

Adukia & Associates
Chartered Accountants

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ANNUAL COMPLIANCES

The Ministry of Corporate Affairs has extended the last date of filing forms AOC-4 (XBRL and non-XBRL) and MGT-7 till 30th Nov 2015 without additional fee.

Annual compliance requirements as per the Companies Act, 2013, have changed compared to the previous Act, 1956. Earlier Annual Return was to be prepared in Form 20B. A new Form MGT – 7 has been introduced to replace the old form 20B. New Annual Return consists of Signing as well as Certification requirements by a Company Secretary.

Certification of Annual Return by a company secretary in practice is made mandatory for all listed companies and companies having paid up share capital of ten crore rupees or more or turnover of 50 crore rupees or more. Signing of Annual Return by a Company Secretary in practice is required to be obtained by all listed companies, public companies and private limited companies having paid up share capital exceeding 50 lakh rupees or turnover exceeding two crore rupees.

Earlier companies were required to prepare Balance Sheet and Profit and Loss Account as part of annual report. But now there is an additional requirement of Cash flow statement and Consolidated financial statement. Small companies and One person companies are exempt from the additional requirement of Cash flow statement.

There are many new clauses which form part of Directors Report such as Disclosure of Sexual Harassment Act, dates of Board Meetings held during the financial year, number of Board Meetings attended by the Directors etc.

Annual Return has to be furnished containing the particulars as stood on the close of the financial year. Information to be furnished are relating to :

- Registered office, principal business activities, particulars of its holding, subsidiary and associate companies;
- Shares, debentures and other securities and shareholding pattern;
- Company's indebtedness;
- Its members and debenture-holders along with changes therein since the close of the previous financial year
- List of promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;
- Meetings of members or a class thereof, Board and its various committees along with attendance details;
- Remuneration of directors and key managerial personnel;
- Penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;
- Matters relating to certification of compliances, disclosures as may be prescribed; Shareholding pattern of the company; and such other matters as required in the form

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IT SYSTEM RISK ASSESSMENT TEST

The nature, extent, scope and rigour of the Information Technology Audit and the resources committed for the job are dependent upon the subjective assessment of the risk parameters or in other words, criticality of the application. In order to bring some

objectivity in to the process, though subjectivity cannot in total be avoided, the following criticality assessment tool may be used to categorise the applications based on criticality.

IT System Risk Assessment Test

Name of the Office	:		
Preliminary Information	:		
Name of the Entity	:		
Nature of the Entity	:		
-Head Quarteres	:		
-Regional Office	:		
-Branch Office	:		
-Unit Office	:		
-All of the above	:		
Name of the System	:		
Short description of the system	:		
Sl No		Question	Marks
1		Does the system relate to any of the following	
		Business critical operations	30
		Airline/Railway reservations, trading operations, telecom, banking operations, bill generation, online bill payment, manufacturing and processing etc.	
		Support Functions	25
		Payroll, inventory, financial accounting, inventory, marketing etc	
		E - Governance	30
2		Investment made in the system	
		Less than Rs. 5 lakh	5
		Rs. 5 lakhs to 25 lakhs	10
		Rs. 25 lakhs to 50 lakhs	15
		Rs. 50 lakhs to 1 crore	25
		More than Rs. 1 crore	30
3		General state of computerization in the entity	
		Most of the Business processes	30
		Most of the Accounting and financial process	25
		No business processes	0
4		Number of computers used for the system	
		More than 100	30
		More than 50, less than 100	25
		More than 20, less than 50	15
		More than 10, less than 20	10
		Less than 10	5

5	Is the system connected to the network?	
	Yes	
	No	
	Is the system connected to	
	Internal LAN and/or intranet	20
	WAN and MAN and/or an extranet	25
	Web based/public domain	30
6	The system is functioning at	
	Only one location	10
	More than 1, less than 5 locations	20
	More than 5 locations	30
	Is proposed to be expanded in more than one location	25
7	The entity is dependant on the system in as much as	
	Outputs are used for business critical operations/revenue generation	30
	Outputs are manually checked before making payments/raising bills	10
	Outputs are used to prepare financial Statements	15
	Outputs are not used at all for payment/revenue purposes	0
8	Even though the system does not deal with financial functions, it processes data of public interest. The nature of data is such that, wrong data may lead to	
	Failure of Business	30
	Erosion of credibility of the organization	15
	Financial loss to the entity	25
	None of the above	0
9	Do the public have access to such data either through web or any other means	
	Yes public can view the data in a dynamic manner	15
	No, public cannot view the data	0
	Public can transact online	30
10	Does the system make use of direct links to third parties	
	Yes	20
	No	0
11	Does the organization have dedicated IT staff	
	Nil	0
	Less than 10	10
	More than 10, less than 30	20
	More than 30, less than 70	25
	More than 70	30
12	Approximately how many persons can be termed as the end users of the system	
	Less than 5	0
	More than 5, less than 25	10
	More than 25, less than 70	20
	More than 70, less than 150	25
	More than 150	30
13	The system is in operation for	
	More than 10 years	5
	Less than 10 years, but more than 5 years	10
	Less than 5 years, but more than 2 years	20
	Less than 2 years	

14	The system is based on	
	Batch processing	10
	Online transaction processing	25
15	Are there formal change management procedures	
	Yes	0
	No	20
	How often changes are made to the applications	
	More than 5 times in a year	30
	Less than 5 times in a year more than twice in a year	20
	Less than twice in a year	10
	Not even once in a year	5
16	Does the entity have a documented and approved security policy	
	Yes	5
	No	20
17	Does the entity use any security software	
	Yes	5
	No	20
18	Does the entity have a system security officer	
	Yes	5
	No	10
19	Does the entity have a documented and approved Disaster recovery plan	
	Yes	0
	No	20
20	Approximate volume of data in the system (including offline data)	
	More than 10GB	25
	More than 2GB less than 10GB	15
	Less than 2GB	10
	Less than 1GB	5
Assessment		
	Points scored as per risk assessment tool	Risk classification
	Less than 150	Low
	Between 150 and 300	Medium
	More than 300	High



SHARE BASED PAYMENT (IND AS 102)



INTRODUCTION:

Ind-AS 102, Share-based Payment prescribes the accounting and disclosure related matters in relation to stock options as may be granted by the Company to its employees as well as non-employees. Under existing Indian GAAP, only employee related share based payments are covered by the guidance note. Further the guidance note is not a notified accounting standard and hence the accounting practices around share based payment are not consistent.

Ind-AS 102 now will require accounting for the same using the fair value method. This will essentially require the determination of the fair value of the options (as against the share in the intrinsic value method) and recording of such costs over the vesting period of such option with the employees. This method inherently assumes that every option has a value and its fair value should be accounted through statement of income.

DETERMINATION OF FAIR VALUE OF STOCK OPTIONS:

Ind-AS 102 will require the application of different method of valuation for determining the fair value which is depending on whether such arrangement is with employees or with non- employees. For transaction with employees, it recommends the option pricing model to determine the fair value of the options

whereas for transaction with non-employees, it require us to determine the fair value of the goods or services so received as an evidence of the fair value of the options so granted to the non-employees.

Determination of fair value can be very tedious and long drawn exercise whereas it may require the use of a valuation expert to determine the same. Similarly if the stock option award scheme is linked to multiple variables (for example continuity of service, achievement of targets, linked with future stock price etc) then determining fair value of such options may require use of complex valuation models and which will further necessitate the use of valuation experts.

WHAT WILL CHANGE?

As a result of the mandatory accounting of stock options at its fair value, Company financial statements can be impacted in many ways and some of them are discussed below;

Assessment of Grant Date:

Grant date of share based arrangement is extremely important in determining the total costs of such arrangement to be recognised by the Company over the period of vesting. This is achieved when the employer and employee have full understanding of all the terms and conditions of such grant. On the date of grant the Company is required to assess the total costs of the options using the option pricing model and depending on the classification of such award (Equity settled vs Cash settled), a Company may be required to reassess (for cash settled) the costs on an ongoing basis.

Historically we have seen that the date of grant is a matter of contention for an unlisted company and significant amount of documentation may be required to be maintained by the Company to demonstrate that such event has indeed taken place and it is appropriate to determine the costs on such date.



will keep on reducing in subsequent period. Accordingly in year 1 the Company will end up recording an accounting charge of INR 2,284 ((1000 +500 +333+250+200) for each tranche) which is approximately 46% of total costs.

Volatility In The Statement Of Income

If the stock option award is likely to be cash settled as oppose to equity settled awards, then such arrangement can add significant volatility to the statement of income as total costs of options will only be known on settlement of the options.

Negative Impact On EBIDTA And Earnings Per Share

Most of the companies which operate in the IT/ITES sector or in the e-commerce sector uses stock option as a form of incentive to reward and retain its employees. Several companies use this as an arrangement to extract more business from its customers or as a mode of payment to its vendors. All such arrangements are likely to negatively impact the EBIDTA as well as basic earnings per share of the Company. Currently the operational parameters of some of the companies which use stock options as a form of reward vs the companies which do not use this instrument are not comparable which in future are likely to become more comparable.

Lot of companies uses stock options as a form of reward to employees immediately before the IPO; such schemes will now impact the pre and post IPO profitability of the Company.

Change In Costs Base

For example if a Company operate on a costs plus model and currently grant stock options to its employees (or such option is granted by the holding company to its employees), such Company will now require to account for the stock option costs as employee benefit costs and as a consequence of that their costs based and related revenue may go up which may result in increased outflow of taxes as well.

If a Company has granted stock option to its employees and such employee is engaged in any construction of an asset or inventory, then stock option costs of such employees will be required to be capitalised with the respective fixed asset or the inventory as the case may be.

If the stock options are supposed to vest in a graded manner over the terms of the option, then the Company may end up recording higher costs in the initial years which will decline over the years in a progressive manner. For example a Company has granted 500 options to its employees and out of which 100 options vests each year. Further assume that the fair value of options is INR 10 and thus the total stock option cost is INR 5000 to be recognised over 5 years (no forfeiture is estimated). The Company will be required to treat each tranche of vesting (5 different tranche in this case) as a separate grant which will result in accelerated costs being recognised in first year, which





Incentive To The Customers Or Vendors

If a Company is using share based arrangement as a form of incentive to its customers then the fair value of such services needs to be determined and to be recorded as a reduction of revenue. Similarly if the same has been used for settling its obligations with its vendors then the fair value of services so received needs to be recorded as costs with a corresponding credit to equity.

Change In The Terms Of The Stock Options

If a Company changes the terms of the stock option either by re-pricing the exercise price or by accelerating the vesting date or by cancellation of such stock option plan, all such changes are considered as the modification of the original terms of the award and the incremental costs of the modification along with the originally determined costs on the date of grant is required to be recognised by the Company.

Disclosure And Other Matters

Significant amount of disclosures are required to be provided by companies which are now engaged in using share based arrangements with its employees or its non-employees. Companies are now required to ensure that all such data points are captured well in advance to ensure the completeness of all disclosures as required to be made under Ind-AS 102.

Significant increase in the costs may impact the plan of several companies to use this as a form of reward for its employees and companies may need to evaluate the costs benefit analysis before using this in future.

Transition Provision Under Ind-AS 101

Ind-AS 101, First time Adoption of Indian Accounting Standards provides certain relief in relation to accounting for past vested share based arrangement. A Company is required to carefully evaluate the impact of the same and determine its policy choice on the date of transition.

CONCLUSION

All Companies using share based arrangement will be required to carefully analyse and evaluate the terms of its arrangement with its employees and its non-employees on its financial statements as well as related disclosures. Companies may need to gather additional data points to ensure that all disclosures are made as required under the standard. This may also necessitate the engagement with external stakeholders and update them the impact of this in relation to financial performance of the Company.



BEST TIME TO TAKE A HOME LOAN?



The repo rate is also used by monetary authorities to control inflation. “If the repo rate is low, banks have to pay a lower interest amount on their borrowings. This will enable them to charge lower interest rates on the loans taken by the housing finance companies. The housing finance companies can then pass on this benefit to the customers by reducing their lending rates on home loans.

For instance, if the repo rate is five per cent and a bank takes a loan of Rs 100 from the RBI, it will pay an interest of five rupees to RBI. If RBI decides to reduce repo rate to three per cent, banks will pay three rupees as interest on the loan and save two rupees. However, the benefit of reduction in repo rate will be felt by a borrower only after the lending bank reduces its base lending rate.

Reaping the benefits

Nearly 25-30 per cent of loans given by banks are for home loans. The low cost of borrowing helps banks in reducing the interest rates and thereby generate additional demand. When RBI cut the repo rate by 50 bps to 6.75 per cent, most of the prominent banks also cut their home loan interest rate.

So, what it means for an individual borrower is that if you have borrowed Rs 50 lakh from SBI for 25 years, your pre rate cut EMI would be Rs 44,382, which

would now reduce to Rs 42,992 for the same period at 9.30 per cent interest rate. Hence, you shall save around Rs 1,400 per month in your EMIs.

Alternatively, the borrower can also reduce the number of EMIs by keeping the same EMI value. In the above case, one can reduce the number of EMIs to 22 years keeping the same EMI of Rs 42,774.

The rate cut announced by RBI, however, does not automatically reduce the rates on home loans. The impact of rate cuts affects different banks differently, as they may or may not choose to reduce their base rate. In case, they lower their base rate, the home loans on floating rate of interest will get favourably impacted and accordingly their EMIs will get reduced. The rate cut would have no impact on home loans at fixed rate as the rate of interest offered on such loans is static and is not vulnerable to interest rate cycle, higher or lower.

It is important that before you avail a home loan you carefully analyse the property you investing in, your cash flows vis-à-vis the EMI, the reputation of builder, the required approvals for the project and the like. You need to ensure that the unit agreed to be sold to you is not subject matter of any prior bank loan, which the builder has taken. If there is any such loan, ensure that the concerned bank gives the NOC in respect of your unit.



Understand from the builder the stages of construction and ensure that your payments in under construction projects are made only against completion of each stage of construction.

Normally during a falling interest rate period, more people go in for home loans. We usually go for home loans for longer duration of 10 to 20 years and therefore, will have to go through interest cycle of ups and downs.

The advantage of taking home loans when interest rates are low and falling is that more people get eligibility for the loans since the EMIs are reduced.

Looking at the current interest rate levels and positive steps undertaken by our monetary policy regulators, it indeed is the right time to avail a home loan. With fourth consecutive cuts in repo rates this year — almost bringing it down by a 125 basis points in 2015 itself — this could very well be a desirable time for a borrower to avail loans at attractive rates.

In a notification issued recently, RBI's decision to allow loan-to-value ratio (LTV) of up to 90 per cent for home loans of Rs 30 lakh, which was earlier only allowed for loans up to Rs 20 lakh, also makes it an apt time to go for home loans, especially for the low and middle income customer segment. LTV denotes how much of the property value a bank can lend to a borrower. A 90 per cent LTV indicates that the buyer will have to shell out only 10 per cent of the property value and the rest can be financed through banks.

Currently, home loans offer a great option for earning individuals to make an investment as well as save on taxes. People can now afford to buy much larger houses. Even after the complete repayment, which

may take up to 20 years, there is still a huge amount that is saved.

The checklist

Some things to consider before you opt for that attractive home loan:

- In such times, when the interest rates are expected to come down further, one must go in for a floating rate scheme.
- Ensure that the property, which you are buying, is legally approved and verified by various authorities.
- Consider the fees and other charges applicable — documentation, pre-payment of loan, late payment of EMI and the like.
- As a general rule, the loan amount you are eligible for is five times your annual CTC.
- Lookout for transparency in the home loan process and also consider the expected turnaround time.
- Enquire about add-on services like free insurance cover.
- Check your CIBIL report, as all banks look for good CIBIL scores before giving loans.



ICDS



Income Computation and Disclosure Standards

whose income comes under the head of “Profit and Gains of Business or Profession (PGBP) or Income from other sources (IOS)”.

There are many areas where current accounting practice differs from the Income Computation and Disclosure standards through this article; I tried to enlighten those issues.

Key Features of ICDS

- Effective date of ICDS is 1st of April, 2015
- ICDS is applicable to each class of assessee whether resident or non-resident.
- No criteria are fixed for the applicability.
- No need to maintain separate books of accounts for the ICDS. It only for the calculation of taxable income.
- If in any case, dispute arises between the Income tax Act, 1961 and Income Computation Disclosure Standards, then income tax act will win the battle.

Name of the following ICDS Issued

1. ICDS I – Accounting policies
2. ICDS II – Valuation of inventories
3. ICDS III – Construction contracts
4. ICDS IV – Revenue recognition
5. ICDS V – Tangible fixed assets
6. ICDS VI – Effects of changes in foreign exchange rates
7. ICDS VII – Government grants
8. ICDS VIII – Securities
9. ICDS IX – Borrowing costs
10. ICDS X – Provisions, contingent liabilities and contingent assets.

Introduction

At present India is going through one of the major tax reforms. In last two budgets our Finance Minister had introduce lots of things to make our economy globalize. “Income Computation and Disclosure Standards is one of the parts of that changing face. Finance Minister shows in his intention to notify these standards in his maiden Budget Speech in July 2014. The Ministry of Finance issued 12 ICDS for the public comment on 8th of January, 2015 till the 8th February, 2015. Later, Central Board of Direct Tax (CBDT) notified 10 standards under section 145(2) of Income tax Act, 1961 with the vide Notification No. 33/2015 [F. No. 134/48/2014-TPL]/SO 892(E) on 31st March 2015. This notification is applicable from Assessment year 2016-17 for both Corporate and Non-Corporate Assessee.

Need of ICDS

There always has been conflict between the Income as per Books and taxable income compute for income tax to overcome this issue the CBDT constituted a committee in 2010 to look the Accounting Standards for the computation of taxable income rather than just of accounting purpose named as TAS (Tax Accounting Standards) later is changed in to ICDS. The main aim of CBDT is to reduce the litigation and trying to avoid the disputable tax issues. In the first context, it is clarified that the ICDS is only applicable to those assessee



Key Impact Areas

1. Accounting Policies

- The ICDS does not acknowledge the concept of prudence. Prudence is one of the basic fundamental assumptions used while selecting the appropriate accounting policies and principle. Therefore, ICDS disallow the early recognition of expected losses or marked-to-market loss unless if it comes under any other ICDS.

However, ICDS is silent about the treatment of marked-to-market unrealized gain.

- Further, ICDS is also not talked about the materiality concept which is considered in preparation and presentation of financial statement. Because ICDS is not talked about the maintenance of books or making company results.
- ICDS does not permit or allow the change is accounting policies unless if there is any reasonable cause. It's matter of issue that ICDS does not define the reasonable cause and hence, it based on the management judgment and tax authorities exercise.

2. Valuation of Inventories

- In AS-2 ICAI specify the technique for measurement cost of inventories. It suggest the Standard cost or Retail cost for the results approximate the actual cost but use of standard cost in measurement of cost of inventory is not recommend in ICDS.

- To remove the confusion or try to avoid the litigation, ICDS incorporates the provision in ICDS-2 that is value of inventory of any business in the beginning of previous year i.e. 1st April 2015 shall be
 - Same as the value of inventory as on the close of immediately preceding previous year; and
 - The cost of inventory available, if any, on the day of commencement of the business when business has commenced from the previous year.

One of the major issue in this, once assessee adopt the method of valuation of inventory shall not changed in any previous year unless until assessee have any reasonable cause. And reasonable cause is not defined anywhere in ICDS.

An excepted provision, in case of dissolution of partnership or association of persons or body of individual inventory as on date shall be value at net realizable value (NRV) whether lower or higher than the cost of inventory.

3. Construction contracts

- ICDS does not permit the accounting under completion contract method, and mandates that only percentage of completion method should be applied for the recognition of revenue from rendering service or construction contracts. Provision of construction contract is difficult so, it is really hard to implement for smaller assessee.
- Pre-construction income in the nature of interest, dividend and capital gains shall not be net off from the cost of construction and hence continue to tax as an income in accordance with Income tax provisions
- Recognition of contract revenue at early stage to the extent of contract cost incurred only when the contract outcome cannot reliably estimate. But early stage shall not extend beyond of 25% of stage of completion. There is no such kind of provision present in AS-7

- Losses incurred on a contract shall be allowed only in the proportion to a stage of construction completed. Future loss or expected loss shall not be allowed in ICDS, until unless those losses are actually incurred
- Retention shall be taken revenue for computing revenue based on the percentage of completion method. Retention money cannot be income till the right to receive after the fulfillment of specified conditions

4. Revenue Recognition

- There is not specific change is ICDS with regards to AS-9 except recognition of revenue until there is a reasonable certainty of ultimate collection.
- ICDS suggest that revenue from the rendering of service shall be recognised by the percentage of completion method. On the contrary, the requirement to apply this standard just recognition of revenue and with that associated expense of service transactions.

5. Tangible Fixed Assets

- Wordings of AS-10, Whenever the assets acquired in exchange of another assets or shares or any other securities then the value of asset recorded are lower of being
 - a) Fair market value of asset acquired; or
 - b) Fair market value of share or securities issued.

(Whichever is more clearly evident)

But in ICDS the concept is totally different, it tells that when the asset acquired then the value of asset acquired shall be its actual cost. The reason is simple behind logic; CBDT didn't want that assessee will claim any extra depreciation by taking Fair market value of asset.

Right now there, is no statutory requirement of maintaining fixed assets register (FAR) for non-corporate entities subjected to that they will not cover under tax audit. The necessity of maintenance of fixed asset reg-

ister will just create the burden of cost to small entities.

ICDS-V clearly specifies the parameter to consider while maintaining the fixed assets register i.e. Description of assets, location of assets, actual cost subject to some adjustment and date of asset first put to use.

In its preamble ICDS clarify that ICDS is not subject to apply for the maintaining of books of accounts and fixed assets register is the part of books of accounts. Still is s matter of issue.

ICDS is silent about treatment of revaluation of asset and disposal or its retirement and hence it is continue to be applied as per the act.

6. Government Grants

Recognition of grant is based on the

- i) the assessee shall comply conditions attached to that grant; and
- ii) the grant shall be received

In addition to the above, ICDS impose one more condition it i.e. recognition of grant shall not be postponed beyond the date of its actual receipt.

AS-12, gives us two approaches for treatment of government grants (Deduction Approach and Deferred Income Approach). However, ICDS allows the deduction approach for treatment of grant for depreciable assets. In deduction approach, asset is recorded in books after net of government grant amount.





Where the grant is related to non-depreciable assets, the treatment of its in AS is to transfer whole amount into capital reserve but in income computation standards the amount is considered as income and deferred in same period of over the cost of meeting such expenses.

7. Borrowing Cost

- Unlike the Accounting standard (AS) 16, Borrowing cost ICDS does not define any minimum period for its classification as a qualifying assets (with the exception of Inventories). ICDS includes both tangible and intangible asset as a qualifying without defining the substantial period
- ICDS states that, in case of specific borrowing capitalization of borrowing cost should commence from the date of borrowing and in case of general borrowing, from the date of utilization of fund
- ICDS is silent about the capitalization of borrowing cost even after active development of qualifying assets is interrupted. Hence, assessee can continue to capitalize the borrowing cost whether interruption is in control or not
- In addition, under ICDS, income from temporary deployment of utilized borrowed fund would not be deducted from the borrowing cost to be capitalized. Rather it is treated as income.

8. Provision, contingent liabilities and contingent assets

- Contingent assets usually arise from unplanned events that give in rise in inflow of the economic

benefits. AS-29 follows the concept of Prudence therefore, no early of income or gain until their realisation. But in case of ICDS, it overrides the concept of Prudence as per this ICDS the contingent assets and corresponding income should be recognised once the contingent assets the meets the criteria reasonably certainty for its inflow of economic benefits

- Again it is matter of litigation or further clarification about the concept of “Reasonable Certainty”.
- Onerous contract is being taken out of the ambit of Provision in ICDS.

Conclusion

ICDS is reality now and CBDT has taken certain step for the smooth implementation of IND-AS and try to reduce the litigation as far as they can, still there are some matter which needs clarification like whether tax auditor have to require to report on compliance of

these standards, how standards separately disclosed in tax return and further changes shall be mandate in form 3CD for the disclosure requirement. While the standards setter have clarified that additional set of books not require for ICDS, there are several other records which needs to maintain.

In overall, the CG with CBDT will have to play highly pro-active role to provide the clarity on some terms of ICDS and minimize the potential areas of litigation.



BORROWING FROM NRI DIRECTOR/SHAREHOLDER



Many companies have NRI promoters or directors from whom company borrows unsecured loan. Such situation falls under FEMA and company should comply with the applicable provisions. To understand this situation let's take one example.

ABC Pvt. Ltd is a company incorporated in India. One of the promoter & director is a NRI who has subscribed 50% shares of the company. Company wants to borrow unsecured loan from its NRI director. Whether such remittance falls under FEMA and if so what are the applicable provisions.

External Commercial Borrowings (ECB)

ECBs refer to commercial loans in the form of bank loans, securitized instruments (e.g. floating rate notes and fixed rate bonds, non-convertible, optionally convertible or partially convertible preference shares), buyers' credit, suppliers' credit availed of from non-resident lenders with a minimum average maturity of 3 years.

ECB can be accessed under two routes, viz., (i) Automatic Route outlined in paragraph I (A) and (ii) Approval Route outlined in paragraph I (B).

Automatic Route

The following types of proposals for ECBs are covered under the Automatic Route –

Eligible Borrowers

- a) Corporates, including those in the hotel, hospital, software sectors (registered under the Companies Act, 1956), Non-Banking Finance Companies (NBFCs) - Infrastructure Finance Companies (IFCs), NBFCs - Asset Finance companies (AFCs), Small Industries Development Bank of India (SIDBI) except financial intermediaries, such as banks, financial institutions (FIs), Housing Finance Companies (HFCs) and Non-Banking Financial Companies (NBFCs), other than those specifically allowed by Reserve Bank, are eligible to raise ECB. Individuals, Trusts (other than those engaged in Micro-finance activities) and Non-Profit making organizations are not eligible to raise ECB.
- b) Units in Special Economic Zones (SEZ) are allowed to raise ECB for their own requirement. However, they cannot transfer or on-lend ECB funds to sister concerns or any unit in the Domestic Tariff Area (DTA).
- c) NBFCs-IFCs are permitted to avail of ECBs for on-lending to the infrastructure sector as defined under the ECB policy.



- d) NBFCs-AFCs are permitted to avail of ECBs for financing the import of infrastructure equipment for leasing to infrastructure projects.
- e) Non-Government Organizations (NGOs) engaged in micro finance activities are eligible to avail of ECB.
- f) Micro Finance Institutions (MFIs) engaged in micro finance activities are eligible to avail of ECBs.
- g) NGOs engaged in micro finance and MFIs registered as societies, trusts and cooperatives and engaged in micro finance (i) should have a satisfactory borrowing relationship for at least 3 years with a scheduled commercial bank authorized to deal in foreign exchange in India and (ii) would require a certificate of due diligence on 'fit and proper' status of the Board/ Committee of management of the borrowing entity from the designated AD bank
- h) Small Industries Development Bank of India (SIDBI) can avail of ECB for onlending to MSME sector (as defined under the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006)
- i) Corporates in the services sector viz. hotels, hospitals and software sector.
- j) Companies in miscellaneous services sector (only from overseas direct / indirect equity holders and group companies). Companies in miscellaneous services mean companies engaged in training activities (but not educational institutes), research and development activities and companies supporting infrastructure sector. Companies doing trading business, companies providing logistics services, financial services and consultancy services are, however, not covered under the facility.
- k) Holding Companies / Core Investment Companies (CICs) coming under the regulatory framework of the Reserve Bank are permitted to raise ECB for project use in Special Purpose Vehicles (SPVs) provided the business activity of the SPV is in the infrastructure sector where "infrastructure" is defined as per the extant ECB guidelines. The infrastructure project is required to be implemented by the SPV established exclusively for implementing the project and is subject to conditions.

Recognised Lenders

1. Borrowers can raise ECB from internationally recognized sources, such as
 2. international banks,
 3. international capital markets,
 4. multilateral financial institutions (such as IFC, ADB, CDC, etc.) / regional financial institutions and Government owned development financial institutions,
 5. export credit agencies,
 6. suppliers of equipment,
 7. foreign collaborators and
 8. foreign equity holders [other than erstwhile Overseas Corporate Bodies (OCBs)].





- i. For ECB up to USD 5 million - minimum paid-up equity of 25 per cent held directly by the lender (all outstanding ECBs including the proposed one),
- ii. For ECB more than USD 5 million - minimum paid-up equity of 25 per cent held directly by the lender and ECB liability-equity ratio not exceeding 4:1(all outstanding ECBs including the proposed one), ECB from indirect equity holders is permitted provided the indirect equity holding in the Indian company by the lender is at least 51 per cent

2. NGOs engaged in micro finance and MFIs registered as societies, trusts and cooperatives can avail of ECBs from;

- (a) international banks,
- (b) multilateral financial institutions,
- (c) export credit agencies
- (d) overseas organisations and
- (e) individuals.

3. NBFC-MFIs will be permitted to avail of ECBs from multilateral institutions, such as IFC, ADB etc./ regional financial institutions/international banks / foreign equity holders and overseas organizations.

4. Companies registered under Section 25 of the Companies Act,1956 and are engaged in micro finance will be permitted to avail of ECBs from international banks, multilateral financial institutions, export credit agencies, foreign equity holders, overseas organizations and individuals.

5. A "foreign equity holder" to be eligible as "recognized lender" under the automatic route would require minimum holding of paid-up equity in the borrower company as set out below:

Obtaining loan from an NRI director will come under ECBs. The NRI director will be covered under the term foreign equity holder. The above mentioned case is covered under the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 & Master Circular on External Commercial Borrowings and Trade Credits. The procedure under FEMA depends on the type of industry of the company and the activity for which the loan has been obtained from the NRI director. Based on this the detailed procedure envisaged under the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 & Master Circular on External Commercial Borrowings and Trade Credit could be given.



NOTIFICATION



Companies Act

Ministry of Corporate Affairs, vide Notification number F.01/34/2073-CL.V has been decided to relax the additional fee payable on forms AOC-4 and AOC -4 XBRL up to 30th November, 2015. The additional fee requirement for MGT -7 e-form is also relaxed for all such forms filled till 30th November, 2015, wherever additional fee is applicable.

FEMA/RBI

Reserve bank of India vide Notification number RBI/2015-16/231, dated 5th November, 2015 liberalized filing of SOFTEX forms by a software exporter, whose annual turnover is at least Rs.1000 crore or who files at least 600 SOFTEX forms annually on an all India basis, is eligible to declare all the off-site software exports in bulk in the form of a statement in excel format, to the competent authority for certification on monthly basis.

In order to provide benefits to small exporters also, it has been decided to extend this facility to all software exporters. Accordingly, all software exporters can now file single as well as bulk SOFTEX form in excel format to the competent authority for certification. Since the SOFTEX data from STPI/SEZ is being transmitted in electronic format to RBI, the exporters are required to submit the SOFTEX form in duplicate as per the revised procedure. STPI/SEZ will retain one copy and handover the duplicate copy to the exporters after due certification.

As hitherto, the software exporters can generate SOFTEX form number (single as well as bulk) for use in off-site software exports from the website www.rbi.org.in. In order to generate the SOFTEX number/s, the applicant exporter has to fill-in the online form (Path www.rbi.org.in- Formsà-FEMA Forms-Printing EDF/SOFTEX Form No.).

The Foreign Exchange Management Act (FEMA),1999 requires exporters to complete the SOFTEX form using the number so allotted and submit it first to the competent authority for certification and then to the AD for further necessary action, as hitherto.

Service Tax

Ministry of Finance vide Notification 22/2015-Service Tax declared that, In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) read with sub-section (5) of section 119 of the Finance Act, 2015 (20 of 2015), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts all taxable services from payment of such amount of the Swachh Bharat Cess leviable under sub-section (2) of section 119 of the said Act, which is in excess of Swachh Bharat Cess calculated at the rate of 0.5 percent of the value of taxable services:

Provided that Swachh Bharat Cess shall not be leviable on services which are exempt from service tax by a notification issued under sub-section (1) of section 93 of the Finance Act, 1994 or otherwise not leviable to service tax under section 66B of the Finance Act, 1994.

This notification shall come into force from the 15th day of November, 2015.

CASE LAWS



INCOME TAX

Business Expenditure

The Delhi 'H' Bench has in *T & T Motors Ltd. v. Addl. CIT* (2015) 154 ITD 306 (Del) opined that the demand raised by the Commissioner of Industries towards apportioned cost of common effluent treatment plant relating to the years ending 31.3.2007 & 31.3.2008 vide notice of demand dated 19.6.2008 was allowable as a deduction in the assessment year 2009-10.

Depreciation

In *ACIT v. West Gujarat Expressway Ltd.* (2015) 154 ITD 103 (Mum) where the assessee-company entered into an agreement with the National Highways Authority of India in terms of which it had to develop and maintain the Jetpur-Rajkot road on 'Build-Operate-Transfer' basis and was given the right to collect toll in respect of the said road for a period of 20 years, the Mumbai 'G' Bench held that the right to collect toll was an intangible asset falling within the scope of section 32(1)(ii) and that the assessee-company was entitled to depreciation thereon.

Income from Other Sources

The Mumbai 'B' Bench has in *ITO v. Bhagwan T. Fatnani* (2015) 154 ITD 207 (Mum) held that the profit derived by the assessee from sale of primary school land which was encroached upon and illegally occupied by him could not be assessed as

capital gain as the assessee did not have a legal right or title over the land and the land could not be considered as a capital asset under section 2 (14) and that the said profit was assessable as income from other sources.

Tax Deduction at Source

Where the assessee-company paid sales commission to a non-resident agent who rendered services outside India and did not have a permanent establishment in India, the commission was not chargeable to tax in India in the hands of the non-resident agent and, therefore, the assessee-company was not obliged to deduct tax at source under section 195 in respect of the commission paid opined the Panaji Bench in *ACIT v. Karishma Global Mineral (P) Ltd.* (2015) 154 ITD 147 (Pnj).

SERVICE TAX

Indfos Industries Ltd V. CC&CE : The High Court set aside the Order of Tribunal dismissing the appeal when Tribunal in earlier appeal of same assessee on identical issue for a different period had remanded the matter to Adjudicating Authority. High Court held Tribunal ought to have remanded the second matter also and not dismissed the appeal. HC remanded the matter to Adjudicating Authority

CENTRAL EXCISE

R Vaithialingam Vs CCE: The appellant removed the goods clandestinely and there was excess stock of over and above the statutory records - These facts are not seriously disputed by the appellant at any point of time - Demand of duty and confiscation of goods upheld - Option to pay 25% of the penalty imposed under Section 11AC extended.

DUE DATES FOR STATUTORY PAYMENTS – November 2015

*Important
DATE!*

Due Date	Category	Description
06-Nov-2015	Central Excise	Payment of Excise Duty for all Assesses (including SSI Units)
06-Nov-2015	Service Tax	Service Tax Payment for Month October (Companies)
07-Nov-2015	TDS/TCS	TDS/TCS payment for October
10-Nov-2015	Central Excise	Filing ER-1 Return (Other than SSI Units)
10-Nov-2015	Central Excise	Filing ER-2 monthly return by 100% EOU (removing goods in domestic tariff area)
10-Nov-2015	Central Excise	Filing monthly ER-6 Return by specified class of Assesses regarding principal inputs.
10-Nov-2015	Central Excise	Exports – Procurement of specified goods from EOU for use in manufacture of Export goods in Form Ann-17B for DTA units, procuring specified goods from EOU for manufacture of export goods.
10-Nov-2015	Central Excise	Proof of Exports in form Ann-19, once in a month for all exporters, exporting goods under Bond
10-Nov-2015	Central Excise	Export details in Form Ann-20, for Manufacturing following simplified export procedure
10-Nov-2015	Central Excise	Removal of excisable goods at concessional rate in Form Ann. -46 for Manufacturers receiving the excisable goods for specified use at concessional rate of duty in terms of Rules described.
15-Nov-2015	ESIC	Monthly – EPF – Return of Employees qualifying for membership to the EPF for the first time during previous month
15-Nov-2015	ESIC	Monthly – EPF – Return of member leaving service during the previous month
15-Nov-2015	ESIC	Exempted establishment – EPS/ EDLIS – Monthly Return of members joining service during the previous month.
15-Nov-2015	ESIC	Exempted establishment – EPS/EDLIS – Monthly Return of Members Leaving Service During the previous Month
15-Nov-2015	Provident Fund	PF Payment for October (5 days grace allowed)

DUE DATES FOR STATUTORY PAYMENTS – November 2015

21-Nov-2015	ESIC	ESIC Payment and Return for October
22-Nov-2015	Income Tax	Due date for issue of TDS Certificate for tax deducted under Section 194-IA in the month of October, 2015
25-Nov-2015	ESIC	Monthly – Consolidated Statement of dues and remittance under EPF Scheme, 1952, EPS 1995 and Employees' Deposit Linked Insurance Scheme, 1976 of the previous month to which the dues relate.
25-Nov-2015	Provident Fund	PF Return filing for October (including pension and insurance scheme forms)
25-Nov-2015	Entry Tax	Payment and Returns October Month
29-Nov-2015	Company Law	Annual Return in MGT-7 for FY 2014-15 (if AGM 30.09.15) (if AGM 30.09.15) 60 days from date of AGM Note: MGT-8, Company Having paid up share capital of 10 Crore or more or turnover of Rs. 50 crore or more shall be certified by a Company Secretary in Practice within 60days of AGM
29-Nov-2015	Company Law	OPC will file its Annual Return within 60 days of entry of ordinary resolution in Minute Book
30-Nov-2015	Profession Tax (Tax Liability > = 50000 or in case of First Year of Registration)	Payment and Return of October
30-Nov-2015	Luxury Tax Act	Monthly Return of October
30-Nov-2015	Income Tax	Annual return of income and wealth for the assessment year 2015-16 in the case of an assessee if he/it is required to submit a report under section 92E pertaining to international or specified domestic transaction(s)
30-Nov-2015	Income Tax	Audit report under section 44AB for the assessment year 2015-16 in the case of an assessee who is also required to submit a report pertaining to international or specified domestic transactions under section 92E
30-Nov-2015	Income Tax	Statement of income distribution by venture capital company or venture capital fund in respect of income distributed during 2014-15
30-Nov-2015	Income Tax	Due date for filing of statement of income distributed by business trust to unit holders during the financial year 2014-15. This statement is required to be filed electronically to Principal CIT or CIT in form No. 64A [As prescribed under Rule 12CA inserted by the Income-tax (First Amendment) Rules, 2015, w.e.f. 19-1-2015.]
30-Nov-2015	Central Excise	Annual Return by units paying duty more than Rs 1 crore (CENVAT + PLA)-ER4

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