



Mysuru Chapter
e-Magazine

January 2020
189th Edition

Vision

"To be a global leader in promoting good corporate governance"

Motto

सत्यं वद। धर्मं चर। इतरेके तेह लुक्के. बरेवेडे खु तेह लुक्के.

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Inside this Issue

I Articles

Business Responsibility reporting in India	05
A Model Tenancy Act, 2019 - A Quick Analysis	09
Reply of MCA E-Adjudication Notice	11
The RCEP Agreement - Implications & Views	13

II Columns

From Chairman's Desk	03
Chapter Activities	04
Living Room	17
GST Suite	18
Brainy bits	21
News Room	22
Tech News	23
Regulatory Updates	24

**MYSURU CHAPTER OF ICSI WISHES ALL THE
READERS**

*A very Happy and Prosperous
New Year
2020*



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)



**CS Veerash Mysore
Jagadish**
Chairman
Mysuru Chapter

From the desk of Chairman

I am happy to meet and greet you all through the E-magazine. Hope all had good time with family, Celebrating Christmas. I am happy to inform you all that, Mysore Chapter conducted Orientation program for foundation students and executive Students, around 30 & 20 students took part in that program respectively.

Wishing you all Happy New Year and Happy Makara Sankranti, It has been wonderful journey as a chairman of Mysuru Chapter, I would like thank our committee members for their wonderful support during my tenure, looking forward to continue even more in a better way in conducting the programs in near future.

Editorial Team

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CS Phani Datta D N
CS Parvati K.R
CS Ajay Madhaiah
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Orientation Program for Executive Students

On 12th December 2019 Chapter organized the One-day orientation program for the Executive level students. The session was inaugurated by Chairman CS Veerash Mysore Jagadish. Various topics have been covered (About the institute, online services, training, exams, syllabus etc.,) in the session which will be helpful for the Executive students. Around 20 students participated in the program.

Orientation Program for Foundation Students

On 16th December 2019 Chapter organized the One-day orientation program for the Foundation level students. Various topics have been covered (About the institute, online services, training, exams, syllabus etc.,) in the session which will be helpful for the Foundation students. Around 30 students participated in the program.



ICSI MYSURU CHAPTER – New Management Committee for 2020-2021

- Chairperson - CS Parvati K R
- Vice - Chairperson - CS Vijaya Rao
- Secretary - CS Harsha A
- Treasurer - CS Phani Datta D N
- MC Members - CS Kiran T, CS Padmanabha & CS Veerash M J

Business Responsibility reporting in India



M S Anand

*M. com, MA (Economics), BGL
FCA FCMA FCS*

A Case for Business Responsibility Reporting in Unlisted Companies, Private Limited Companies and other unmapped Business entities

As part of improved Corporate Governance measures the Ministry of Corporate Affairs has introduced a Business Responsibility reporting framework. The same is a collaboration with the Indian Institute of Corporate Affairs (IICA) and released last year. Initially the National Voluntary Guidelines on the Social, Environmental and Economic Responsibilities of Business (NVGs), which were released in 2011. Subsequently the same was revised and released in its current form in 2018 for enabling business reporting guidelines enabling the businesses to perform above and beyond the requirements of regulatory compliance. After numerous iterations the Ministry of Corporate affairs has brought out the present Guidelines to be used by all businesses, irrespective of their ownership, size, sector, or location. Instead of converting the same into a compliance and checkbox ticking exercise the purport of the same is to be understood and all businesses investing or operating in India, including foreign multi-national corporations (MNCs) will make efforts to follow the Guidelines.

“There are 9 core principles or the nine pillars at the heart of Business responsibility reporting.

This can be called as corporate Dharma and based on the guiding principles of “Bahujana Hitaya Bahujana Sukhaya” (The good of many and the happiness of many).”

Generally, the Principles of the Guidelines are equally important, inter-related, inter-dependent and non-divisible, and Businesses should adopt them to demonstrate its commitment to be a responsible business and accrue the full benefits of sustainable business strategies. Business in its traditional Capitalistic Avatar is supposed to be a profit maximizing micro entity maximizing owner value. The Concept of giving back to various social stakeholders is to make Business as more acceptable, accountable to society from which it draws resources and gives back finished goods and Services. At this stage there may be nay Sayers who would question as to why Business Responsibility reporting is required in the first place. Compliance reporting is enough to ward off Civil and criminal liability. However, it is to be understood that responsibility reporting is like a deviation indicator and helps to identify the risks of potential liability in a more systematic and planned manner and may act as a risk mitigation and management tool if the exercise of business responsibility reporting is taken up in spirit along with the letter.

There are 9 core principles or the nine pillars at the heart of Business responsibility reporting. This can be called as corporate Dharma and based on the guiding principles of “Bahujana Hitaya Bahujana Sukhaya” (The good of many and the happiness of many).

1. Businesses should conduct and govern themselves with integrity in a manner that is Ethical, Transparent and Accountable.
2. Businesses should provide goods and services in a manner that is safe and sustainable.
3. Businesses should respect and promote the well-being of all employees, including those in the value chain.
4. Businesses should respect the interests of and be responsive to all its stakeholders.
5. Businesses should respect and promote human rights.
6. Businesses should respect and make efforts to protect and restore the environment.
7. Businesses, when engaging in influencing public and regulatory policy, should do so in a manner that is responsible and transparent.
8. Businesses should promote inclusive growth and equitable development.
9. Businesses should engage with and provide value to their consumers in a responsible manner.

For implementation of these guidelines data needs to be organized so that a measurement framework can be evolved to see how business is measuring up on all the above nine principles.

1. Businesses should conduct and govern themselves with integrity in a manner that is Ethical, Transparent and Accountable:

The Business is governed by external and Internal process both of which need to be clearly and legally defined and held to account if things go wrong. The Conduct and governance of enterprises is measured in terms of their internal processes and guidelines set for themselves based on which the differing business functions shall operate. A checklist of Standardized Internal processes shall be framed and business process compliance shall be ticked off on the touchstone of ethics, whether the logic and truth is visible to all and the initiator of the process action shall be held accountable to a designated internal independent authority like the Audit committee, CSR Committee or any other authority of independent standing. As regards to the external processes like Statutory reporting and Compliance filing under the various Acts like the Companies Act 2013, Income Tax Act 1962, GST Act 2017 and other enactments the Statutory compliances shall be monitored once again on whether the Compliance is in spirit rather than the word. The ethical undertones of dharma chara or upholding Compliance dharma by filing the returns and forms on time and compliance with the duties and responsibilities under the various enactments are ensured. A transparent time bound compliance calendar along with the Process initiator who is accountable shall be clearly set out example an Officer in default under Section 2 (60) of the Companies Act 2013.

2. Businesses should provide goods and services in a manner that is safe and sustainable.

The Business Entity is seen as an economic entity that draws upon natural resources exploits extracts the same and converts it into a product of service that is socially acceptable and safe to consume. The emphasis on safety is to ensure that in the quest for profits safety standards and norms are not given short shrift and that social good of stakeholders like employees, Consumers and other people living in the area where the goods or services are being produced. The resources shall be recycled and consumed wherever necessary and conserved for the greater good of the planet. A typical case is the usage of water by Industries, the emphasis is on reusing and recycling existing water resources so that the limited supplies of water does not run out due to inefficiency in the input process.

3. Businesses should respect and promote the well-being of all employees, including those in the value chain.

Employees from the top to the bottom whether they be top management or Contract and Casual workers make up the cog that keeps a business on the track of high growth and performance. The wellbeing of employees is sought to be protected by providing fair wages, fair opportunities for advancement, non-discrimination on the basis of caste community, race creed, colour, religion and sex, adherence to anti sexual harassment policy and law, various labour laws and not finding shortcuts for denying them benefits that are rightfully due under the various labour enactments and Company policies recognition of merit, proper work life balance and avoidance of unfair, unethical and predatory practices that bring the business bad publicity. A compliance matrix can be drawn up and periodic evaluation documented to show in the form of various illustration ratios like Attrition rate, Ratio of employees suffering from various lifestyle diseases like Diabetes and Hypertension to the total labour work force. Productive hours lost due to Industrial relations problems etc. It is no secret that enlightened HR Practices can boost work productivity and enable an employee to Contribute his best efforts for the Company top line and bottom line.

4. Businesses should respect the interests of and be responsive to all its stakeholders.

Stakeholder identification and addressing their concerns is key to responsiveness. Identification of disadvantaged and underprivileged groups like tribal and other socially and economically disadvantaged sections that are impacted by the company policies and practices CSR measures to address stakeholder concerns like addressing skill development issues, livelihood issues for marginalized and backward communities. The concerns of existing financial stakeholders like Shareholders, creditors and Government are well serviced. The disadvantaged stakeholder responsiveness is generally aligned to overall Business Objectives and may take an altruistic form which cannot be ruled out given the nature of business and commerce.

5. Businesses should respect and promote human rights.

In the legal sense Human rights has been defined under the Protection of Human Rights Act 1993. Section 2(d) of the Human Rights defines human rights as “Human Rights” means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India; In a sense it embodies that the Business in its conduct of affairs shall not act in violation of inviolable rights or support actions which violate human rights and which cannot be traded as they are the essential elements of Human dignity and vital for peaceful and Just existence. In the quest for profits one cannot condone slavery, sweatshops with horrible working conditions or any other action which enforces bondage and other such exploitative conditions. Even working conditions of female workers, disadvantaged especially abled worker’s policies governing their working condition get covered under this. The penal aspects of noncompliance are very harsh, and it would be better for businesses to avoid unwanted distractions and be on the right side of the law.

6. Businesses should respect and make efforts to protect and restore the environment.

Businesses don’t operate in Silos, they must comply with various Environmental laws and compliances especially in Hazardous and polluting Industries like Iron and Steel, Thermal Generation etc. Besides environmental compliances under the various Air pollution, Water pollution and Environmental Protection Act and rules, Businesses have a duty to promote environmental sustainability, afforestation, site restoration more so for extractive and Mining Industries.

The costs of restoration and protection must be suitably factored to ensure compliance. Taking the local stakeholders and a participative approach will enhance the image of the Company as a responsible citizen.

7. Business when engaging in influencing public and regulatory policy, should do so in a manner that is responsible and transparent

Lobbying for favourable Government Policies, Industry facilities, suitable fiscal Policies influencing public behaviour by conducting Publicity and advocacy Campaigns should be done in an upfront, Professional and transparent manner through Individual Industry bodies and other collective groups such that there is an understanding in the Public and Regulators as regards desired outcomes and that the same does not skew the impact of Public and regulatory Policy in favour of a privileged few. A clear-cut documented approach can do much to allay public and regulatory suspicions concerns regarding the conduct of Business in a fair manner.

8. Businesses should promote inclusive growth and equitable development.

Corporate Governance shall ensure that growth shall not come at the expense of social, cultural and economic values that society holds dear. Businesses shall adhere to Corporate dharma by adhering to the credo of Sangachadwam Samvadadhvam (Going together, speaking in one voice with Society as embodied in the Rig Veda). Mitigate negative impact on social, and economic development, and respond through appropriate action to minimize negative impacts. This can come about by investing in products, technologies and processes that promote the well-being of all segments of society, including vulnerable and marginalized groups. Businesses shall remain sensitive to the concerns of local communities, especially in regions that are underdeveloped. Efforts shall be made to minimize the negative impacts of displacement of people and disruption of livelihoods through their business operations and where the same is unavoidable, take steps to assure appropriate resettlement, compensation and rehabilitation of communities who have been displaced. Businesses shall not engage in Bio Piracy or any other forms of intellectual capital theft in any form and lawfully all forms of indigenous intellectual property and traditional knowledge and make efforts such that benefits derived from their knowledge are shared equitably. One example is the Pharmaceutical Industry where attempts were made in the 1990s by a few advanced countries to Claim Intellectual Property rights on an Indigenous substance like Turmeric known in India for thousands of years for its medicinal properties.

9. Businesses should engage with and provide value to their consumers in a responsible manner.

The responsibility of Business to provide safe Choice of goods at affordable cost with information on Environmental and Social Parameters pertaining to Product usage, an approved use of Customer data within the parameters of data privacy laws, addressing Competition and trade issues, Customer Complaints and providing an appropriate channel for resolving Customer grievances in a time bound Manner. The Business must be mindful of the impact of various laws like the Consumer Protection Act 2019 which have penal provisions. A new beginning will be made if the Government of India makes such Comprehensive Business responsibility reporting mandatory for Companies in Consultation with various Social, Government NGOS and other Economic Bodies.

References:

(1) *National Guidelines on the Economic, Social and Environmental Responsibilities of Business issued by MCA 2018. (www.mca.gov.in)*

(2) *UN Guiding Principles on Business and Human Rights (ungpreporting.org)*

Model Tenancy Act, 2019 - A Quick Analysis



Ms. Neetu Aggarwal
Compliance Officer - CDSL
Depository, Religare Finvest Limited
neetu.aggarwal@religare.com

“While the Draft Model Tenancy Act, 2019, comprises several laws for protecting the interests and rights of the tenants, various norms have been laid down to redress the contemporary issues of the landlord community as well. The aim of Proposed Model Act is said to be to balance the interests of landowner and tenant and to create an accountable and transparent environment for renting of premises in an efficient manner.”

Introduction

Considering severe housing shortage and to achieve the vision of “Housing for All by 2022” by PM Modi, there was a definite need to boost rental housing. The Finance Minister Nirmala Sitharaman, in her maiden Budget speech of 2019, had also highlighted that the current rental laws are antiquated, as they do not address the relationship between the lessor and the lessee realistically and fairly. She also spoke about the proposed reform measures which the government would be undertaking to promote the housing sector. Accordingly, In July, 2019, the housing ministry put a policy in the public domain for suggestions, which could act as the model act for States and Union Territories to regulate this segment. The Model Tenancy Act, 2019, takes forward what was proposed in the Draft Model Tenancy Act, 2015.

The objective of the Model Act is to, inter alia, bring within its ambit the rules for residential and non-residential premises and further

develop the policies to promote balanced rental housing by developing different options like individual units, dormitories, hostels, co-living, co-housing, paying guest and employee housing and outline the roles of various stakeholders in ensuring housing for all. The Model Act aims to promote rental housing as the government is steering to attain ‘Housing for all by 2022’. However, it must be noted that the policy is not an obligation on states/UTs since land is a state subject under the Indian Constitution and the same is not retrospective. This puts existing rental contracts out of the purview of the policy.

The Key highlights of the Proposed Model Act:

- The definition of ‘premises’ includes residential and commercial premises but excludes premises earmarked for industrial use.
- Under the Proposed Model Act, the renting-out of the premises must be under an agreement in writing and filed with the Rent Authority by the landowner and tenant, in the form specified, within two months from the date of the agreement. This filing shall be taken as evidence for matters relating to the tenancy.
- In the event that the tenant fails to vacate the premises once the lease has expired, the tenancy will revert to a month-to-month tenancy for a period of six months. After this period, the tenant is liable to pay twice the rent for two months and four times the monthly rent thereafter, till the time they vacate the premises;

- Whilst the amount of security deposit that is payable under the tenancy is said to be as per the terms of the agreement, for residential premises there is a cap of two months' rent that can be charged by way of security deposit. On the other hand, for non-residential premises, there is no cap but instead there is a minimum of one month's rent which would need to be charged as security deposit;
- The landlord is not permitted to increase the rent during the tenancy period, unless the amount or the method to calculate the proposed increase is stated in the tenancy agreement;
- The concept of a 'property manager' has now been included in the Proposed Model Act' with obligations and responsibilities of the property manager being elaborated on.
- The Proposed Model Act, has also introduced the mechanism of addressing the disputes and grievances through a specific Rent Authority, Rent Court and Rent Tribunal in the hope of providing for an expeditious conclusion of such disputes;
- The State/Union Territories may make rules to carry out provisions of the Proposed Model Act and the existing rent control act applicable to State/Union Territories would stand repealed from the date of notification of Proposed Model Act.



Author's Opinion

The Model Act has two notable changes that will have a positive impact on the renting segment: first, is the setting up of a rent authority, to bring transparency, fix accountability and promote fairness; and the second is speedy dispute resolution, wherein timelines have been provided in the policy, to avoid a long-drawn-out process, presently taken under the civil courts for reaching a verdict on disputes between landowners and tenants. One concern that may be raised by landlords proposing to lease their residential premises is the cap on the amount of security deposit that may be taken under the agreement with the tenant. Generally, the security deposit is meant to cover the cost of any damages caused to the premises by the tenant as well as failure by the tenant to vacate the premises and capping this would not be viewed positively by landlords. Additionally, the Proposed Model Act only covers tenancy and lease of the premises and is silent on leave and license arrangements. This may be an issue that may be left to the states, such as Maharashtra which had provided for the concept of a leave and license and the obligation of the landlord to register such agreements covered under the Maharashtra Rent Control Act, 1999 which may also cause confusion by implementation of proposed Act in the states where specific rent control acts are already being followed. It remains to be seen to what extent the states will toe the central government's line, as land remains a state subject. If the states and union territories can enforce this novel legislation in letter and spirit, it will go a long way towards reviving the fortunes of the rental market in India.

References:

[http://mohua.gov.in/upload/uploadfiles/files/Draft%20Model%20Tenancy%20Act%2C%202019\(1\).pdf](http://mohua.gov.in/upload/uploadfiles/files/Draft%20Model%20Tenancy%20Act%2C%202019(1).pdf)
https://www.business-standard.com/article/pf/good-for-tenants-and-owners-model-tenancy-act-takes-checks-most-boxes-119080301054_1.html

Reply of MCA E-Adjudication Notice



CS Divesh Goyal

FCS, Divesh Goyal & Associates
csdiveshgoyal@gmail.com

Ministry of Corporate Affairs has issued notice to approximately 3000 companies due to non-compliance of provision of Section 96(1) for not holding of AGM within Due date. As per notice companies have to reply the notice within 15 days of receipt of notice. In case of non-reply of notice within 15 days it shall be presumed that company has nothing to say and penal action shall be initiate against the company.

In this editorial author will discuss - (a) Reply of Notice of MCA (b) Penal Provisions for non-holding of AGM within Due Date and (c) Process of Compounding of such non-compliance.

IMPORTANT NOTE

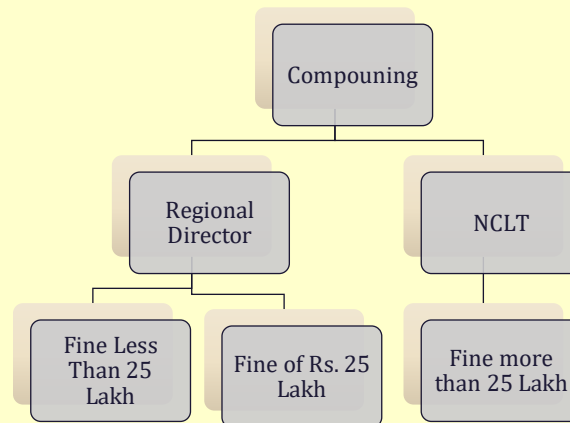
- ✓ This is non-compliance of Section 96.
- ✓ Penal provisions for same are mentioned under Section 99.
- ✓ Compounding u/s 441.
- ✓ Adjudication power u/s 454.

Step - I: Reply of Notice to MCA: As per provision of Section 96 Company have to held AGM within 6 months from the end of Financial Year or within 15 months from the last AGM of Company, Whichever is earlier. Therefore, this is responsibility of company to reply the notice of MCA with following points:

- a. Actual reasons for not holding of AGM within Due date.
- b. As non-compliance occur in previous years therefore mention in reply that Company will file application for Compounding with appropriate authority. If possible, file the compounding application and attached receiving of same with Notice.

Penal Provision - Non Compliance of 96: As per Section 99 If any default is made in holding a meeting of the company in accordance with section 96 or section 97 or section 98 or in complying with any directions of the Tribunal, **The company and every officer** of the company who is in default shall be punishable with Fine which may extend to **one lakh rupees** and in the case of a **continuing default**, with a further fine which may extend to **five thousand rupees for every day during which such default continues**. Officer who is in default means any of the officers of a company, namely (i) whole-time director; (ii) key managerial personnel; (iii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified; Therefore, separate fine shall be impose on Company and Office in default both.

Compounding:



As mentioned above in section 96 fine is less than 25 Lakh therefore power of compounding vested with Regional Director.

Step - II: Process of Compounding with RD: As the power of compounding in above mentioned matter vested with Regional Director of the Region. Therefore, the Company has to file application with Regional Director by following process:

i. **Preparation of Application:** There is no specific format of Compounding application with RD under Companies Act. Therefore, Company have to prepare a normal application mentioning Name, Registered Office, Capital Structure, Jurisdiction of RD, Facts of the Case and Relief to be sought.

Application should annex with proper attachments like Affidavit verifying the application, Financial Statements of Company, Proof of holding of Annual General Meeting, etc.

ii. **Filing of Application with Registrar of Companies:** Company has to file a copy of such application with Registrar of Company in e-form GNL-2. After receipt of GNL-2 ROC shall prepare its report and submit the same with Regional Director.

iii. **Filing of Application with Regional Director:** Company has to file a copy of such application with Regional Director in e-form RD-1 and submit hard copy of application with all annexure to Regional Director.

iv. **Hearing by Regional Director:** There will be a personal hearing before the Regional Director, which shall decide the amount to be paid for compounding.

v. **Passing of Order Regional Director:** Get the order passed by the RD and pay the amount stipulated within the time fixed.

vi. **Filing of Order with ROC:** File Order of RD with ROC in e-form INC-28 and Roc will take note of the same.

CONCLUSION:

If company done noncompliance of Section 96 there is no way out, then compounding for making default good. As per Act RD can't impose penalty more than mentioned in the concerned section.

THE RCEP AGREEMENT IMPLICATIONS & VIEWS



CS V Namitha

NAMITA & CO

Company Secretary in Practice

BACKGROUND TO RCEP

The Regional Comprehensive Economic Partnership (RCEP) is a proposed free trade agreement (FTA) between ASEAN nations and its FTA partners. The discussions and negotiations began way back in 2012. The mega free trade agreement (FTA) is negotiated among 10 member ASEAN countries and their FTA partners. Once concluded, this would be world's largest integrated trading zone and the biggest trade pact after the World Trade Organization (WTO) came into existence. This agreement is expected to cover half the world's population and nearly 30 per cent of global GDP. This agreement proposed to create a common trade bloc. The free trade agreement (FTA) was meant to make it easier for products and services of each country to move freely across this region.

The ten ASEAN member nations include Singapore, Thailand, Vietnam, the Philippines, Cambodia, Brunei, Laos, Malaysia, Myanmar and Indonesia. The FTA partners of the ASEAN nations included China, Japan, Australia, New Zealand, South Korea and India. The negotiations for the RCEP agreement were formally launched in November 2012 at the ASEAN Summit in Cambodia.

WHAT'S RCEP ALL ABOUT?

The agreement aims to reduce tariff rates to an acceptable level and boost the exchange of goods and services within the member states.

Joining RCEP could be beneficial for India since it will provide a greater access to the regional market, more opportunities for Indian businesses to expand in the region, and also increase foreign investments. Should the RCEP go ahead ignoring India's presence, we could be facing tariff and non-tariff barriers from a united RCEP, and more so from China, thereby increasing the existing trade deficit – a call that India may not like to take.

However, India was looking at more protection for its domestic industry and agricultural sector from the surge of imports under the deal, especially from China. India fears increased imports from China through the pact which would damage its domestic industries. Since the deal could not offer any such specific protection, India decided to not join it to protect the national interest, protect the poor and also to stop unfair imports.

“The agreement aims to reduce tariff rates to an acceptable level and boost the exchange of goods and services within the member states.

Joining RCEP could be beneficial for India since it will provide a greater access to the regional market, more opportunities for Indian businesses to expand in the region, and also increase foreign investments. Should the RCEP go ahead ignoring India's presence, we could be facing tariff and non-tariff barriers from a united RCEP, and more so from China, thereby increasing the existing trade deficit – a call that India may not like to take.”

WHY INDIA OPTED OUT?

In the recently concluded ASEAN Summit at Bangkok, India decided to pull out of the RCEP as stated by Prime Minister Shri. Narendra Modi.

- ✓ **Export Quality:** A big reason behind opting out of the RCEP is the uncompetitiveness of Indian exports. There is a fear that a flood of imports from the partner countries would wipe out many of the Indian players. India's concern over the deal has focused on an anticipated increase in cheap imports from China
- ✓ **Trade Deficit:** Out of 15 other countries in RCEP, India has a total trade deficit with almost 11 countries. The trade deficit India is facing would only increase if we take a decision to go ahead with the agreement. Such an agreement could potentially make India a dumping ground for cheap Chinese goods making the volume of imports become bigger than the exports. Once the agreement comes into force, member states cannot raise tariffs. This is the anti-trigger clause - a big drawback for India.
- ✓ **Economic Slowdown:** Already, after demonetization and introduction of GST, India is reeling under an economic slowdown. Added to that, import of cheaper goods from outside would further hurt their businesses, which are already suffering from an economic slowdown.
- ✓ **Make In India:** Cheap imports under RCEP would undermine our Government's "Make in India" flagship scheme. The dairy sector is a major source of jobs and livelihood for a majority of Indian farming households. Small-scale dairy farming is a way of life in India. India fears that cheap imports of milk and dairy products from Australia and New Zealand wherein automated mechanisms exist would destroy farmers' livelihoods.

INDIA'S DEMANDS:

India had demanded a three-tiered structure for phasing out its tariffs for different groups of countries. India would have provided an initial tariff reduction on 65 percent of goods from members of the Association of Southeast Asian Nations (ASEAN), with reductions on another 15 percent phased in over a 10-year period. For countries such as Japan and South Korea, with which India already had trade agreements, the reduction would be on 62.5 percent of items. The rest of RCEP members, including China, which doesn't currently have a free trade agreement with India, would have received a reduction on 42.5 percent. ASEAN nations and other RCEP members still wanted India to make deeper concessions and commit to future tariff cuts on 92 percent of tariff lines across all countries. Further, in 2019, the members indicated that India would also have to accept the immediate elimination of its import duties on more than one-fourth of the items it trades once RCEP comes into effect. To protect its domestic industries from surges in cheaper imports, especially from China, India had been negotiating with the RCEP members for a mechanism that would automatically snap back safeguard duties on imports if a certain threshold, to be mutually decided by members, were crossed. India had wanted a system that would kick in automatically so any damage to its economy could be contained immediately, but there was no agreement on this issue.

CONCLUSION: So, though India might have lost on a few benefits due to opting out of RCEP, the need of the hour is to see that proper and sophisticated infrastructure is developed in the country. Secondly, the standards for manufacturing or even exporting goods from the country should be competitive. Only then, we will not face threat of 'dumping' cheap quality goods. However, the option to join RCEP has been kept open. So, India might try to debate for better clauses protecting the domestic industry.

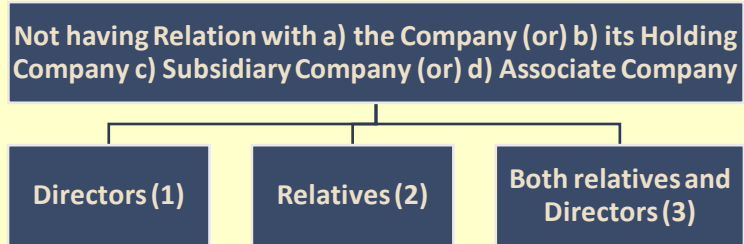
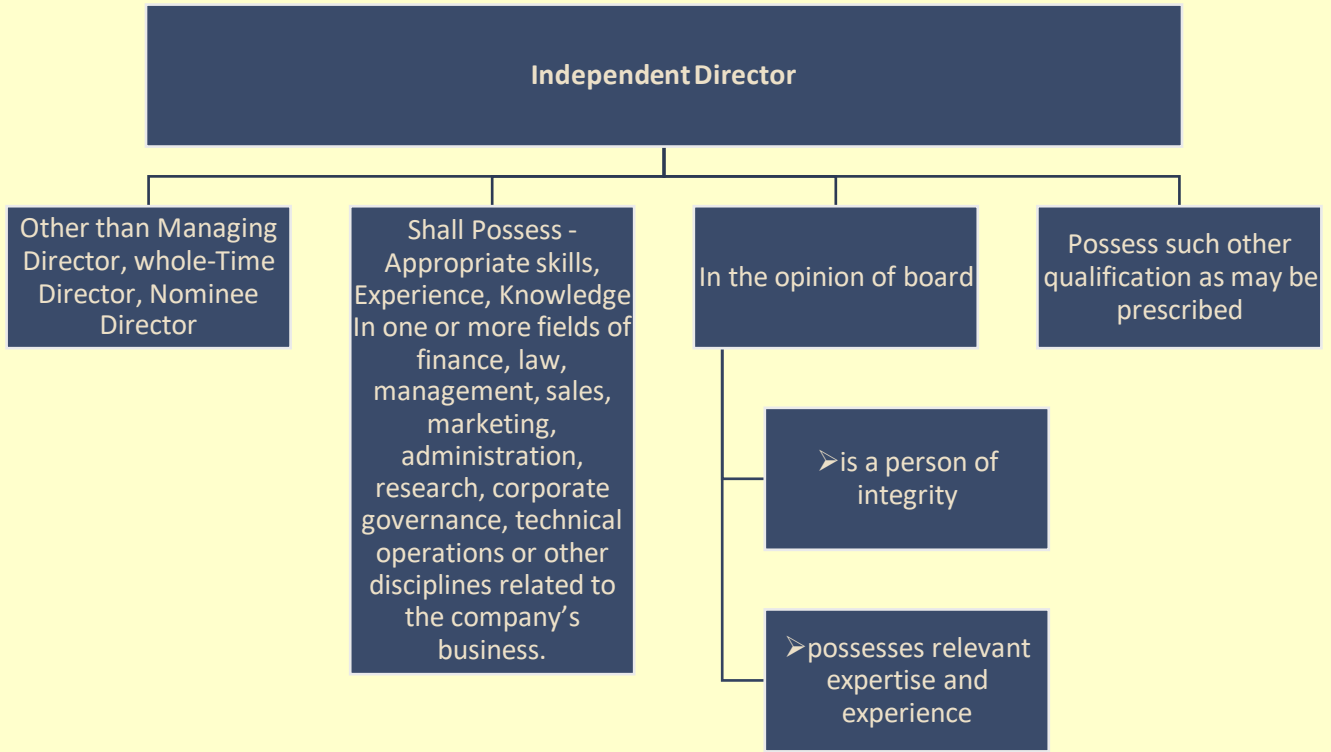


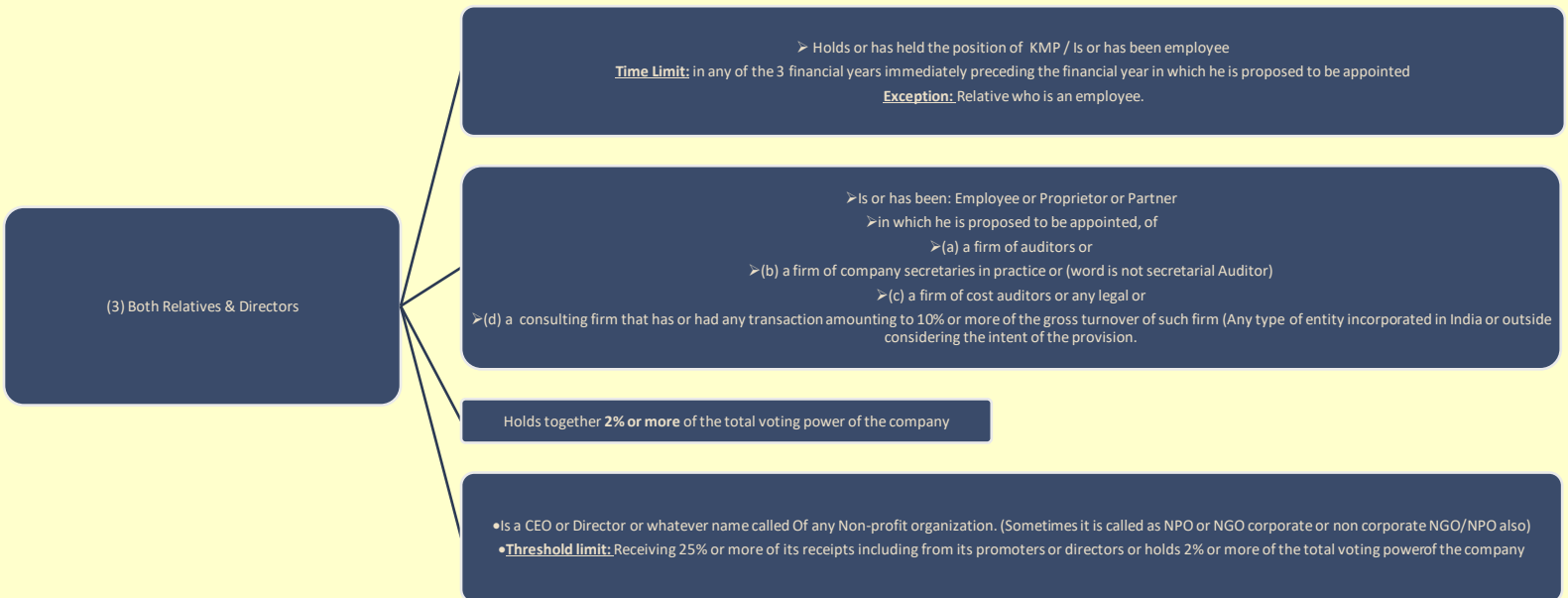
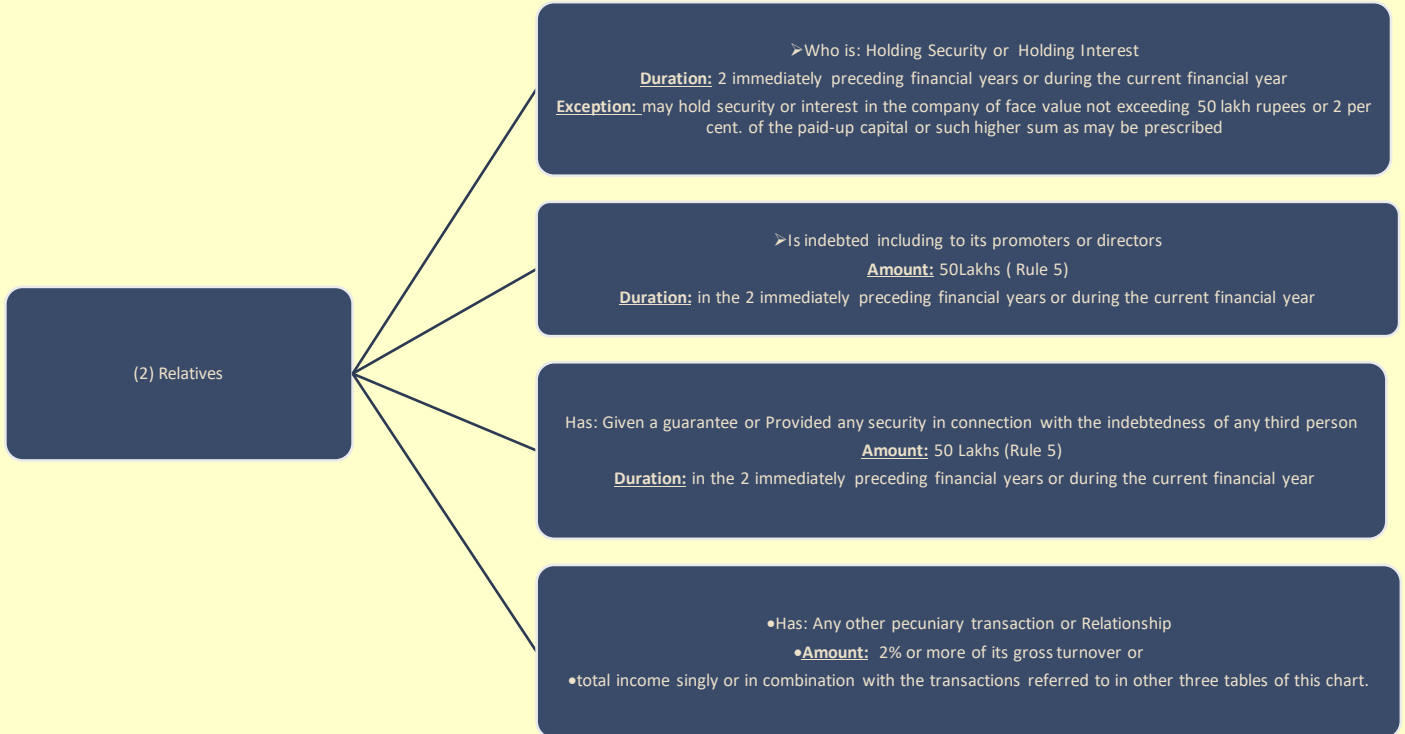
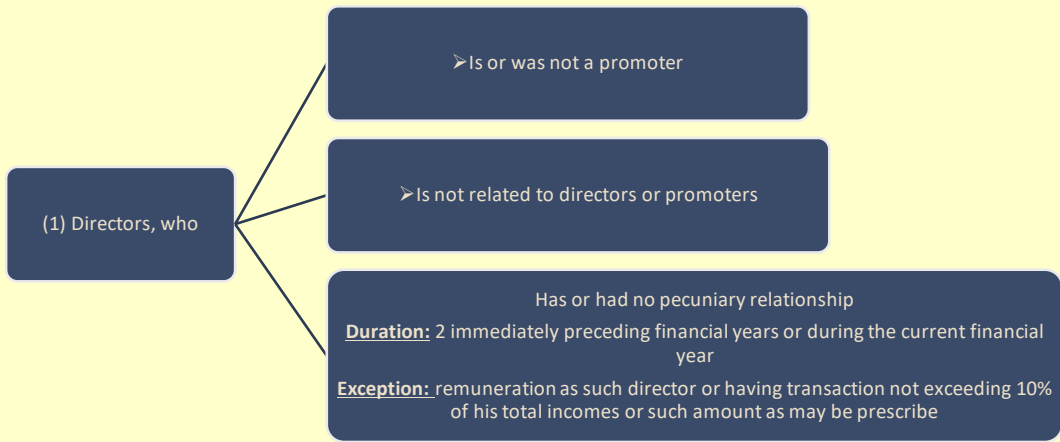
Vijay Kumar Sajjan
 BBM, PCS, Bengaluru
 sajjan@vijaysajjan.in

CS MINERVA - *The Student's Corner*

Commentary on Independent Director- Definition- Series-21 - Part II

- 1. Who is an Independent Director:** Definition of an independent director is defined u/s149(6). r/w 2(47). For easy understanding, it is provided in flow chart format as follows:
- 2.** The meaning of holding company, subsidiary company, associate company, relative, KMP or promoter are as defined u/s 2 of the Companies Act 2013.
- 3. Pecuniary Relationship:** Pecuniary means relating to or connected to or with money or consisting or measured in money. Pecuniary relationship means a relationship which







Living Room...

CS. CMA. J. RAJGANESH

*B.Com., MBA, CA (Finalist), ACMA., ACS
Assistant Accounts Manager, The Ramco Cements Limited,*

Life skills is a term used to describe a set of basic skills acquired through learning and direct life experience that enable individuals and groups to effectively handle issues and problems commonly encountered in daily life. They include happy living, creative and critical thinking, problem-solving, decision-making, work life balance, handling failures, learning thru experience, the ability to communicate, good personal character and social responsibility that contribute to good citizenship and all essential skills for healthy societies and for successful and employable individuals. It helps to develop self-confidence and successfully deal with significant life changes and challenges.

The primary purpose of life is to be happy and to love others and to have a variety of experiences. Failure is inevitable in life, but how we overcome challenges and use them to our advantage is what matters. Highly successful people are the ones who have failed the most. As the public, we usually only learn about these individuals and their companies once they have made it big. We admire their success yet rarely witness the immense struggle they went through to get there. By not being exposed to their failures, we are unfortunately only left to compare ourselves to their achievements. This in turn can make it hard for us to validate the mistakes we make and problems we experience.

This way of thinking has made the world afraid of failure. Even from a young age we have been taught that being wrong and making mistakes are bad. Setbacks and failures are inevitable in life, no one is perfect, and we all fall on hard times at some point or another. When times get tough, one of the most frustrating things we can hear from someone is to “stay positive.” It is okay to get upset and disappointed. Our goal however is to not stay down.

Education is not entirely the key to success and students need to know this. Parents, teachers and society should stop deceiving and destroying young people’s lives and future with their false claims of what education is. First, we need to understand what type of education I am referring to in this context...This whole education process is not only in school. Besides what we get in school is not the complete package. If you go on to get all these degrees yet lack the correct attitude to apply it in life situations, it is all in vain.

First, there should be clarity in the fact that being successful in life does not mean building houses, having many cars, huge amount of money in various bank accounts among others. Frankly speaking, that is the kind of success mostly perceived for us by our parents. We need to understand that success is relative. Being successful to me is maximising your potential to the fullest and achieving set goals in life. And there is no way we can all have the same potential. If my aim is to become a fashion designer, being successful is becoming that fashion designer and even exceeding my boundaries as a fashion designer. All those luxuries automatically come with it.

Finally, we can’t stop obstacles from appearing in life, but we can choose how to handle them. They may block our vision temporarily, but if we persevere then we can discover opportunities that have always been waiting for us on the other side. As we get more efficient with this process, we enable ourselves to see the positive side in even the toughest of situations.



New Insight for Renting of a Motor Vehicle under GST on RCM

The activity “Renting of a Motor Vehicle” has been brought under RCM during September 2019 with a limited compliance requirement under Section 9(3) of CGST Act, 2017. However, Government authorities felt that the compliance requirement under the above entry has been unclear in Trade & Industry, whereby they have issued a Circular No.130/2019 dtd:31.12.2019.

There is a scope for the Registered person to understand the compliance requirement in this regard and to augment cost reduction by way of tax planning at the Service provider end. We shall examine this in detail from the following paragraphs, only after if we perceive the intended meaning of the proposed entry in this regard:

Original Entry Notification 22/2019 dtd:30.09.2019:

Service category covered	Service Provider	Service Recipient
Services provided by way of renting of a motor vehicle provided to a body corporate.	Any person other than a body corporate, paying central tax at the rate of 2.5% on renting of motor vehicles with input tax credit only of input service in the same line of business	Any Body corporate located in the taxable territory.

New version for the activity of “Renting of a Motor Vehicle” under RCM w.e.f. 31.12.2019 vide Notification No.29/2019 CTR dtd:31.12.2019 inserted for the above entry as below:

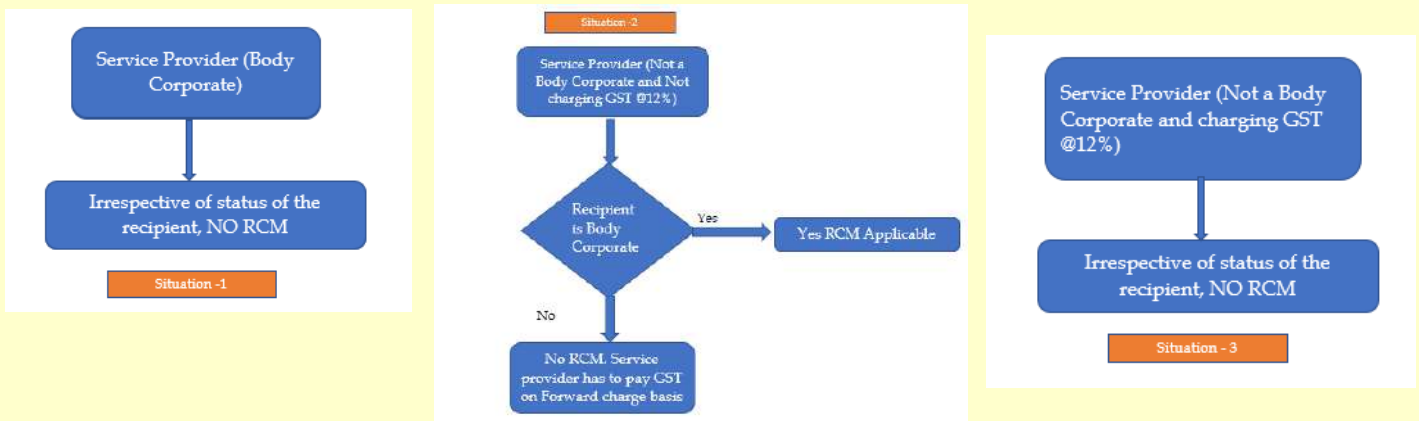
Service category covered	Service Provider	Service Recipient
Services provided by way of <u>renting of any motor vehicle designed to carry passengers where the <u>cost of fuel is included in the consideration charged from the service recipient, provided to a body corporate.</u></u>	Any person, other than a body corporate who supplies the service to a body corporate and does not issue an <u>invoice charging central tax at the rate of 6 per cent.</u> to the service recipient	Any Body corporate located in the taxable territory.

Currently there are two category of services which requires more explicitness from the Government authorities for its existence and also under what circumstances those services become mutually exclusive for their operation. First category is “Passenger Transportation service - SAC9964” and second category is “Renting service of motor vehicles with operator - SAC9966”. In general, all the Body Corporates have an intent of providing transport facility to their employees from a standard point of alighting to the factory and back to such place of origin. Renting of a motor vehicle and passenger transportation have some sort of similarity for their existence.

Points to note for compliance in this regard:

- Service provider is other than a Body Corporate i.e., Not constituted as a Private or Public Limited Company
- Contract cost in relation to “Renting of any motor vehicle” should include “Cost of Fuel”
- The aforementioned motor vehicle which has been rented is “designed to carry Passengers”
- Service provider is not charging GST @12% on the Tax Invoice issued. This could be interpreted as Service Provider is either Registered and Charging GST @12% or not registered under GST at all
- If above points are complied, Recipient of Service who happens to be a Body Corporate has to pay GST @ 5% on account of RCM for the Services received

We shall summarize the applicability of GST on Forward / Reverse charge basis as per below flow charts:



Now we shall examine the tax planning to be made at the Service provider end that is registered under GST to adopt for charging GST @12% by availing Input Tax credit. An illustration has been made for ease of understanding on some hypothetical circumstances as below:

Possible Areas of ITC Availment:

Particulars	Amount	GST
Cost of the vehicle	8,50,000	2,38,000
Repairs & Maintenance for 5 years	1,50,000	42,000
Insurance & Other exp for 5 years	1,25,000	22,500
Total		3,02,500
ITC available P.A		60,500
(Life is assumed to be 5 years)		

Particulars	Without ITC	With ITC
Monthly Rental	45,000.00	45,000.00
GST Rate	5%	12%
Conditions for Service provider	Not to avail ITC	Can avail ITC
GST to be charged	2,250	5,400
Additional cash outflow for Service Recipient per month for higher GST Rate		3,150
Total Addnl Cash Outflow P.A (a)		37,800
Saving possible on account of ITC (b)		60,500
Net Saving to the Organisation (b-a)		22,700

Comments.

- Renting of Motor vehicle activity should have a contract which includes “cost of fuel”. This ambit of a conditional clause shall push the taxpayer’s to undertake re-drafting of their contracts to circumvent the levy of GST under Section 9(3) of CGST Act, 2017

- An ordinary accountant cannot check thoroughly all the above given conditions and do proper compliance under GST and respective accounting entries
- There exists a possible scenario where the employee travels out of station for a business trip and hires a motor vehicle. Assuming the above given conditions are met, Department has to clarify how the GST has to be remitted and how shall such tax be appropriated amongst the respective states if happens to be an Interstate supply. Also, relevant disclosure in the GST returns has to be clarified.
- Accounting entries along with compliance under GST law for the above entry for a SME segment, Registered persons is going to face a massive compliance cost given the complexity that arise in understanding the conditions laid out and posting the relevant accounting entries

The above Notification has been issued on 31.12.2019 widening the scope and ambit of coverage for the circumstances under which tax needs to be paid on RCM basis. Accordingly, all the bills received for Dec'19 and thereafter we need to pay GST on RCM basis. Though the Circular No.130/2019 issued at para 6 has clarified that the insertion made in Notification 29/2019 dtd: 31.12.2019 is effective from 01.10.2019, we understand that an amendment made to the levy provision has to be prospective and cannot be retrospective in nature.



Attention Executive Programme (2012 Old Syllabus) Students!

One More Attempt under Executive Programme (2012 Old Syllabus)

The Council of the Institute in its 266th Meeting held on 9th January, 2020 has decided to give one more attempt to the Executive Programme (2012 Old Syllabus) students in the Company Secretaries Examinations i.e. upto June 2020 Session of Examinations.

All such students who are not able to clear the Executive Programme stage during December 2019 examination session may continue to appear in the 2012 Old Syllabus for one more session i.e. June 2020 Session.

In view of the above, from December, 2020 Session, all students under Executive Programme (2012 Old Syllabus) shall be automatically switched over to Executive Programme (2017 New Syllabus).

M/s ABC Ltd., got printed New Year Diary having its company logo and the list of products dealt by the company. Such diaries are given to their stockist and customer conveying New Year Wishes. M/s ABC Ltd., has spent Rs.20lakhs plus GST applicable @18%. Examine whether ITC can be claimed on such expense.



Opinion to Last Month's Brainy Bits

Relevant Provisions:

- Section 22 - Persons liable for Registration - Third Proviso "Provided also that the Government may, at the request of a State and on the recommendations of the Council, enhance the aggregate turnover from twenty lakh rupees to such amount not exceeding forty lakh rupees in case of supplier who is engaged exclusively in the supply of goods, subject to such conditions and limitations, as may be notified."
- Notification 01/2020 dtd:01.01.2020 giving effect to certain provisions of Finance Act, 2019
- Section 23 - Persons not liable for Registration - The Government may, on the recommendations of the Council, by notification, specify the category of persons who may be exempted from obtaining registration under this Act
- Notification 10/2019 dtd:07.03.2019 - Provides for exemption for obtaining registration for a person who is exclusively supplying goods and not having aggregate turnover exceeding Rs.40lakhs. there are certain goods for which the above threshold limit shall not be applicable.

Conclusion:

Though a Notification has been issued during March 2019 stating that a person supplying exclusively goods has a threshold limit of Turnover for Rs.40 lakhs, there has been a need to enhance the basic registration threshold limit from existing Rs.20lakhs to Rs.40lakhs under Section 22 of CGST Act, 2017.

Notification No.01/2020 has given authority w.e.f.01.01.2020 to Section 22 to enhance the basic threshold limit under Section 22 w.e.f.01.01.2020. However, since Notification provided during March 2019 vide No.10/2019 is beneficial to any person willing to obtain the maximum threshold limit of Rs.40lakhs the same can be availed for

Accordingly, Mr.A can get relieved from obtaining Registration under Section 22 of GST Act, 2017 for a turnover up to Rs.40lakhs subject to a condition that he is not dealing with products Ice-cream and other edible ice whether or not containing cocoa [HSN 2105 00 00] OR Pan Masala [HSN 2106 90 20] OR All Goods i.e. Tobacco and manufactured tobacco substitutes [HSN 24].

- CCI orders anti-trust probe against Flipkart, Amazon
- ED arrests Hyderabad-based firm promoter in Rs 1,768 crore bank fraud case
- Jeff Bezos says Amazon will invest \$1 billion to digitise small, medium businesses in India
- NHAI settles NH-21 project with IL&FS for Rs 672 crore

PMC Bank scam: HC sets up panel for sale of HDIL assets

The Bombay High Court set up a three-member committee on Wednesday for valuation and sale of encumbered assets of Housing Development and Infrastructure Ltd (HDIL) to expeditiously recover dues payable by the firm to crisis-hit Punjab & Maharashtra Cooperative (PMC) Bank.

YES Bank share price rises 6.6% on acquiring stake in Reliance Power's arm

YES Bank acquired 12.7 crore shares, having a nominal value of Rs 10 each per share, representing 29.97% stake in Rosa Power Supply Company Ltd (RPSCL), a wholly owned subsidiary of Reliance Power.

As India switches to BS-VI, sub Rs 10 lakh petrol cars may gain

Petrol-run vehicles priced below Rs 10 lakh are likely to be the initial gainers when India transitions to Bharat Stage-VI emission standards in April, according to industry executives and experts.

Govt should step up expenditure to spur consumption: Sangita Reddy, FICCI president

Sangita Reddy, who is the joint managing director of Apollo Hospitals, also said that the government needed to focus on “clusters,” besides undertaking labour reforms, to boost manufacturing in the country. “To spur consumption, we need to put money into the system.





Komal Kumar M

Executive Student

Komalkumarm677@gmail.com



Do you know how much e-waste is produced in India yearly?

Do you know what are the effects of e-waste produced?

E-waste is emerging as serious public and environmental problems in India. It produces about 2 million tons of e-waste every year, with CAGR of 30%. It is estimated that India will produce about 5.2 Metric tons in 2020. India stands 5th place in production of E-waste. The major destruction is caused by computer and telecom combined where people sell their old or damaged devices to shops or to organizations where recycle is made. If devices can't be sold, they should not end in Fields. E-waste usually contains harmful materials like mercury, lead, cadmium, sodium chloride, chloric acid, nitric acid, potassium nitrate and other harmful chemicals which are particularly dangerous when left into soil and water.

E-waste is also valuable because it contains gold, silver, rare earth minerals. Due to this the E-waste is recycled illegally in the streets and in the shops where they treat E-waste without any proper methods and knowledge just to get these metals. While doing this the workers burn these E-waste which may result in chaos. Because of the toxic materials, when these wastes are burnt they produce harmful gases which may cause diseases like skin rashes, breathing problems and other lungs related problems. Many developed countries export these E-waste to Africa and Asian countries because of the reason that they cannot recycle these wastes properly.



E-waste must be managed responsibly and with proper knowledge. Scientists are doing continuous research to reduce these waste and exploring different ways to recycle without causing any kind of effect to the environment.

There are few steps which every one need to take, like using the electronic products responsibly, upgrading only when utterly necessary, Buying second hand products if they can be used, using refurbished products to stop them going into dump yard, selling the E-waste products only to Certified E-waste Recyclers. Stop buying products just for the simple new features.

Source: Wikipedia



Regulatory Updates

Compiled by:

Matruka B M

Professional Student
Mysore



Companies Act, 2013

Updates on Amended Rules

MCA has amended Companies (Meetings of board and its powers) rules, 2014, which is to be known as Companies (Meetings of board and its powers) Second amendment rules, 2019.

In the Companies (Meetings of Board and its Powers) Rules, 2014, in rule 15, in sub-rule (3), in clause (a)

- (a) in sub-clauses (i) and (ii), the words “or rupees one hundred crore, whichever is lower”, shall be omitted;
- (b) in sub-clause (iii), for the words “amounting to ten per cent or more of the net worth of the company or ten per cent or more of turnover of the company or rupees one hundred crore, whichever is lower”, the words “amounting to ten per cent or more of the turnover of the company” shall be substituted; and
- (c) in sub-clause (iv), the words “or rupees fifty crore, whichever is lower”, shall be omitted.

Companies (Meetings of board and its powers) Second amendment rules, 2019, dated 18th day of November, 2019.

MCA has amended Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, which is to be known as Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2020.

In the Principal Rule, for Rule 8A, the following rule shall be substituted,

“8A. Every private company which has a paid-up share capital of ten crore rupees, or more shall have a whole-time company secretary.”

In Rule 9, sub-rule (1) of the principal rule;

- (i) after clause (b), at the end the word “or” shall be inserted.
- (ii) after clause (b), the following clause shall be inserted, namely: (c) every company having outstanding loans or borrowings from banks or public financial institutions of one hundred crore rupees or more.”

(Companies Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2020., dated 6th day of January 2020.

