltd. v. ACIT, Circle-2(1)(2) [2018] 94 taxmann.com 400 (Gujarat)

The assessee filed its return of income for AY 2010-11 on September 23, 2010. The return was taken up for scrutiny by the AO who passed an order on September 27, 2014 u/s 143(3) of the Income-tax Act. To reopen the assessment, the AO issued notice u/s 147 on March 30, 2017. The reason recorded for reopen of assessment stated it was found that the companies which had between themselves advanced a sum of INR 4.82 crores to the assessee during the year under consideration, didn't have the necessary resources for making such advances. Thus, it was a clear case of addition u/s 68. The assessee submitted that notice was issued without proper application of mind and further that the reopening which has been resorted to for further investigation is not permissible. It was held that order passed by AO lacked validity since the AO did not have any material on record to prove the aforementioned claims.

Case Law 4

ITAT Vizag: Where assessee bank was not an Indian company registered under Companies Act, 1956 and was only a cooperative bank, assessee was not eligible to claim deduction on cost of acquisition of one 'P' bank as expenditure under section 35DD

Direct Tax : Case Laws

**Kanaka Mahalakshmi Cooperative Bank Ltd.
v. ACIT, Circle-1(1), Visakhapatnam**

**[2018] 97 taxmann.com 638
(Visakhapatnam - Trib.)**

The assessee a co-operative bank, filed its return of income. Case of the assessee was selected for scrutiny and after following due procedure, assessment was completed under section 143(3). Subsequently, the Assessing Officer noted that the assessee had claimed 1/5th of cost of acquisition of on 'P' bank as expenditure under section 35DD. The Assessing Officer was of a view that as per the provisions of section 35DD, only an assessee, who was an Indian company was eligible for this deduction as the assessee was not an Indian company, deduction under section 35DD could not be allowed. As this was a mistake, the Assessing Officer issued a notice under section 154 proposing to rectify the same. On appeal, the Commissioner (Appeals) upheld the order of the Assessing Officer. In instant petition, the assessee claimed that in case deduction under section 35DD was not allowed assessee would be eligible for claim under section 32. The assessee (acquirer) is a cooperative bank registered under the Cooperative Societies Act and filed its return of income for the year under consideration, wherein it has claimed 1/5th of cost of acquisition of 'P' Cooperative Bank as expenditure under section 35DD, amounting to Rs. 57.81 lakhs, same is allowed by the Assessing Officer under section 143(3). Subsequently, the Assessing Officer noticed that as per the provisions of section 35DD, only assessee

who is an Indian Company is eligible for deduction, as the assessee is not Indian Company, deduction under section 35DD was disallowed and notice under section 154 was issued and after considering the explanation given by the assessee, he rectified the order passed under section 143(3) and disallowed claim made under section 35DD. On appeal, Commissioner (Appeals) confirmed the order of the Assessing Officer by observing that the assessee is not an Indian Company and, therefore, prima-facie, there is a mistake apparent on record committed by the Assessing Officer in allowing claim originally made under section 143(3) and the same is rectified subsequently in accordance with the provisions of section 154.

Direct Tax Notification



1. SECTION 80D OF THE INCOME-TAX ACT, 1961 - DEDUCTIONS - MEDICAL INSURANCE PREMIUM - NOTIFIED SCHEME U/S. 80D(2)(a)

NOTIFICATION NO. SO 4982(E) [NO.55/2018 (F.NO.178/15/2018-ITA-I)], DATED 26-9-2018

In exercise of the powers conferred by clause (a) of sub-section (2) of section 80D of the Income-tax Act, 1961, the Central Government has notified the Ex-Servicemen Contributory Health Scheme of the Department of Ex-Servicemen Welfare, Ministry of Defence, for the purposes of the said clause for the assessment year 2019-20 and subsequent assessment years.

2. SECTION 90 OF THE INCOME-TAX ACT, 1961 - DOUBLE TAXATION AGREEMENT - AGREEMENT FOR AVOIDANCE OF DOUBLE TAXATION AND PREVENTION OF FISCAL EVASION WITH FOREIGN COUNTRIES - HONG KONG SPECIAL ADMINISTRATIVE REGION OF PEOPLE'S REPUBLIC OF CHINA

NOTIFICATION DATED 25-9-2018

The Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of India have concluded an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income. This Agreement shall apply to persons who are residents of one or both of the Contracting Parties.

The existing taxes to which the Agreement shall apply are:

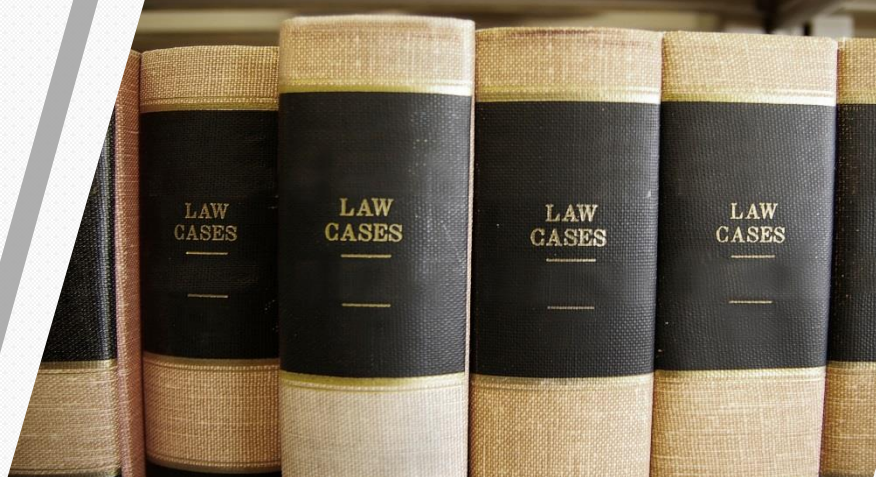
(a) in the case of the Hong Kong Special Administrative Region,

- (i) profits tax;
- (ii) salaries tax; and
- (iii) property tax;

whether or not charged under personal assessment;

(b) in the case of India, the income tax, including any surcharge thereon.

Indirect Tax : Case Laws



Case Law 1

Benefit of Lowering the Tax not passed on to the Recipients

Appeal was filed by two Appellants against the Respondent M/s Lifestyle International Private Limited for not surpassing the benefit of reduction in rate of tax by lowering the price of “Maybelline FIT Me Foundation” to the recipient, hence, there was contravention of Section-171 of the CGST Act, 2017. The respondent sold the goods by increasing the base price of goods. The Respondent claimed that no methodology has been prescribed by the Authorities in Rule 126 of the CGST Rules, 2017 for determining whether the benefits of tax reduction had been passed or not and hence, the Respondent could not be held liable for anti-profiteering. It was also established that the Respondent had issued incorrect invoices while selling the products to his customers as he had not correctly shown the basic price which he should have legally charged from them which is an offence under Section 122(1)(i) of the CGST Act, 2017 and hence, he is liable for imposition of penalty. It was held that the Respondent had enhanced the basic price of the product which was exactly equal to the amount by which the GST on them had been reduced and hence, there is no doubt that the Respondent had restored to profiteering which constitutes violation of the provisions of Section 171 of the said Act.

Re: M/S LIFESTYLE INTERNATIONAL PRIVATE

LIMITED [2018(9) TMI 1640-NATIONAL ANTI-PROFITEERING AUTHORITY]

Case Law 2

Transfer of DFIA License-Benefits of Transferor Terminates

The petitioner is a manufacturer and exporter of polypropylene mats. During 2007, the petitioner exported 50,776.730 kgs of polypropylene mats along with 374.031 kgs of packing material under Duty Free Import Authorization (DFIA) scheme and was issued with a DFIA license, although the petitioner was allowed to import 61,952.000 kgs of polypropylene granules as raw materials and 378 kgs of Polypropylene granules as packing material without payment of basic customs duty, additional customs duty, education cess, antidumping and other safeguards, if any. The license was valid for 24 months. This license was transferred to a third party by the Petitioner. The petitioner had made a claim of drawback of the Additional Customs Duties paid by the transferee unit by stating that Rule 3(c) of the Rules allows drawback of duty paid on inputs only, when the credit of duty of the inputs are not availed. This drawback claim was rejected. The Court held that under the DFIA Scheme, it is inferred that once the license is transferred to a third party legitimately, the benefits accrued under the license on the transferor terminates. Hence, it held that the respondents have rightly rejected the claim of the petitioner and the petition was dismissed.

Indirect Tax : Case Laws

SIGMA MAT (P) LTD. VERSUS JOINT SECRETARY, COMMISSIONER, (APPEALS) , CUSTOMS AND CENTRAL EXCISE, ASSISTANT COMMISSIONER OF CUSTOMS (REFUNDS) [2018 (9) TMI 1737 - MADRAS HIGH COURT]

Case Law 3

Mandatory registration in the state from where a supplier makes taxable supply of goods/services

The applicant was engaged in construction of cold storage at various parts of Country. They were expecting to do some construction work in the state of Rajasthan whereas they were located and registered under GST in the state of Gujarat. Since place of supply was Rajasthan, the applicant would be charging IGST, but he believed that he was not required to take registration in the state of Rajasthan. Advance ruling had been sought on whether registration was required to be taken in the state of Rajasthan where activity was to be undertaken. As per section 22 of CGST Act, every supplier shall be liable to take registration from where he makes taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees or ten lakh rupees (in case of special category states) respectively. As per Para 6(a) of Schedule II of CGST Act,2017 “Works Contract” shall be treated as a supply of service under GST Act and the location of work contractor shall be the state where his principal place of business is registered (unless he has established his office in the place where the services are supplied). As per section 12(3)(a) of IGST Act,2017 in case of Work

Contract Services, place of supply shall be the location at which the immovable property is located. Therefore, it was ruled that if the supplier of services has any place of business/office in the state of Rajasthan (place where the services are to be provided) then he was required to get himself registered in the state of Rajasthan.

AUTHORITY FOR ADVANCE RULING – RAJASTHAN, M/S JAIMIN ENGINEERING PRIVATE LIMITED [ADVANCE RULING NO. RAJ/AAR/2018-19/07 Dated- 01/07/2018]

Case Law-4

Educational Services provided in affiliation to recognized universities exempt from GST

The applicant is a private limited company engaged in providing specific educational services in the field of hotel management. It is an approved training partner to the National Skill Development Corporation of the Government of India and provides education to the students under the said scheme. Also, it is affiliated to various universities and provides degree courses under the related curriculum wherein the administration & curriculum is managed by the applicant and the examination is conducted and degree is granted by the university. The applicant has sought an advance ruling on whether such services are exempt from levy of GST. The government vide Notification No. 12/2017 – Central Tax (Rate) dated 28th June 2017 has exempted services provided by the educational institutions to its students, faculty and staff from scope of GST. The essence of the above-mentioned exemption is that the

Indirect Tax : Case Laws

institution in question must qualify as an “educational institution”. The key criterion for qualification of any service under the above exemption would be that education delivered results in a legally recognized qualification being granted to the students. It was ruled by the authority that since the applicant is affiliated to the recognized universities and qualifications which are recognized by law would be issued to the successful students, hence the institution would qualify as an “educational institution”. Thus, the services provided by the applicant is covered under the above-mentioned exemption and would be exempt from levy of GST.

**AUTHORITY FOR ADVANCE RULINGS –
KARNATAKA IN M/s EMERGE VOCATIONAL
SKILLS PRIVATE LTD. (Advance Ruling No.
KAR ADRG 20/2018 Dated 13th August
2018)**

Indirect Tax Notification



1. Extension of period for filing of FORM GST TRAN-1

CBIC vide Order No. 4/2018-GST dated 11th September 2018 has extended the period for submitting the declaration in FORM GST TRAN-1 till 31st January 2019 for those registered persons who could not submit the declaration due to technical difficulties on the common portal and for whose cases have been recommended by the Council.

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/order4-2018-cgst.pdf>

2. Guidelines for Deductions & Deposits of TDS

CBIC vide Circular No. 65/39/2018-DOR dated 14th September 2018 has notified guidelines for deductions and deposits of TDS by the DDO under GST.

http://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular_No.65-new.pdf

3. Format of Annual Return

CBIC vide Notification No. 39/2018-Central Tax dated 4th September 2018 has notified the formats of Annual Return in FORM GSTR-9 for regular taxpayers and FORM GSTR-9A for composite taxpayers for the period July 2017 to March 2018.

http://www.cbic.gov.in/resources//htdocs-cbec/gst/Notification-39-2018-central_tax-English.pdf

4. Extension of due date for filing FORM GST ITC-04

CBIC vide Notification No. 40/2018-Central Tax dated 4th September 2018 has extended the time limit for making the declaration in FORM GST ITC-04 till 30th September 2018 in respect of goods dispatched to or received from a job worker or sent from one job worker to another, during the period from July 2017 to June 2018.

http://www.cbic.gov.in/resources//htdocs-cbec/gst/Notification-40-2018-central_tax-English.pdf

5. Waive the Late Fees paid

CBIC vide Notification No. 41/2018-Central Tax dated 4th September 2018 has waived off the late fees paid for specified classes of taxpayers for FORM GSTR-3B, FORM GSTR-4 and FORM GSTR-6

http://www.cbic.gov.in/resources//htdocs-cbec/gst/Notification-41-2018-central_tax-English.pdf

Indirect Tax Notification



6. Extension of due date for quarterly furnishing of FORM GSTR-1 CBIC vide Notification No.

CBIC vide Notification No. 43/2018-Central Tax dated 10th September 2018 has extended the due date for quarterly furnishing of FORM GSTR-1 till 31st October 2018 for those taxpayers with aggregate turnover of upto 1.5 crores for the period July 2017 to September 2018.

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-43-central-tax-english.pdf>

7. Extension of due date for monthly furnishing of FORM GSTR-1

CBIC vide Notification No. 44/2018-Central Tax dated 10th September 2018 has extended the due date for monthly furnishing of FORM GSTR-1 till 31st October 2018 for those taxpayers with aggregate turnover of more than 1.5 crores for the period July 2017 to September 2018.

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-44-central-tax-english.pdf>

8. Format of Reconciliation Statement

CBIC vide Notification No. 49/2018-Central Tax dated 13th September 2018 has notified the format of Reconciliation Statement in FORM GSTR-9C for the purpose of GST Audit

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-49-central-tax-english-new.pdf>

9. Seeks to bring TDS Provisions into force

CBIC vide Notification No. 50/2018-Central Tax dated 13th September 2018 has appointed 1st October 2018 as the date on which the provisions of Section 51 of the CGST Act 2017 (relating to TDS) shall come into force for the notified persons.

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-50-central-tax-english.pdf>

10. Seeks to bring TCS Provisions into force

CBIC vide Notification No. 51/2018-Central Tax dated 13th September 2018 has appointed 1st October 2018 as the date on which the provisions of Section 52 of the CGST Act 2017 (relating to TCS) shall come into force for the e-commerce operators.

11. Seeks to notify the rate of TCS

CBIC vide Notification No. 52/2018-Central Tax dated 20th September 2018 has notified the rate of TCS @ half per cent, to be collected by every e-commerce operator for intra-state taxable supplies.

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-52-central-tax-english-new.pdf>

Corporate Legal & Regulatory Notifications



S.No	Notifications
1	<p>THE COMPANIES (PROSPECTUS AND ALLOTMENT OF SECURITIES) THIRD AMENDMENT RULES, 2018.</p> <p>(MCA Notification dated September 10, 2018)</p> <p>The Ministry of Corporate Affairs (MCA) vide its notification dated September 10, 2018 has amended the Companies (Prospectus and Allotment of Securities) Rules, 2014 to be effective from October 02, 2018. Through this Amendment, MCA has made it mandatory for all Unlisted Public Companies to issue new securities only in dematerialized form and to facilitate dematerialization of all its existing securities in accordance with provisions of the Depositories Act, 1996 and regulations made there under. The key highlights of these rules are provided below:</p> <ul style="list-style-type: none">• Every unlisted public company should ensure that the entire holding of securities of its promoters, directors, key managerial persons has been dematerialized before issue of any further securities.• On and after October 02, 2018, shareholders of such companies would be able to transfer their shares only in the dematerialized form.• Any company which defaults in payment of fees due to the Registrar and Transfer Agent or other agencies shall not be able to issue any further securities without clearing all pending payments.• Further, the audit report provided under regulation 55A of the SEBI (Depositories and participants) Regulations, 1996 shall also be submitted by all such unlisted public company on a half-yearly basis to the Registrar under whose jurisdiction the registered office of the company is situated. <p>http://www.mca.gov.in/Ministry/pdf/CompaniesProspectus3amdRule_10092018.pdf</p>
2.	<p>COMMENCEMENT NOTIFICATION</p> <p>(MCA Notification dated September 12, 2018 and September 19, 2018)</p> <p>The Ministry of Corporate Affairs has notified various provisions of The Companies (Amendment) Act, 2017 vide its notifications dated September 12, 2018 and September 19, 2018. The sections which are notified along with their effective dates are as follows:</p>

Legal & Regulatory

S.no Notifications

Section No. of the Companies (Amendment) Act, 2017	Corresponding Section under Companies Act, 2013	Section Title	Effective Date
Section 66	Section 196	Appointment of Managing Director, Whole-Time Director and Manager	September 12, 2018
Section 67	Section 197	Overall maximum Managerial Remuneration and Managerial Remuneration in case of absence or inadequacy of profits	September 12, 2018
Section 68	Section 198	Calculation of Profits	September 12, 2018
Section 69	Section 200	Central Government or Company to fix limit with regard to Remuneration	September 12, 2018
Section 70	Section 201	Forms of and procedure in relation to certain applications	September 12, 2018
Section 37	Section 135	Corporate Social Responsibility	September 19, 2018

http://www.mca.gov.in/Ministry/pdf/commencementnoti_13092018.pdf

http://www.mca.gov.in/Ministry/pdf/CompaniesAmendAct2017_19092018.pdf

3 COMPANIES (APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL) AMENDMENT RULES, 2018.

(MCA Notification dated September 12, 2018)

The Ministry of Corporate Affairs (MCA) vide its notification dated September 12, 2018 has notified the Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2018 to be effective from September 12, 2018. Through the amendment the rules, have been amended as below:

Legal & Regulatory

S.no	Notifications
	<p>(i) in rule 6 (a) for the heading 'Application to the Central Government' the heading 'Parameters for consideration of remuneration' has been substituted and the words 'Central Government' have been omitted. Accordingly, these rules shall provide the parameters to be followed by a company for Managerial Remuneration in case of absence or inadequacy of profits.</p> <p>(ii) In rule 7, sub-rule (2) shall be omitted, which was regarding the conditions to be complied by non-listed companies in the event of no profit or inadequate profit.</p> <p>(iii) Revised form no.MR-2 has been introduced</p> <p>http://mca21.gov.in/Ministry/pdf/companiesAmendRules_13092018.pdf</p>
4	<p>AMENDMENT TO SCHEDULE V OF THE COMPANIES ACT, 2013</p> <p>(MCA Notification dated September 12, 2018)</p> <p>The Ministry of Corporate Affairs (MCA) vide its notification dated September 12, 2018 has made amendments to the Schedule V of the Companies, Act, 2013 to be effective from September 12, 2018. Through the notification, below mentioned amendments have been made:</p> <p>(i) In part I under the title APPOINTMENTS: the amendment provides that any person who has been convicted under the new acts such as Insolvency and Bankrupt Code, Goods and Service Tax etc. cannot be appointed as Managing Director.</p> <p>(ii) In part II under the heading REMUNERATION: in section II the words “without Central Government Approval” wherever appearing has been omitted.</p> <p>(iii) In part II under the heading REMUNERATION: in section III the words “without Central Government Approval” wherever appearing has been omitted.</p> <p>(iv) In part II in section IV in explanation VI the clause A providing the definition of “current relevant profit” has been omitted.</p> <p>http://mca21.gov.in/Ministry/pdf/ScheduleVCompAct_13092018.pdf</p>
5.	<p>LIMITED LIABILITY PARTNERSHIP (SECOND AMENDMENT) RULES, 2018.</p> <p>(MCA Notification dated September 18, 2018)</p>

Legal & Regulatory

S.no	Notifications
	<p>The Ministry of Corporate Affairs (MCA) vide its notification dated September 18, 2018 has notified the Limited Liability Partnership (Second Amendment) Rules, 2018 to be effective from October 2, 2018. Through the amendment changes have been introduced in the process for incorporation of Limited Liability Partnerships (LLPs) which are stated as below:</p> <p>Name Reservation – A new form RUN-LLP (Reserve Unique Name- Limited Liability Partnership) has been introduced replacing Form 1. The form shall be available as an on-line link and name can be applied after payment of the prescribed fees. The name can be approved or rejected after giving a chance of one re-submission by the authority.</p> <p>Incorporation of LLPs – Old Form 2 LLP has been replaced by Form FiLLip for incorporating the LLP. Further, this form shall also be used in situation where if an individual required to be appointed as designated partner and does not hold a DPIN or DIN, but the same is restricted to a maximum of two person. Also, the said form can be used to make an application for reservation of name directly at the time of incorporation.</p> <p>Further it has been provided that the above new forms along with other forms (Form 5, Form 17 and Form 18) shall be processed by the Registrar, Central Registration Centre (CRC) for and on behalf of the jurisdictional Registrar established under the provisions of the Companies Act, 2013.</p> <p>http://www.mca.gov.in/Ministry/pdf/LLPSecondAmendRules2018_19092018.pdf</p>
6.	<p>COMPANIES (CORPORATE SOCIAL RESPONSIBILITY POLICY) AMENDMENT RULES, 2018 (MCA Notification dated September 19, 2018)</p> <p>The Ministry of Corporate Affairs (MCA) vide its notification dated September 19, 2018 has amended the Companies (Corporate Social Responsibility Policy) Rules, 2018 to be effective from September 19, 2018. Through the amendment, a few modifications have been done to the words used in the rules providing more clarity to the rules however no legal change has been brought through the amendment.</p> <p>http://www.mca.gov.in/Ministry/pdf/CompaniesCSRPolicyAmendRules2018_19092018.pdf</p>
7.	<p>COMPANIES (REGISTRATION OFFICES AND FEES) FIFTH AMENDMENT RULES, 2018. (MCA Notification dated September 20, 2018)</p> <p>The Ministry of Corporate Affairs (MCA) vide its notification dated September 20, 2018 has amended the Companies (Registration offices and Fees) Rules, 2018 to be effective from September 20, 2018.</p>

Legal & Regulatory

S.no	Notifications
	<p>The amendment prescribes the fees applicable on filing of e-form DIR-3 KYC for the financial year 2018-2019 shall be rupees five hundred for the forms filed between September 21, 2018 to October 05, 2018 and thereafter a fee of rupees five thousand shall be payable on or after October 06, 2018.</p> <p>http://www.mca.gov.in/Ministry/pdf/RegistrationOfficesFeesFifthAmendmentRules_20092018.pdf</p>
8.	<p>COMPANIES (REGISTERED VALUERS AND VALUATION) THIRD AMENDMENT RULES, 2018. (MCA Notification dated September 25, 2018) The Ministry of Corporate Affairs (MCA) vide its notification dated September 25, 2018 has amended the Companies (Registered Valuers and Valuation) Amendment Rules, 2017 to be effective from September 25, 2018. The amended provisions provide as below:</p> <p>(i) Any person who may be rendering valuation services under the Act, on the date of commencement of these rules, may continue to render valuation services without a certificate of registration under these rules upto January 31, 2019. Provided that if a company has appointed any valuer before such date and the valuation or any part of it has not been completed before January 31, 2019, the valuer shall complete such valuation or such part within three months thereafter.</p> <p>(ii) Further the recognition granted under rule 13 shall be subject to the conditions that registered valuers organization shall be converted or registered as company under section 8 of the Act with governance structure and bye laws as specified in this regard within 2 years from the date of commencement of Rules, if it is an organization referred to in sub-rule (1) of rule 12.</p> <p>http://www.mca.gov.in/Ministry/pdf/CompaniesThirdAmendment_25092018.pdf</p>
9.	<p>RELAXATION OF ADDITIONAL FEES AND EXTENSION OF LAST DATE OF FILING OF FORM BEN-2 UNDER THE COMPANIES ACT, 2013 (MCA Circular dated September 06, 2018) The Ministry of Corporate Affairs (MCA) vide its circular dated September 06, 2018 has extended the time limit for filing the BEN-2 form on account of Companies (Significant Beneficial Owners) Rules, 2018 which would now be 30 days from the date of deployment of BEN-2 on the MCA portal and no additional fees shall be levied if the same is filed within 30 days from the date of deployment of the said form.</p> <p>http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.7_06082018.pdf</p>

Legal & Regulatory

S.no	Notifications
10.	<p>CLARIFICATION IN FILING BEN-1 UNDER THE COMPANIES ACT, 2013 (MCA Circular dated September 10, 2018)</p> <p>The Ministry of Corporate Affairs (MCA) vide its circular dated September 10, 2018 has informed the stakeholders that form BEN-1 shall be revised and notified shortly. Accordingly, the stakeholders are advised to file the revised form only and adhere to the time lines which will be specified therein.</p> <p>http://www.mca.gov.in/Ministry/pdf/GCCircularBen_10092018.pdf</p>
11.	<p>External Commercial Borrowings (ECB) Policy – Liberalisation (RBI notification dated September 19, 2018)</p> <p>Reserve Bank of India via its notification dated Septmeber 19, 2018 has liberalised ECB policy. The amended provisions provide as below:</p> <p>(i) ECBs by companies in manufacturing sector: RBI has allowed 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 instead of 3 years.</p> <p>(ii) Underwriting and market making by Indian banks for Rupee denominated bonds (RDB) issued overseas: RBI has permitted Indian banks to participate as arrangers/underwriters/market makers/traders in RDBs issued overseas subject to applicable prudential norms, whereas prior to said notification, Indian banks, could act as arranger and underwriter for RDBs issued overseas provided their holding could not be more than 5 per cent of the issue size after 6 months of issue.</p> <p>https://rbidocs.rbi.org.in/rdocs/notification/PDFs/APDIR320977A84B400D4D3B93473300BCF12144.PDF</p>



DEMATERIALIZATION OF SECURITIES OF UNLISTED PUBLIC COMPANIES

By – Mukta Kheterpal

IBA

The Ministry of Corporate Affairs (MCA) has issued the Companies (Prospectus and Allotment of Securities) Third Amendment Rules, 2018 (Amendment Rules) on September 10, 2018. The Amendment Rules make it mandatory for every unlisted public company to (i) issue the securities only in dematerialised form, and (ii) facilitate the dematerialisation of all its existing securities. The Amendment Rules are effective from October 2, 2018.

The amendment talks about securities and not just shares. Which means that it covers not only outstanding and future issue of Equity Shares but also Preference Shares, Debentures including NCDs and CCDs etc.

Rationale for Amendment Rules

1. The Amendment Rules are being introduced to enhance transparency, investor protection, and governance in the corporate sector. The MCA envisages the benefits to include:
2. Elimination of risks associated with physical certificates such as loss, theft, mutilation, fraud etc.
3. Improving the corporate governance system by increasing transparency and preventing mal-practices such as benami shareholding and the back dated issuance of securities.
4. Better acceptance of such securities as collateral and mitigation of disputes and risks associated with securities issued in physical form.
5. Ease in transfer and pledge etc of securities.

Overview of the Amendment Rules

- Applicability: Pursuant to the Amendment Rules, the onus is on both unlisted public companies as well as every holder of securities of such companies to dematerialise their securities.
- Obligations of unlisted public company: The Amendment Rules impose the following key obligations on unlisted public companies:

1. Securities are to be issued only in dematerialised form- whether by way of private placement or bonus shares or rights offer;
2. Facilitate the dematerialisation of all outstanding securities by making application to the depository and obtain ISIN for each type of security and shall inform all its security holders of such facility;
3. Ensure that the entire holdings of promoters, directors and key managerial personnel are dematerialised prior to making an offer for issue or buyback of securities or for issue of bonus shares or shares on a rights basis; and
4. Comply with regulations and guidelines issued by the SEBI and depositories with respect to the dematerialisation of shares.
5. The Amendment Rules do not provide any clarity on whether they apply to deemed public companies (private companies which are subsidiaries of public companies). In the absence of such clarity, it appears that deemed public companies may also have to comply with the Amendment Rules.
6. Consequences of payment defaults: In addition to the above obligations, the Amendment Rules require unlisted companies to make timely payments to depositories, registrars to issue, and share transfer agents, including the requirement to maintain a security deposit of at least two years fees. If an unlisted public company fails to comply with the above payment obligations, then the unlisted public company cannot offer or buyback securities or issue bonus shares or shares on a rights basis until it makes all outstanding payments to applicable agencies.
7. Reporting requirements: The Amendment Rules require unlisted companies to submit audit reports on half-yearly basis with the jurisdictional registrar of companies. The requirement for such audit reports has been linked to the requirements set out in Regulation 55A of the SEBI (Depositories and Participants) Regulations, 1996.
8. Duties of holders of securities of unlisted public company: Every holder of securities of an unlisted public company who intends to: (a) transfer any securities on or after October 2, 2018, can do so only if the securities are dematerialised; and (b) subscribe for securities of an unlisted public company on or after October 2, 2018, can do so only if all such holder's existing securities are in dematerialised form.
9. Application of SEBI Regulations: The SEBI (Depositories and Participants) Regulations, 1996 and the SEBI (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 will apply mutatis mutandis to the dematerialisation of securities of unlisted public companies.
10. Grievances: The Grievances, if any, of security holders of unlisted public company shall be filed before the Investor Education and Protection Fund (IEPF) Authority. IEPF Authority shall initiate any action against a depository or participant or RTA after prior consultation with the SEBI.

Upcoming Compliances

Date	Compliance
October 13, 2018	Due date for furnishing of Form GSTR-6 for Input Service Distributor for the month of September 2018.
October 15, 2018	Due Date for filing of Audit Report u/s 44AB for the A.Y 2018-19 in the case of a corporate assessee or non-corporate assessee, who is required to file his/its return of Income on October 15th, 2018
	Due date for filing of annual return of income for the assessment year 2018-19 for the assessee, not having any international or specified domestic transaction and is a corporate-assessee or non-corporate assessee (whose books of account are required to be audited) or working partner of a firm (whose accounts are required to be audited)
October 20, 2018	Due date for filing consolidated return in the Form GSTR-3B for the month of September 2018
	Due Date for Intimation by a designated constituent entity, resident in India, of an international group in Form no. 3CEAB for the accounting year 2017-18
	Due Date for Country-By-Country Report in Form No. 3CEAD by a parent entity or an alternate reporting entity or any other constituent entity, resident in India, for the accounting year 2017-18.
	Due Date for filing of Quarterly statement of TDS deposited for the quarter ending September 30, 2018
	Due date for furnishing of Form GSTR-1 for the taxpayers having aggregate turnover of up to 1.5 crore for the quarter from July 2017 to September 2018
	Due date for furnishing of Form GSTR-1 for the taxpayers having aggregate turnover of more than 1.5 crore for the months from July 2017 to September 2018

Editorial Team



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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.

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