Brahmayya Bulletin

September 2015

Brahmayya & co.
Chartered Accountants

Editorial

September – crucial month for corporates and professionals from a regulatory perspective. All companies gear up for the AGM's, being the first meeting post the new Companies Act scenario, where members have been provided with various additional disclosures.

Professionals and the industry have been concerned with the outcome of notification of forms for the purpose of Income Tax and after much effort and representation, the CBDT had extended the due dates for filing of income tax returns, for certain cases.

With the voluntary declaration relating to Black Money ending on 30th September, the CBDT has issued FAQ's pursuant to various queries raised.

The MCA has extended the due date for filing of Cost Audit Report form CRA-4. It also provided an exception in relation to acceptance of deposits rules. The MCA has also come out with a report on improved monitoring and implementation of CSR Activities. The MCA has also notified the XBRL Rules for filing financial statement with the RoC through the AOC Form.

In order to strengthen the understanding of financial statements by the investors, SEBI has issued a circular on continuous disclosure requirements for Listed Entities and has also prescribed format of Compliance report on Corporate Governance to be submitted to Stock Exchange by the Listed Entities.

We request the readers to also review the "Our News" section in the website for detailed analysis on specific circulars and notifications

"The Greatest Enemy of Knowledge is not Ignorance, it is the Illusion of Knowledge"

Ministry of Corporate Affairs (MCA)

Amendment to Schedule III of Companies Act, 2013 – Dated 4th September 2015

Under the classification of Trade Payables (Para 4), the entities should disclose:

- total outstanding dues of micro enterprises and small enterprises; and
- total outstanding dues of creditors other than micro enterprises and small enterprises.
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Under the Notes, General Instructions for preparation of Balance Sheet, (Para 6), under Trade Payables, the following details relating to Micro, Small and Medium Enterprises shall be disclosed in the notes:

- the principal amount and the interest due thereon (to be shown separately) remaining unpaid to any supplier at the end of each accounting year;
- the amount of interest paid by the buyer in terms of section 16 of the Micro, Small and Medium
- Enterprises Development Act, 2006, along with the amount of the payment made to the supplier beyond the appointed day during each accounting year;
- the amount of interest due and payable for the period of delay in making payment (which have been paid but beyond the appointed day during the year) but without adding the interest specified under the Micro, Small and Medium Enterprises Development Act, 2006;
- the amount of interest accrued and remaining unpaid at the end of each accounting year; and
- the amount of further interest remaining due and payable even in the succeeding years, until such date when the interest dues above are actually paid to the small enterprise, for the purpose of disallowance of a deductible expenditure under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006.

Amendment to Companies (Accounts) Rules, 2015 – Dated 4th September 2015

These amendment rules brings insertions/substitutions in the following aspects:

- Rule 2 (insertion) – Indian Accounting Standard (Ind AS) means the Ind AS referred to in Rule 3 and Annexure to the Companies (Indian Accounting Standards) Rules, 2015
- Rule 4 (insertion) – The financials shall be in the form prescribed under Schedule III and Comply with the Accounting Standards as applicable. Provided that the items contained in the financials shall be prepared in accordance with the definition and other requirements specified in the Accounting Standards.
- Rule 8 (insertion) – Requirement to furnish certain information and details as part of the Board Report shall not apply to a Government Company engaged in producing defense equipment.
- Rule 12 (1) (substitution) – Every Company shall file financial statements with RoC in Form AOC-4 / Form AOC-4 CFS. to operation of this section has been dealt with as a separate article as part of “Our News” in the website.

Report of High Level Committee (HLC)– CSR Policies – Dated 22nd September 2015

India being the first country to have statutorily mandated CSR for certain corporates. Being a new statute, various concerns have been raised by stakeholders. The MCA had therefore constitute a HLC to suggest measures for monitoring the progress of implementation of CSR Policies, The committee having consulted various stakeholders has come out with its detailed report.

General Circular No. 12/2015 - Dated 1st September 2015

The MCA had extended the last date of filing of Form CRA-4 (Form of Cost Audit Report) without any penalty/ late fee to 30th September 2015.

Amendment to Companies (Acceptance of Deposits) Rules, 2015 - Dated 15th September 2015

Companies (Acceptance of Deposits) Rules, 2015 provides an inclusive definition of the term "Deposit". [Rule 2(1)(c)]

"Deposit" includes any receipt of money by way of deposit or loan or in any other form, by a company, but does not include –

(i) _____

(ii) _____

(viii) any amount received from a person who, at the time of the receipt of the amount, was a director of the company. Provided that the director from whom money is received, furnishes to the company at the time of giving the money, a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others.

Any amount received by the Company from its Director was not considered as Deposit. The following substitution is made is Rule 2(1)(c) (viii) through this amendment:

(viii) any amount received from a person who, at the time of the receipt of the amount, was a director of the company or a relative of the director of the private company. Provided that the director of the company or relative of the director of the private company, from whom money is received, furnishes to the company at the time of giving the money, a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and the company shall disclose the details of the money so accepted in the Board's Report.

By virtue of this amendment, any amount received by the Company from its Director and Relative of the Director of a Private Company is not considered as Deposit.

It is also requires disclosure of the moneys accepted in the Board's Report.

Central Board of Direct Taxes (CBDT)

Circular No. 15/2015 – Dated 3rd September 2015

On receipt of various queries pursuant to the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 and Rules being notified, the Board has clarified certain aspects in the form of questions and answers in this Circular.

Notification No. 4/2015 – Dated 4th September 2015

Certain procedural changes have been made through this notification which prescribes the procedures for registration and submission of report as per Section 285BA (1) (k) of the Income Tax Act, 1961 read with sub-rule (7) of Rule 114G of the Income Tax Rules, 1962. On issue of this Notification, the Notification No. 3/2015 – Dated 25th August 2015, stands withdrawn.

Notification No. 75/2015 – Dated 23rd September 2015

Section 10(14) of the Income Tax Act, 1961 read with Rule 2BB of Income Tax Rules, 1962 specifies that Transport allowance (to the extent of INR 3,200 per month), granted to an employee, who is blind or orthopaedically handicapped with disability of lower extremities, to meet his expenditure for the purpose of commuting between the place of his residence and the place of his duty shall be exempt. By virtue of this notification, the words "Deaf and Dumb" is included in this Rule.

Notification No. 76/2015 – Dated 29th September 2015

Section 197A / 197(1A) of the Income Tax Act, 1961, read with Rule 29C of the Income Tax Rules, 1962, prescribes that no deduction of tax shall be made in case the assessee furnishes to the person responsible for deducting tax, a declaration in Form 15G duly verified by the prescribed Assessing Officer, that the tax on his estimated total income of the previous year will be nil.

Section 197(1C) of the Income Tax Act, 1961, read with Rule 29C of the Income Tax Rules, 1962, specifies

that no deduction of tax shall be made in case the resident individual who is of the age of 60 years of more, furnishes to the person responsible for deducting tax, a declaration in Form 15H duly verified by the prescribed Assessing Officer, that the tax on his estimated total income of the previous year will be nil.

This notification amends Rule 29C whereby:

- declaration may be submitted either in paper of electronic form.
- The person responsible for paying the income/ deducting tax shall allot a unique identification number and to each declaration and furnish particulars of such declaration received during every quarter.
- The person responsible for paying the income/ deducting tax shall furnish statement of deduction of tax referred to in rule 31A containing the particulars of declaration received by him during each quarter of the financial year along with the unique identification number allotted by him.
- Income-tax authority may, before the end of seven years from the end of the financial year in which the declaration has been received, require the person responsible for paying the income/deducting tax to furnish or make available the declaration for the purposes of verification or any proceeding under the Act in accordance with the procedures specified.
- The Principal Director General of Income-tax (Systems) shall specify the procedures, formats and standards for the purposes of furnishing and verification of the declaration, allotment of unique identification number and furnishing or making available the declaration.
- The Principal Director General of Income-tax (Systems) shall make available the information of declaration to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner to whom the Assessing Officer having jurisdiction.

Securities and Exchange Board of India (SEBI)

Circular - CIR/CFD/CMD/4/2015 – Dated 9th September 2015

In order to strengthen the understanding of financial statements by the investors, SEBI has issued a circular on continuous disclosure requirements for Listed Entities.

Detailed note on this disclosure requirement has been dealt with as a separate article as part of "Our News" in the website.

Circular - CIR/CFD/CMD/5/2015 – Dated 24th September 2015

Regulation 27(2) of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("Listing Regulations"), specifies that the listed entity shall submit quarterly compliance report on corporate governance in the format specified by the Board to recognised Stock Exchange within 15 days from close of the quarter.

This circular prescribes formats for Compliance Report:

- Annexure I – on Quarterly Basis
- Annexure II - at the end of the financial year (for the whole of financial year)
- Annexure III - within six months from end of financial year. This may be submitted along with second quarter report.

These compliance of reports along with the Secretarial Audit Report prepared in accordance with the requirements of the Companies Act, 2013 shall be placed before the board of directors of the listed entity in its next meeting.

This circular comes into force with effect from 1st December 2015.

Reserve Bank of India (RBI)

A.P. (DIR Series) Circular No. 13 – Dated 10th September 2015

With an intention of providing greater flexibility for structuring of trade credit arrangements (Buyers Credit/Suppliers Credit), RBI has specified that the resident importer can raise trade credit in Rupees

(INR) within the following framework after entering into a loan agreement with the overseas lender:

- Trade credit can be raised for import of all items (except gold) permissible under the extant Foreign Trade Policy.
- Trade credit period for import of non-capital goods can be upto 1 year from the date of shipment or upto the operating cycle whichever is lower.
- Trade credit period for import of capital goods can be upto 5 years from the date of shipment.
- No roll-over / extension can be permitted beyond the permissible period.
- AD Category - I banks can permit trade credit upto USD 20 mn equivalent per import transaction.
- AD Category - I banks are permitted to give guarantee, Letter of Undertaking or Letter of Comfort in respect of trade credit for a maximum period of three years from the date of shipment.
- The all-in-cost of such Rupee (INR) denominated trade credit should be commensurate with prevailing market conditions.
- All other guidelines for trade credit will be applicable for such Rupee (INR) denominated trade credits.

Overseas lenders of Rupee (INR) denominated trade credits will be eligible to hedge their exposure in Rupees through permitted derivative products in the on-shore market with an AD Category - I bank in India. Necessary guidelines for hedging will be issued separately.

A.P. (DIR Series) Circular No. 17 – Dated 29th September 2015

In order to facilitate Rupee denominated borrowing from overseas, a broad framework for issuance of Rupee denominated bonds overseas, has been issued by RBI , within the contours of the ECB guidelines, with following conditions:

- Eligible Borrowers – Any Body Corporate, Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs) coming under the regulatory jurisdiction of SEBI is eligible to issue Rupee denominated bonds overseas.
- Type of Instruments - plain vanilla bonds issued in Financial Action Task Force (FATF) compliant financial centres; either placed privately or listed on exchanges.
- Recognised Investors - Any investor from a FATF compliant jurisdiction. Banks incorporated in India will not have access to these bonds. Indian banks, however, can act as arranger and underwriter. In case of underwriting, holding of Indian banks cannot be more than 5 per cent of the issue size after 6 months of issue. Further, such holding shall be subject to applicable prudential norms.
- Maturity - Minimum maturity period of 5 years. The call and put option, if any, shall not be exercisable prior to completion of minimum maturity.
- All-in-cost - The all-in-cost of such borrowings should be commensurate with prevailing market conditions.
- End Uses – Proceeds can be used for all purposes except :
- Real Estate activities other than for development of integrated township / affordable housing projects
- Investment in capital markets and using the proceeds for equity investment domestically
- Activities prohibited as per FDI guidelines
- On-lending to other entities
- Purchase of Land
- Amount – Under Automatic Route an amount equivalent of USD 750 million per annum. Cases beyond this would require prior approval of RBI
- Conversion Rate – Market Rate on the date of settlement for the purpose of transaction undertaken for issue and servicing of bonds.
- Hedging - Overseas investors will be eligible to hedge their exposure in Rupee through permitted derivative products with AD Category - I banks in India.

- Leverage – Leverage Ratio for the borrowing by financial institutions will be as per the prudential norms, if any, prescribed by the sectoral regulator concerned.

DPSS (CO) RTGS No. 492 /04.04.002/2015-16 – Dated 1st September 2015

With Effect from 1st September 2015, Second and Fourth Saturdays of any month was declared to be holidays for Banks. Accordingly, RTGS will not be operated on second and fourth Saturdays but would operate for full day on working Saturdays. Processing of future value dated transactions with value date falling on second and fourth Saturdays will not be undertaken under RTGS.

RTGS Time Window with effect from 1st September 2015 is:

Time Event	Time
Open for Business	08:00 Hours
Initial Cut-Off	16:30 Hours
Final Cut-off	19:45 Hours
IDL Reversal	19:45 – 20:00 Hours
End of Day	20:00 Hours

This circular is issued under Section 10 (2) of Payment & Settlement Systems Act, 2007.

DBR.BP.BC.No.41/21.04.048/2015-16–Dated 24th September 2015

The RBI had recently formulated "Strategic Debt Restructuring Scheme (SDR)", which provided banks exemptions for asset classification through change in ownership of entities which are under stress primarily due to operational/ managerial inefficiencies of the existing promoters.

This prudential norms with following guidelines is issued to facilitate uggrading credit facility to 'Standard' Category through change of Ownership of Borrowing Entities (Outside SDR scheme):

- Change in ownership may be by way of sale by the lenders, to a new promoter, of shares acquired by invocation of pledge or by conversion of debt into equity outside SDR, (or) bringing in a new promoter by issue of fresh shares by the borrowing entity (or) acquisition of the borrowing entity by another entity. However, the exemptions from SEBI regulations permitted under SDR guidelines will not be available.
- On change of ownership, credit facilities may be upgraded as 'Standard'.
- Upgrade is subject to the condition that New Promoter should not be part of existing promoter group and should have acquired atleast 51% paid up capital of the borrowing entity. If New promoter is an NRI, for whom sector investment ceiling is applicable, the new promoter should own atleast 26% of paid up capital or upto ceiling limit, whichever is higher.
- At the time of takeover, banks may refinance the existing debt, considering the changed risk profile, without treating the exercise as 'restructuring' subject to banks making provisions for any diminution in fair value of the existing debt.
- Banks may reverse the provision only when the principal and interest are serviced as per terms of payment.
- If satisfactory provisions is not evidenced, the asset classification should be in reference to the repayment schedule that existed before change of ownership and assuming that upgrade in asset classification had not been given.
- In cases where, the bank exits the account completely, i.e. no longer has any exposure to the borrower, the provision may be reversed/absorbed as on the date of exit.

DBR.Dir. BC.No.38/13.03.00/2015-16- Dated 16th September 2015

Section 20 of Banking Regulation Act, 1949 prohibits banks from granting any loan or advance to any of its Directors. However, RBI has specified that for the purposes of the said

Section, the following loans/advances granted to the Chief Executive Officer / Whole Time Directors will not be considered as 'loans and advances':

- Loans for purchasing car
- Loan for purchasing of personal computer
- Loan for purchasing of furniture
- Loan for constructing/ acquiring a house for personal use
- Festival advance
- Credit limit under credit card facility

The policy guidelines require banks to obtain prior approval of RBI before providing such loans. In order to streamline this process, the RBI allows commercial banks to provide loans and advances to Chief Executive Officer / Whole Time Directors without approval of RBI, subject to following conditions:

- The loans and advances shall form part of the compensation / remuneration policy approved by the Board of Directors or any other committee empowered
- The guidelines on Base Rate will not be applicable on the interest charged on such loans. However, the interest rate charged on such loans cannot be lower than the rate charged on loans to the bank's own employees.
- The terms and conditions of the loans granted which are currently outstanding may, at the banks' discretion, be reviewed in the light of the above guidelines in order to address transition issues.
- Apart from the types of loans mentioned in Section 20 (Specified above), no other types of loans can be sanctioned to Directors.

DBR.No.FSD.BC.37/24.01.001/2015-16- Dated 16th September 2015

Banks cannot participate in the equity of financial services ventures including stock exchanges, depositories, etc., without obtaining the prior specific approval of the Reserve Bank of India, notwithstanding the fact that such investments may be within the ceiling prescribed under Section 19(2) of the Banking Regulation Act. Master Circular on 'Para-Banking activities' specifies that:

- equity investments by a bank in a subsidiary company, or a financial services company, including financial institutions, stock and other exchanges, depositories, etc., which is not a subsidiary should not exceed 10% of the bank's paid-up share capital and reserves, and
- total investments made in all subsidiaries and other entities that are engaged in financial services activities together with equity investments in entities engaged in non-financial services activities should not exceed 20% of the bank's paid-up share capital and reserves.

The cap of 20% does not apply or prior approval of RBI is not required, if investments in financial services companies are held under 'Held for Trading' category, and are not held beyond 90 days as envisaged in the Master Circular on 'Prudential Norms for Classification, Valuation and Operation of Investment Portfolio by Banks'.

In order to give more operational freedom, it is advised that banks which have CRAR of 10 per cent or more and have also made net profit as of March 31 of the previous year need not approach RBI for prior approval for equity investments in cases where after such investment, the holding of the bank remains less than 10 per cent of the investee company's paid up capital, and the holding of the bank, along with its subsidiaries or joint ventures or entities continues to remain less than 20 per cent of the investee company's paid up capital.

DBR.BP.BC.No.39/21.04.132/2015-16 Dated 24th September 2015

A framework to revitalize distressed assets through Corrective Action Plan (CAP) by Joint Lenders Forum (JLF) was issued in 2014. The SDR scheme was also introduced for assets in stress due to managerial inefficiencies. As part of continuous assessment of these frameworks, feedbacks received have been reviewed and the following

changes/additions are introduced:

- Seniority of JLF Empowered Group (JLF-EG) - Some Banks had represented that JLFs do not have senior level representations from the participating lenders and therefore find it difficult to approve JLF's decision. RBI clarifies that banks are expected to depute sufficiently empowered senior level officials for deliberations and decisions in the meetings of JLF, where the JLF will finalise the CAP to be placed before the EG which will approve the restructuring package under CAP.
- Composition of JLF – EG – JLF shall have the following composition:
- Representatives of SBI and ICICI Bank as standing members;
- Representatives of top 3 Lenders. If SBI & ICICI form part of top 3, then representative of 4th and 5th largest lender;
- Representative of 2 largest banks in terms of advances who do not have any exposure to the borrower;
- Participation in JLF-EG shall not be less than the rank of an Executive Director in a PSB or equivalent.

The JLF convening bank will convene the JLF-EG and provide the secretarial support to it.

- Restructuring of Doubtful accounts – Earlier RBI directive suggests that JLF shall not consider accounts classified as doubtful for restructuring, however, where only small portion is doubtful and 90% of the account is standard/sub-standard the account may be considered by JLF for restructuring. The RBI now suggests that JLF may consider doubtful accounts for restructuring, provided the account is assessed as Techno-Economically Viable (TEV) and the JLF-EG concurs with the assessment and approves the proposal.
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- Disagreement on restructuring - Earlier RBI directive suggests that banks, irrespective of whether they are within or outside the minimum 75% and 60%, can exercise the exit option for providing additional finance only by way of arranging their share of additional finance to be provided by a new or existing creditor. Disagreements have resulted in delays on deciding the CAP. RBI now suggests that the dissenting lenders will have an option to exit their exposure completely by selling their exposure to a new or existing lenders within the prescribed timeline for implementation of the agreed CAP. The exiting lender will not have the option to continue with their existing exposure and simultaneously not agreeing for rectification or restructuring as CAP. The new lender to whom the exiting lender sells its stake may not be required to commit any additional finance, if the agreed CAP involves additional finance. In such cases, if the new lender chooses to not to participate in additional finance, the share of additional finance pertaining to the exiting lender will be met by the existing lenders on a pro-rata basis.
- Penal Provisions – In the following cases, duration of penalty has been prescribed from date of imposition of penalty till one year of rectification of defect whichever is later:
- Banks fail to report SMA status of the accounts to CRILC.
- Banks resort to methods with the intent to conceal the actual status of the accounts or evergreen the account.
- Lenders agree to restructuring but later change stance or delay/refuse to implement the package.
- Lenders fail to convene JLF
- Lenders fail to agree upon a common CAP within stipulated timeline

Duration of Penalty would be from date of notification as willful defaulter in the list of wilful defaulters till the removal of the name from the list if accelerated provision for

existing loans/exposures of banks to companies having director/s (other than nominee directors of government/financial institutions brought on board at the time of distress), whose name appear more than once in the list of wilful defaulters.

- SDR Scheme – In cases of failure of restructuring as a CAP as decided by JLF, then JLF will have the option to initiate SDR to effect change of management of the borrower company.

A.P. (DIR Series) Circular No. 18 – Dated 30th September 2015

In order to deal with assets held abroad by persons resident in India in violation of the Foreign Exchange Management Act, 1999 (FEMA) for which declarations have been made pursuant to requirements of the Black Money Act, the RBI has issued Foreign Exchange Management (Regularization of assets held abroad by a person resident in India) Regulations, 2015 notified on 25th September, 2015. RBI clarifies that:

- No proceedings shall lie under FEMA Act, against the declarant for which penalty has been paid under Black Money Act.
- No permission under FEMA will be required to dispose the asset so declared and bring back the proceeds to India through banking channels within 180 days from date of declaration.
- If declarant wishes to hold the asset so declared, an application to RBI to be made within 180 days from date of declaration.
- If permission is not granted by RBI to hold such declared asset, then the asset is to be disposed within 180 days from date of RBI conveying its refusal or within such extended period permitted by RBI and proceeds brought back to India immediately through the banking channel.

Foreign Exchange Management Act (FEMA)

Notification No. FEMA. 348 /2015-RB – Dated 25th September 2015

In order to deal with assets held abroad by persons resident in India in violation of the Foreign Exchange Management Act, 1999 (FEMA) for which declarations have been made pursuant to requirements of the Black Money Act, the RBI hereby notifies the Foreign Exchange Management (Regularization of assets held abroad by a person resident in India) Regulations, 2015.

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