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August 2018

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INCOME TAX

DOMESTIC TAXATION

Circulars/ Notifications/Press Release

NOTICES FOR ASSESSMENT/RE-ASSESSMENT OF INCOME OF OLD CASES

Under the provisions of Income-tax Act, 1961 ('Act'), notices for assessment/reassessment of income of old cases of more than six years from the end of the relevant assessment year can be issued only in the following exceptional situations:

1. Under clause (c) of sub-section (1) of section 149 of the Act, in cases where income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment, such cases can be reopened up to sixteen years from end of the relevant assessment year. Information regarding number of cases in which notices were issued under the said provision six years from the end of the relevant assessment year, as provided by the Directorate of System, is as under:

   During Financial Years No. of cases in which notices were issued beyond six years:

2014-15	82
2015-16	17
2016-17	05
2017-18	07

2. In cases where tangible evidences are found during a search or seizure operation revealing that income exceeding rupees fifty lakh has escaped assessment, then assessment can be framed for an assessment year falling between the seventh upto the tenth assessment year. This provision was introduced vide Finance Act, 2017 and applies where search under section 132 of the Act is initiated or requisition under section 132A of the Act is made on or after 1st April, 2017.

   Further, Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, which taxes the undisclosed foreign income and assets of earlier years in the year of issuing notice has been made applicable from 1st April, 2016.

If any specific instance of causing undue harassment to the assessee while invoking the above provisions is detected, the same is dealt with strictly by the Department.

The Act contains a specific chapter XIX-A consisting of section 245A to 245M, inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 01.04.1976 for 'SETTLEMENT OF CASES'. In this regard, Settlement Commission which is a quasi-judicial body was set up under section 245B of the Act. The objective of setting up of Settlement Commission is to settle tax liabilities in complicated cases avoiding endless and prolonged litigation and consequential strain on investigational resources of Income-tax Department, subject to fulfillment of conditions prescribed therein.

Further, in recent years, Government had introduced following laws/schemes to deal with undisclosed income/asset:

i. A one-time compliance window between the period 1st July, 2015 to 30th September, 2015, for disclosing any undeclared foreign asset acquired from income chargeable to tax under Income tax Act for any assessment year prior to 2016-17 was provided;
ii. The Income Declaration Scheme, 2016 provided an opportunity to any person to make a declaration between the period 1st June, 2016 to 30th September, 2016, in respect of any income chargeable to tax under the Income tax Act for any assessment year prior to 2017-18;
iii. Under Pradhan Mantri Garib Kalyan Yojana, 2016, between 17th December, 2016 till 31st March, 2016, a declarant could make a declaration in respect of any income, in the form of cash or deposit in an account maintained by the person with a specified entity, chargeable to tax under the Income tax Act for any assessment year prior to 2017-18.
iv. Section 270AA of the Act, inserted by the Finance Act, 2016 w.e.f. 1st April, 2017, provides immunity from penalty under section 270A and initiation of prosecution proceedings under section 276C or 276CC, subject to fulfillment of conditions prescribed therein.

No instructions have been issued to the IT Department to open special counters to settle their cases by imposing minor penalties.

This was stated by Shri Shiv Pratap Shukla, Minister of State for Finance in a written reply to a question in Lok Sabha today.

(Press Release dated 3rd August, 2018)

CLARIFICATION ON IMMUNITY PROVIDED UNDER SECTION 270AA

Section 270AA of the Income-tax Act, 1961 (the Act) *inter alia* provides that w.e.f. 1s April, 2017, the Assessing Officer, on an application made by an assessee, may grant immunity from imposition of penalty under section 270A (not being penalty for misreporting) and initiation of proceedings under section 276C or section 276CC, subject to the conditions specified therein.

Apprehensions have been raised that where an assessee makes an application seeking immunity under section 270AA of the Act, and in the earlier year(s) penalty under section 271(1)(c) of the Act has been initiated on the same issue, the Income-tax Authority may contend that the assessee has acquiesced on the issue in such earlier year (s), by seeking immunity under section 270AA of the Act and therefore, take an adverse view in the proceedings for penalty under section 271(1)(c) of the Act.

In this matter, it is hereby clarified that where an assessee makes an application seeking immunity under section 270AA of the Act, it shall not preclude such assessee from contesting the same issue in any earlier assessment year. Further, the Income-tax Authority, shall not take an adverse view in the proceedings for penalty under section 271(1)(c) of the Act in earlier assessment years merely on the ground that the assessee has acquiesced on the issue in any later assessment year by preferring an immunity on such issue under section 270AA of the Act.

(Circular no.5/2018 [f.no.370149/155/2018-tpl], dated 16th August, 2018)

DEFERMENT OF CLAUSE 30C GAAR) AND 44 (GST) OF FORM NO. 3CD

Section 44AB of the Income-tax Act, 1961 ('the Act') read with rule 6G of the Income-tax Rules, 1962 ('the Rules') requires prescribed persons to furnish the Tax Audit Report along with the prescribed particulars in Form No. 3CD. The existing Form No. 3CD was amended vide notification no. GSR 666(E) dated 20th July, 2018 with effect from 20th August, 2018.

Representations have been received by the Board that the implementation of reporting requirements under the proposed clause 30C (pertaining to General Anti-Avoidance Rules (GAAR)) and proposed clause 44 (pertaining to Goods and Services Tax (GST) compliance) of the Form No. 3CD may be deferred.

The matter has been examined and it has been decided by the Board that reporting under the proposed clause 30C and proposed clause 44 of the Tax Audit Report shall be kept in abeyance till 31st March, 2019. Therefore, for Tax Audit Reports to be furnished on or after 20th August, 2018 but before 1st April, 2019, the tax auditors will not be required to furnish details called for under the said clause 30C and clause 44 of the Tax Audit Report.

(Circular no.6/2018 [f.no.370142/9/2018-tpl], dated 17th August, 2018)

Case laws

DCIT vs. M/s. Gilbarco Veeder Root India Pvt. Ltd. (ITA 1003/Mum/2017) [Assessment Year: 2010-11] Order dated 20-6-2018

Facts:

- The assessee is a Private Limited Company and engaged in the business of manufacturing and selling of petrol dispensers and related accessories.
- The assessment in the present case was completed u/s. 143(3). However, the same was reopened by issuance of the notice u/s.148 of the Act. During the course of reassessment proceedings, the learned AO observed that the assessee had received a sum of Rs. 90 crore from M/s. Portescap India Pvt. Ltd.
- Further, it was also observed that the 100% shareholding of the assessee-company was held by M/s. Kollmorgen India Investment Company, Mauritius. So far as the shareholding of M/s. Portescap was concerned, it was entirely held by Kollmorgen, albeit @ 99.99% directly and 0.01% through its nominee, Mr. Jim Eder.
- Thus, the learned AO reached the conclusion that the amount received by the Assessee was in the nature of 'Loans and advances' and invoked the provisions of section 2(22)(e) of the Act On appeal, the Ld. CIT(A) accepted the contentions of the Assessee and allowed the appeal of the Assessee by observing that there was no common shareholding when a sum of Rs. 90 crores was received by the Assessee from M/s. Portescap. Kollmorgen became a register shareholder on 29-3-2010 which was subsequent to the payment received by the Assessee.
- Thus, the Ld. CIT (A) held that the provisions of section 2(22)(e) of the Act was not applicable in the present case. Aggrieved by the same, the Department preferred an appeal before Hon'ble ITAT.

Issue:

Deemed Dividend – Section 2(22) (e) of the Act – addition under section 2(22)(e) of the Act is not sustained when the assessee, recipient of the money is neither the registered shareholder nor the beneficial shareholder of the payer company.

Held:

- Hon'ble ITAT held that the assessee-recipient was not a shareholder in the payer company, i.e. M/s. Portescap.
- It, further, observed that even if it is assumed that the amount received by the assessee-company was for the benefit of the common shareholder, yet, it could only be assessed in the hands of such a registered shareholder and not in the hands of the assessee company.
- Hon'ble ITAT followed the decisions of the Hon'ble Bombay High Court in the case of Universal Medicare (P.) Ltd., 324 ITR 263 (Bom.), Impact Containers 367 ITR 346 (Bom.) and NSN Jewellers (P) Ltd., ITXA 2312 of 2011(Bom.) and further, held that there is no justifiable ground to interfere in the conclusion drawn by the CIT (A).
- It also distinguished the decision of the Supreme Court relied by the Revenue in the case of Gopal and Sons (HUF) and held that the ratio laid down by the Supreme Court is not applicable in the present case. In view of the above, Hon'ble ITAT dismissed the appeal of the Department.

Sanjaykumar Footermal Jain vs. ITO (ITA 4853/ Mum/2016) [Assessment Year: 2012-13] Order dated 14-8-2018

Facts:

- The assessee is an individual and filed the return of income for the A.Y. 2012-13 declaring the total income at Rs. 6,84,760/-.
- During the course of assessment, the learned A.O. disallowed the claim of long term capital gains of Rs. 5,72,282/- with regard to sale of the godown on the observation that the asset under consideration was not held by the assessee for a period of more than 36 months and finally treated the said gains as short-term in nature resulting in the addition of Rs. 86,82,000/-.
- On appeal, the learned CIT(A) confirmed the action of the learned A.O. Being aggrieved by the same, the assessee preferred an appeal before Hon'ble ITAT.

Issue:

Period of holding for the purpose of LTCG – Section 2(42A) of the Act – Period of holding should be computed from the date of agreement to purchase and not from the date of registration.

Held:

- Hon'ble ITAT observed that the assessee had purchased godown vide agreement dated 24-4-2008 and the initial payment of Rs. 1,26,000/- as against the total purchase consideration of Rs. 12,26,000/- was made by the assessee with a promise to make the balance payment on or before 3-5- 2008.
- Further, it was observed that as a consequence of the agreement dated 24-4-2008, the balance payment was made by the assessee and the agreement was subsequently registered with the stamp duty authority on 11-7-2008.
- Hon'ble ITAT held that it was crystal clear that by virtue of the agreement for sale dated 24-4-2008, and making a part payment, the assessee had acquired irrevocable right, title and interest including the possession in the house property in the form of godown.
- The registration of the property which was done subsequently on 11-7-2008 was only a formality. Therefore, a period of holding of a capital Asset should be reckoned from 24- 4-2008 and not from 11-7-2008 as wrongly adopted by the learned AO.

- For the purpose of Section 54 benefit, the date of Agreement to purchase should be taken as the date of purchase and date of registration of the same is not relevant.
- Hon'ble ITAT while arriving at the said conclusion relied on the decision of Delhi High Court in the case of CIT vs. R. L. Sood (2000) 227 ITR 245 (Del) and the decision of Mumbai ITAT in the case of Anita D Kanjani [2017] 163 ITD 451 (Mum.) and held in favour of the assessee.

INTERNATIONAL TAXATION

Circulars/ Notifications/Press Release

Indian Advance Pricing Agreement regime moves forward with signing of nine more UAPA’S by CBDT in July, 2018

- The Central Board of Direct Taxes (CBDT) has entered into nine more Unilateral Advance Pricing Agreements (UAPAs) during the month of July, 2018. With the signing of these Agreements, the total number of APAs entered into by the CBDT has gone up to 232, which includes 20 Bilateral Advance Pricing Agreements (BAPAs).
- The UAPAs entered into during this month pertain to various sectors and sub-sectors of the economy like manufacturing, engineering, media, irrigation, education, healthcare, telecommunications, industrial gases, pharmaceuticals, etc. and cover international transactions including software development service, manufacturing and sale of engineering good, import of raw materials, payment of royalty and AMP, among others.
- Complex issues like capacity utilization adjustment; treatment of AMP expenses etc. have been carefully examined and resolved in some of these agreements. Thus, the APA Scheme continues to make good progress, gaining maturity over the passage of time. It reflects the Government's commitment towards fostering a non-adversarial tax regime.

(Press Release dated 1st August, 2018)

Case laws

Bellsea Ltd v. ADIT [TS-426-ITAT-2018(Del)] Assessment Year: 2008-09

Facts:

- The assessee is a Cyprus based company which was awarded a contract by another foreign entity Allseas Marine Contractors S.A, (AMC) for placement of rock in seabed for laying of gas pipelines and providing sub- -structures in oil and gas field developed at Krishna Godavari Basin.
- AMC was awarded a contract from the Reliance group and Niko Resources for extraction of gas and for laying of the gas pipeline. In order to carry out its contract work, AMC has given a contract to the assessee for the placement of rock in the oil and gas field.
- Under the terms of the contract, the work was intended to commence from 4th January 2008 which has been mentioned as 'effective date' in the contract. Under the said contract itself, the completion of the work was reckoned from the date of issuance of completion certificate by AMC which was 30th September 2008.
- The contract lasted for less than 12 months which is the threshold period for the establishment of PE in India in terms of installation PE under Article 5(2)(g) of the tax treaty. Therefore, it was claimed by the assessee that no income earned from such contract can be attributed or taxed in India.
- The Assessing Officer (AO) held that the assessee was responsible for multifarious functions. Thus, from terms of contract and scope of work it cannot be said that the role of the assessee was limited to mere rock placements in river sections. One of the employees of the assessee has come to India as early as in September 2007 to collect data and information. Despite asking the assessee to provide the details of employees who stayed in India, no data has been furnished.
- Therefore, the AO concluded that the assessee had rendered service for a period of more than 12 months and therefore, there was an installation PE in India.

Issue:

India-Cyprus DTAA – Installation PE – held that the activities of the assessee does not constitute an installation Permanent Establishment (PE) under Article

5(2) (g) of the India-Cyprus tax treaty (tax treaty) since threshold period of 12 months has not been exceeded- In favour of the assessee.

Held:

On appeal, the Tribunal held in favour of the assessee as under:

- Assessee's activity under the 'scope of work' has been given in the contract. From the scope of work, it could be deduced that it was purely with regard to rock transport and delivery, the supply of material and equipment, construction, installation of the temporary facilities, rock dumping activities and site restoration. All other activities enumerated by the AO qua the assessee was not correct.
- It had not been brought out by the tax department that the assessee installed any kind of project office or developed a site before entering into the contract with the AMC for carrying out any preparatory work.
- Auxiliary and preparatory activity, purely for tendering purpose before entering of the contract and without carrying out any activity of economic substance or active work qua that project cannot be construed as carrying out any activity of installation or construction.
- Article 5(2)(g) of the tax treaty refers to activity based PE because the main emphasis is on 'where such site project or activity continues for a period of more than 12 months'. The duration of 12 months per se is activity specific qua the site, construction, assembly or installation project. If the contract would not have been awarded, then any kind of preparatory work for tendering of contract cannot be reckoned for carrying out any activity as stipulated in this clause. Hence, in this case, all such preparatory work for tendering purpose before entering into the contract cannot be counted while calculating the threshold period.
- Situation would be different if after the contract/work has been awarded/assigned, any kind of active work of preparatory or auxiliary nature is carried out. In such as case, it could be counted for determining the time period.
- This principle has been well discussed by the Delhi High Court in the case of National Petroleum Construction Company vs. DIT [2016] 383 ITR 648 (Del) wherein the High Court was analyzing similar terminology appearing in Article 5(2)(h) of India-UAE tax treaty. The High Court observed that a building site

or an assembly project can only be construed as a fixed place of business only when an enterprise commences its activities at the project site. Any activity which may be related or incidental but was not carried out at the site in the source country would clearly not be construed as a PE. Albeit, preparatory work at the site itself can be counted for the purpose of determining the duration of PE.

- The material placed on record and the payment schedule etc., point out that all the activities connected with the project including the receiving of the payments was before 30th September 2008 and even the completion certificate mentions 30th September 2008.
- Though certain formalities for final completion certificate may have exceeded one or two months but still it will not make the continuity of the activity where it has been brought on record that the last barge sailed out or was decommissioned from India on 25th September 2008 and the entire payments were received on or before that date. The activity qua the project comes to an end when the work gets completed and the responsibility of the contractor with respect to that activity comes to an end.
- The contentions raised by the tax department, both for the starting period and the final end date of the installation project were without any factual material to support.
- Threshold period of 12 months has not exceeded in the present case and consequently, no PE can be said to have been established in Article 5(2) (g) of the tax treaty. Accordingly, no income of the assessee on the contract executed by the assessee in India is taxable in terms of Article 7 of the tax treaty.

M/s. Uniparts India Limited vs. CIT [TS-390- ITAT-2018 (Del.)] Assessment Years: 2007-08, 2008-09, 2009-10, 2010-2011 & 2011-12

Facts:

- The assessee was a resident in India. It had advanced a certain amount to its wholly owned subsidiary in USA (S Co.).
- The assessee, inter alia, earned interest income on the above advances. The said interest was remitted by S Co. after withholding taxes at 15%, as per Article 11 of the double taxation avoidance agreement between India and USA (tax treaty).
- The assessee offered such interest income to tax in India and claimed credit of taxes withheld by its subsidiary under Article 252 of the tax treaty, in its return of income.
- The tax officer (TO) denied the credit of taxes withheld in USA. The Commissioner of Income tax (Appeals) (CIT (A)) upheld the TO's order. The aggrieved assessee filed an appeal before the Tribunal.

Issue:

India-USA DTAA – Credit for foreign taxes withheld is available, even if no return filed overseas but income can be shown to be taxable in that country.

Held:

The Tribunal held in favour of the assessee as under:

- The Tribunal observed that AO denied the credit mainly on the following grounds:
    a) The assessee had not filed its return of income in USA to claim the refund of taxes withheld in USA.
    b) The tax treaty does not enable the resident country to grant credit of the tax withheld in the source country when the income was not taxable in the source country, as it was not a case of double taxation;
    c) CIT (A) alleged that interest paid by S Co. was actually an expenditure for S Co. and therefore, the question of same being taxable in USA did not arise;

d) The assessee had failed to prove under which provision the taxes were withheld by the S Co. in USA.

- Tribunal analysed the provisions of the India US Tax Treaty and inferred that Article 11 of the tax treaty empowers S. Co to withhold taxes at the rate specified in the said Article.
- Paragraph 2 of Article 25 of the tax treaty clearly provides that if a resident of India derives income which may be taxed in USA, then India has to grant credit of taxes withheld in USA.
- It was not in dispute that tax had been deducted by the S. Co in USA on the interest income earned by the assessee. The issue was with respect to the provision under which such amount of interest paid by the S. Co to the assessee was liable for tax under the laws of USA. Hence, the withholding tax certificate issued by S. Co perhaps will provide those details.
- The case was remanded back to the TO for the limited purpose of examination of the withholding tax certificate or any other substantiating document.
- It was further directed that the assessee should be allowed the credit of the taxes withheld in USA, if the assessee furnished the withholding tax certificate and substantiate.

REGULATIONS GOVERNING INVESTMENTS

FOREIGN EXCHANGE MANAGEMENT ACT

Fem (transfer or issue of security by a person resident outside India) (second amendment) regulations, 2018- amendment in regulation 13

In exercise of the powers conferred by clause (*b*) of sub-section (3) of Section 6 and Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank of India hereby makes the following amendments to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017 (Notification No. FEMA. 20 (R)/2017-RB, dated November 07, 2017) (hereinafter referred to as 'the Principal Regulation'), namely:—

Short Title & Commencement

1. (i) These Regulations may be called the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2018.

   (ii) They shall come into force with effect from the 1st day of September, 2018.

Amendment to Regulation 13

2. (i) The existing clause (1) of sub-regulation 13.1 is deleted.
   (*ii*) The existing clause (*11*) of sub-regulation 13.1 is substituted with the following namely: (11) Downstream Investment

(i) An Indian entity or an investment vehicle making downstream investment in another Indian entity which is considered as indirect foreign investment for the investee Indian entity in terms of these Regulations, shall notify the Secretariat for Industrial Assistance, DIPP within 30 days of such investment, even if capital instruments have not been allotted, along with the modality of investment in new/existing ventures (with/without expansion programme).

(ii) "**Form DI**: An Indian entity or an investment Vehicle making downstream investment in another Indian entity which is considered as indirect foreign investment for the investee Indian entity in terms of Regulation 14 of these Regulations shall file Form DI with the Reserve Bank within 30 days from the date of allotment of capital instruments."

(iii) After the existing clause (12) of sub-regulation 13.1, the following is inserted as Clause (13) namely:

(13) "**Form InVi** : An Investment vehicle which has issued its units to a person resident outside India shall file Form InVi with the Reserve Bank within 30 days from the date of issue of units."

(Notification no.fema.20(r) (3)/2018-rb/gsr 823(e) [f.no.1/22/em/2016 pt. (ii)], dated 30th August, 2018)

FEM (establishment in India of a branch office or a liaison office or a project office or any other place of business) (amendment) regulations, 2018 – amendment regulation 5 & form FNC

In exercise of the powers conferred by sub-section (6) of Section 6 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank makes the following amendments to the Foreign Exchange Management (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016, Notification No. FEMA 22(R)/2016-RB dated March 31, 2016, namely:

Short Title and Commencement

1. (i) These regulations may be called the Foreign Exchange Management (Establishment in India of a branch office or a liaison office or a project office or any other place of business) (Amendment) Regulations, 2018.
   (*ii*) These regulations shall come into force from the date of their publication in the Official Gazette.

Amendment to Regulation 5

2. In the Foreign Exchange Management (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016 (Notification No. FEMA 22(R)/2016-RB dated March 31, 2016), in the Regulation 5, (A) The existing sub-regulation d, shall be substituted by the following namely:

   d. *the applicant is a Non-Government Organisation, Non-Profit Organisation, Body/Agency/Department of a foreign government. However, if such entity is engaged, partly or wholly, in any of the activities covered under Foreign Contribution (Regulation) Act, 2010 (FCRA), they shall obtain a certificate of registration under the said Act and shall not seek permission under this regulation.*

Amendment to Form FNC (Annex C)

3. In the Foreign Exchange Management (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016 (Notification No. FEMA 22(R)/2016-RB dated March 31, 2016), in the existing

form FNC (Annex C), in Part–II, under the heading 'Declaration', in clause (ii), at the end of the existing sentence, the following shall be added, namely:

"We will not undertake either partly or fully, any activity that is covered under Foreign Contribution Regulation Act, 2010 (FCRA) and we understand that any misrepresentation made or false information furnished by us in this behalf would render the approval granted under the Foreign Exchange Management (Establishment in India of a branch office or liaison office or a project office or any other place of business) Regulations, 2016, automatically as void ab initio and such approval by the Reserve Bank shall stand withdrawn without any further notice".

(NOTIFICATION NO.FEMA 22(R) (1)/2018RB/GSR827(E)[F.NO.16/13/EM/2014-PART-I], DATED 31st August, 2018)

COMPANY LAW

Subscription of securities on private placement

Section 42 of Companies Act, 2013 (corresponding Section 10 of the Companies (Amendment) Act, 2017) for "offer or invitation for subscription of securities on private placement" is notified effective from 7th August 2018. Corresponding changes are also made in rules and clarifications issued to bring rules in line with notified sections. The key amendments are:

Earlier	Amended
Utilization of such funds restricted only till allotment of shares.	Restriction to use monies extended till the return of allotment is filled with the Registrar.
Restriction to issue fresh offer unless allotment for earlier offer is completed or the offer has been withdrawn or abandoned.	Proviso is added that where the number of persons to whom the offer is made does not exceeds identified persons i.e. (select group of persons who have been identified by the board of directors) as may be prescribed, the Company may, at any time, make more than one issue of securities to such class of identified persons.
Investment size per person shall not be less than Rs. 20,000.	Such requirement is now omitted.
The time period for filing of return of allotment (e-form PAS 3) is 30 days from date of allotment.	Time limit reduced to 15 days.
There was no specific penal provision for noncompliance in filing return of allotment.	If the Company defaults in filing the return of allotment within fifteen days, then the Company, its promoters and directors shall be liable to a penalty for each default of Rs. 1,000 for each day during which such default continues but not exceeding Rs. 25

	lakhs.
No such restriction.	Specifically restricts right of renunciation of the private placement offer.

Financial statements, Boards Report, etc.

Amendment to Section 134 of the Companies Act, 2013 are effective from 31st July 2018. The amendments comprises of the following:

- Chief Executive Officer (CEO) shall sign the standalone and consolidated financial statements. Prior to amendment, CEO signature was required only if appointed as director.

- It clarifies that the disclosures made in the financial statements are to be referred in the board's report in order to avoid duplications.

ACCOUNTS & AUDITING

Treatment of financial liability under Ind AS 32 Financial Instruments: Presentation and Ind AS 109 Financial Instruments

a) **Fact of the case**

As per the facts of the case, the company executed metro rail project in Mumbai and actual cost incurred exceeded the estimated project cost. Based on the arrangement agreed upon between the parties involved in the project, deficit was funded by its holding company. Funding was in the form of interest free non-convertible 'sub-ordinated-debt' repayable after 22 years. The company has sought this opinion in regard to appropriate accounting treatment under the Indian Accounting Standard (Ind AS) for receiving such funds from its holding company. The company's transition date to Ind AS is 1st April 2015.

The company has treated the sub-ordinate debt received as financial liability and following accounting classification / treatment was given by the company under Ind AS:

Particulars	Accounting classification treatment given by the company
Fair value of liability (sub-ordinate debt from holding company) at initial recognition.	Financial liability recognized in regard to sub-ordinate debt.
Difference between the fair value and transaction value at initial recognition i.e. amount of sub-ordinated debts funds received.	Excess amount over the fair value on day 1 is classified as "Other Equity" [part of shareholder's funds].
Recognizing finance cost for unwinding of fair value of sub-ordinate debt.	Finance cost on sub-ordinate debt measured at amortized cost is charged to Statement of Profit and Loss.

b) Query

Whether the above accounting treatment and presentation is in line with Ind AS 32 / Ind AS 109?

c) Point considered by Committee

- The company has the obligation to repay the subordinated-debt to holding company and hence it is not in nature of equity or compound financial instrument.
- Initial recognition of financial liability to be measured at fair value and subsequent measurement at amortized cost. Resulting gain / loss on initial recognition i.e. difference between transaction price and fair value to be recognized in Profit and Loss unless that Ind AS specifies otherwise [Para 60 of Ind AS 113]. Similar principles are also laid down in Ind AS 109 [para B5.1.1. and B5.1.2A.].
- Interest shall also be accrued in each reporting period, on such amortized cost calculated on the basis of effective interest rate.
- The Committee notes the definitions of ‘Income’ and ‘Expense’ given in the ‘Framework for the Preparation and Presentation of Financial Statements in accordance with Indian Accounting Standards’. Income or expense is any increase or decrease in economic benefits during the accounting period, other than those relating to contributions from or distributions to equity participants, respectively. Accordingly, the committee is of the view that difference between the fair value of interest free subordinate debts and book value of subordinate debts should be recognized as equity contribution from holding company and the same should be disclosed under “other equity”.

d) Opinion

- Difference between fair value and book value (transaction price) of interest free subordinate debt at the date of initial recognition shall be taken to other equity.
- Interest expense from the date of initial recognition of liability till Ind AS transition date (i.e. 1st April 2015) that would have been recognised using effective interest rate method shall be debited to retained earnings as on 1st April 2015.

GOODS AND SERVICE TAX

TAXABILITY OF SERVICES PROVIDED BY INDUSTRIAL TRAINING INSTITUTES

- Representations have been received requesting to clarify the following:
  a) Whether GST is payable on vocational training provided by private ITIs in designated trades and in other than designated trades.
  b) Whether GST is payable on the service, provided by a private Industrial Training Institute for conduct of examination against consideration in the form of entrance fee and also on the services relating to admission

- With regard to the first issue, [Para 1(a) above], it is clarified that Private ITIs qualify as an educational institution as defined under para 2(y) of notification No. 12/2017-CT (Rate) if the education provided by these ITIs is approved as vocational educational course. The approved vocational educational course has been defined in para 2(h) of notification ibid to mean a course run by an ITI or an Industrial Training Centre affiliated to NCVT (National Council for Vocational Training) or SCVT (State Council for Vocational Training) offering courses in designated trade notified under the Apprenticeship Act, 1961; or a Modular employable skill course, approved by NCVT, run by a person registered with DG Training in Ministry of Skill Development. Therefore, services provided by a private ITI in respect of designated trades notified under Apprenticeship Act, 1961 are exempt from GST under Sr. No. 66 of Notification No. 12/2017-CT(Rate). As corollary, services provided by a private ITI in respect of other than designated trades would be liable to pay GST and are not exempt.
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- With regard to the second issue, [Para 1(b) above], it is clarified that in case of designate trades, services provided by a private ITI by way of conduct of entrance examination against consideration in t e form of entrance fee will also be exempt from GST [Entry (aa) under Sr. No. 66 of Notification No. 12/2017-CT (Rate) refers]. Further, in respect of such designated trades, services provided to an educational institution, by way of, services relating to admission to or conduct of examination by a private ITI will also be exempt [Entry (b(iv)) under Sr. No. 66 of notification No. 12/2017-CT(Rate) refers]. It is further clarified that in case of other than designated trades in private ITIs, GST shall be payable on the service of

conduct of examination against consideration in the form of entrance fee and also on the services relating to admission to or conduct of examination by such institutions, as these services are not covered by the exemption ibid.

- As far as Government ITIs are concerned, services provided by a Government ITI to individual trainees/students, is exempt under Sl. No. 6 of 12/2017-CT(R) dated 28.06.2017 as these are in the nature of services provided by the Central or State Government to individuals. Such exemption in relation to services provided by Government ITI would cover both - vocational training and examinations conducted by these Government ITIs.
- Difficulty if any, in the implementation of this circular may be brought to the notice of the Board.

MISCELLANEOUS - E-WAY BILL SYSTEM

- The E-way Bill System has been introduced nation-wide for inter-State movement of goods with effect from 1st April, 2018 while the States were given the option to choose any date till 3rd June, 2018 for the introduction of the E-way bill system for intra-State supplies. Consequently, all the States have notified the E-way bill system for intra-State supplies, the last being the National Capital Territory of Delhi which introduced it with effect from 16th June, 2018. The objectives of E way bill system are as below:
    a. single and unified E-way bill for inter-State and intra-State movement of goods for the whole country in self-service mode,
    b. enabling paperless and fully online system to facilitate seamless movement of goods across all the States,
    c. improve service delivery with quick turnaround time for the entire supply chain and provide anytime anywhere access to data/services,
    d. to facilitate hassle free movement of goods by abolishing inter State check posts across the country.
- The E-way Bill System was scheduled to be launched on 1st February, 2018 for inter-State movement of goods. However, intra-State E-way bill was also made mandatory by some States from 1st February 2018 which resulted in increase in the number of transactions on the portal. Due to limited server capacity, the Information Technology (IT) infrastructure of the E way bill system could not

handle the load and crashed within few hours of operation on 1st February, 2018. A total of 4.5 lakhs E-way bills could be generated that day.

- The Union Government deferred the introduction of the E way Bill System till 1st April, 2018. Further, the Government took various corrective steps in this regard viz., new Information Technology (IT) infrastructure including high end servers were installed to handle the increased load on the system. The upgraded system is capable of handling a peak load of 75 lakh E-way bills per day. As a result, the E-way bill system is now being successfully implemented since 1st April, 2018 across the country. As on 30th July, 2018, a total of 7,58,75,207 E-way bills for intra-State movement and 7,81,51,096 E-way bills for Inter-State movement of goods have been generated on the common portal www.ewaybillgst.gov.in.
- This was stated by Shri Shiv Pratap Shukla, Minister of State for Finance in a Written Reply to a Question in Lok Sabha today.

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