



# eMagazine



*I am a Director, but not in the Board of Directors!!! ... 4*  
*Intangible Assets under Companies Act, 2013... 7*  
*Model Shops and Establishment Bill, 2016... 11*

**Columns:**

*From Chairman's Desk... 2 | Chapter Activities... 03 | Living Room... 10*  
*Words Worth Millions... 10 | e-Tools for the Professionals ... 12 | Web Reading... 12*  
*News Room... 13 | Spectrum Space... 14 | Regulatory Updates ... 15*



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Dear Readers,

Happy to interact with you through this monthly e-magazine. It's time to salute and show our support to our armed forces guarding our nation in all critical situations.

Finally, the much awaited GST bill has got the nod in both the houses of Parliament and has created history in the tax structure of India. The introduction of Goods and Services Tax (GST) would be a significant step in the reformation of indirect taxation. The GST is expected to foster the Economic growth and the overall development of the nation. I am also happy to inform you that Mysore Chapter in association with CII-Mysore conducted a one-day session on GST at Mysore to throw light on the act.

We regret that due to some unforeseen events we were unable to issue the magazine for the past two months.

This is a season of Festivals and it is a time for celebration and happiness and I pray for the blessings of the Almighty on all of us. I wish all of you a very Happy Dussehra, Navarathri & Deepavali.

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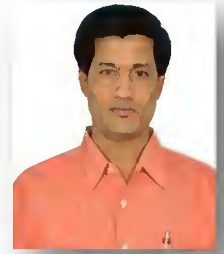
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**CS Vijay Shyam Acharya**

# Chapter Activities

Sl. no	Date	Event	Speaker/s
1	1.07.2016	Van Mahotsav & oral coaching inauguration	Shri. Parashivamurthy, Assistant Professor of Government First Grade College, T Narsipura
2	14.07.2016-11.08.2016	Career Awareness Programmes	CS members , Mysore Chapter
3	15.08.2016	independence day celebrations	Dr. Vaman Rao Bapat
4	15.08.2016	felicitation program for foundation passed students	Mr. Prakash Kothari, Managing Director, Shubham Electronics
5	18.08.2016	seminar on GST jointly with CII-MYSORE	Dr Amitha Sehgal, Prof. Banking & Faculty Member, Management Institute, S S Bhandare, Advisor, Economic and Government Policy, Tata Strategic Management Group
6	24.08.2016	session on income declaration scheme	Mr. D Vishnuvardhana Reddy, IRS, Principal Commissioner of Income Tax, Mysore
7	27.08.2016 & 17.09.2016	study circle meeting on companies act 2013	CS Sabareeshan C K, Past Chairman, Mysore Chapter( Moderator)





# I AM A DIRECTOR, BUT NOT IN THE BOARD OF DIRECTORS!!!

## Introduction

Supreme authority to take major business decisions in day to day operations

In a company registered under the Companies Act in India, Board of Directors is and are the ex-officio, authorized to represent the company before the third parties including various governmental authorities. Most of the government and judicial authorities insist on the signatures of Director(s) for any form, application etc., submitted on behalf of the Company. Such acts of Directors i.e., signing of various documents on behalf of the Company or taking decisions by way of resolutions will bind the company with the third parties/authorities.

## Issue for Focus

We often hear the designations such as Director – HR, Director – Legal, Director – Procurement etc., (hereinafter referred to as ‘designated director in this article). When a person is said to be a Director, the general assumption is that he is appointed to the Board of Directors of that Company and has all the rights and privileges (even liabilities) of a Director under any law in force specifically the Companies Act. It is not a surprise if the third parties act on the belief that he has the authority to represent the Company and considers his decision/s as decisions of his company. To say it in other words, where a company designates a person as a Director, the company and the Board of Directors are estopped from denying their liability for the acts of any such (designated) director, even if he is not appointed to the Board of Directors.

## Legal Position

Under Section 2(13) of the Companies Act, 1956, if read with its forward, defines the term ‘Director’ as below In this Act, unless the context otherwise requires, "director" includes any person occupying the position of director, by whatever the name called. However, under the Companies Act, 2013, the term ‘Director’ is redefined and hence, we need to visit Section 2 (34) of the new Act, which, if read with its forward, defines the term ‘Director’ as below:

In this Act, unless the context otherwise requires, “director” means a Director appointed to the Board of a company. As per the definition under the Act of 1956, the term Director would include any person who would occupy the position of a Director by way of performing the roles and responsibilities of a Director, even though he is not formally appointed to the Board of Directors and requisite formalities are not done for his appointment as a Director.

However, from the above definition under the Act of 2013 it is clear that only a person who is appointed to the Board of a company is recognized as director for all purposes under this Act. It is further inferred that any powers, duties and/or liabilities under this Act extend only to those directors who are appointed to the Board of Directors and not to the designated directors, if any as mentioned above. On the other hand, neither the company law nor any other legislation in India specifically restrains the companies from designating a person as director without appointing him to the Board of Directors of the company.

## Analysis

The issue for analysis in this article is what is the extent of liability on the Company for the acts of a designated director? Or vice versa!

Let's understand the issues with below examples:

**Case 1:** In a manufacturing company, Mr A is designated as Director – Regional Sales and Operations, South and is given the charge of a factory located in the outskirts of Bangalore. However, Mr A is neither appointed to the Board of Directors nor is formally appointed as the Occupier of the factory and also, all decisions relating to the said factory are taken by his reporting manager, who is designated as Vice President, Sales and located at the corporate office of the company.

After two years of commencement of operations in the said factory, the Director of Factories visits the factory and finds some major non-compliance which attracts personal liability on the Director/Occupier. Even though Mr A is not appointed as the Occupier of the factory and all decisions are taken by the VP – Sales, the Director of Factories deems Mr A to be the Occupier in terms of Sec 2(n) of the Factories Act, 1948 read with clause (ii) of the said sub section and makes him liable for the non-compliance. Section 2 (n) of the Factories Act, 1948: "occupier" of a factory means the person who has ultimate control over the affairs of the factory. Further, clause (ii) of the first proviso to the above Section says that "in the case of a company, any one of the directors shall be deemed to be the occupier";

With a combined reading of the above provisions, the Director of Factories is absolutely correct in deeming Mr A to be the occupier of the factory as he fulfils both the requirements in the above provisions i.e., being in charge of the factory, he has the ultimate control over the affairs of the factory and his designation in the company is 'Director', he fulfils the requirement of the proviso as well. The department also may allege that the Company has deliberately not appointed Mr A to the Board, to relieve from his liabilities of a Director. However, it is vital to note that if, Mr A had not been designated as a Director, he would not have been deemed to be the Occupier and hence, personal liability would not follow him.

**Case 2:** Mr B is designated as Director – Sales in a company, but is neither appointed to the Board of Directors nor is expressly authorized by resolution to sign and/or execute any contract with customers. Let's assume that Mr B concludes and signs a contract with one of the customers with his designation mentioned above, and that contract contains a liquidated damages (LD) clause by which, Mr B's company will be liable for LD at 1% for every instance of delay in delivery beyond 7 days (which is not accepted by his company's sales policy). To push sales, Mr B overrides the company policy and signs the same with the designation Director – Sales and the Customer also considers his signature as consent from his company based on his designation.

Later on, if there is a claim of liquidated damages from the customer based on the terms of contract signed by Mr B, the Company or the Board is estopped from denying its liability for LD on the stand that Mr B was not in the Board of Directors and his signature could not be considered by the customer as the consent by his company. As per the law of estoppel, as the Company has given the designation "Director" to Mr B, the Company is deemed to have knowledge of its liabilities for his acts and omissions. Further, as the legal maxim *ignorantia juris non excusat* goes, the Company cannot give an excuse that it was not aware of the law of estoppel, and hence the designation given without the knowledge of such principle of law will not bind the Company! Ignorance of law is no excuse!!!

### Erstwhile DCA view on practice of 'designated director':

The Department of Company Affairs (DCA) vide Circular No.2/82, dated 20.01.1983 has clarified, after noticing the instances where companies have designated executives who are not members of the Board as 'Special Director', 'Director-Administration', etc., that:

- Such designations give an impression to public at large and those dealing with these companies and the executives that they are full-fledged directors entitled to act as such on behalf of the companies.
- If in fact these executives are not directors on the board of the companies, it will be patently wrong on the part of the companies to designate them as directors.
- Therefore, DCA has constrained to advise companies to desist from giving such designations to their executives which tend to mislead.

Above stand was reiterated by DCA vide Circular No.11/1990 (3/5/89-CL-V) dated 29th May, 1990.

### Conclusion

Though it is quite common in multi-national companies to designate the senior head of department as Director of the respective department, a comprehensive study of the above legal provisions, clarification from DCA and examples recommends that unless appointed to the Board of Directors, a person shall not be designated as Director for the reasons stated below:

- “A Director means only a Director appointed to the Board of Directors” is applicable only for the matters under the Companies Act, 2013 and not for all other purposes. i.e., the powers and liabilities of a Director would extend to every person of the company who is designated as director, even if any such person is not appointed to the Board of Directors.
- By designating a person as Director, the company and the Board is deemed to have knowledge of his roles and responsibilities and the Company is estopped from denying its liability for his acts and omissions with the designation as Director.

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**CS Ahalada Rao V.**

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## INTANGIBLE ASSETS UNDER COMPANIES ACT, 2013

Intangible assets are not physical in nature. In today's market, goodwill, patent, trademark, copyright, design and so on are the common intangibles of Corporate Intellectual property. Intangible assets are the long term resources of an entity. Intangible assets derive their value from intellectual rights and add to the other assets. While tangible assets add value to the entity's current market value, intangible assets add to its future worth. Unlike tangible assets, these intangible assets cannot be destroyed. However, they cannot be used as collateral to raise loans. In certain companies like Coco-cola , the value of intangibles outweighs the value of its tangible assets .Even certain companies like IBM, McDonald's and Chevrolet are making incredible profits as they are potentially rich in intangible assets .

**Definition:** Accounting Standard AS-26 defines as "An intangible asset is an identifiable non-monetary asset, without physical substance, held for use in the production or supply of goods or services, for rental to others, or for administrative purposes."

### Companies Act, 1956

Section 211(1) of the Companies Act, 1956 requires all companies to draw up the Balance Sheet and Statement of Profit and Loss account as per the form set out in Schedule VI. As per revised Schedule VI, the disclosure for fixed assets is to be segregated into Tangible assets; Intangible assets; Capital, work-in-progress; and intangible assets under development.

Accounting Standard (AS) 26 specifically defines the accounting meaning of intangible assets and brings out distinction between accounting of intangible assets based on type and business transaction thereby helping the accounting community in true and fair treatment of intangible assets in the books of accounts of the Company. As per Accounting Standard 26 it prescribes the accounting treatment for Intangible Assets which are not dealt with specifically in other Accounting Standard and it applies to all enterprises in accounting for intangible assets.

According to Section 129 of Companies Act 2013 "The financial statements shall give a true and fair view of the state of affairs of the company or companies, comply with the accounting standards notified under section 133 and shall be in the form or forms as may be provided for different class or classes of companies in Schedule III." The Intangible assets classification shall be given in the Balance sheet as

- (a) Goodwill; (b) Brands /trademarks; (c) Computer software; (d) Mastheads and publishing titles;
- (e) Mining rights; (f) Recipes, formulae, models, designs and prototypes; (g) Licenses and franchise;
- (h) Copyrights, and patents and other intellectual property rights, services and operating rights;
- (i) Others (specify nature).

However, as per the Accounting Standard 26 (AS 26) there are two kinds of intangible assets.

1. Legal intangibles (which includes patent, trade mark, copyright and designs)

2. Business intangibles (which include franchises, brand, goodwill, customer list and so on based on the nature of business)

New Companies Act, 2013 has also recognized and places specific sections 77 to 87 on 'Registration of Charges' that includes charges against funding of intangible assets within 30 days of its creation.

With regard to the depreciation of intangible assets, the accounting standards for the time being in force are applicable with exception to road projects. In case of amortization of intangible assets, the accounting standard IAS 38 takes into account amount or rate of amortization and ensures that the total cost of intangible asset is amortization over concession period. The depreciable amount in amortization of intangible assets is cost minus the residual value. The amortization should be on a systematic basis over the best estimate of useful life of the asset.

Under Companies Acceptance of Deposit Rules 2014, for the purpose of exemption of deposit rules for creating the mortgage, it was taken into account only tangible assets. The intangible assets are out of the purview of creation of mortgage. Both the charge provisions and deposit provisions impacts the borrowings in creating the security as an enabling source of funding.

Table of Intangible assets provisions under Companies Act, 2013:

S.no	Section under Companies Act ,2013	Gist of the provision
1	Chapter II Incorporation Section 9	From the date of incorporation mentioned in the <b>CERTIFICATE OF INCORPORATION</b> , such subscribers to the memorandum and all other persons, as may, from time to time, become members of the company, shall be a <b>BODY CORPORATE</b> by the name contained in the memorandum, capable of exercising all the functions of an incorporated company under this Act and having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, tangible and <b>INTANGIBLE</b> , to contract and to sue and be sued, by the said name.
2	Chapter VI Registration of charges Section 77(1)	It shall be the duty of every company creating a charge within or outside India, on its property or assets or any of its undertakings, whether <b>TANGIBLE OR OTHERWISE</b> , and situated in or outside India, to register the particulars of the charge signed by the company and the charge-holder together with the instruments, if any, creating such charge in such form, on payment of such fees and in such manner as may be prescribed, with the Registrar within thirty days of its creation
3	Companies (Prospectus and Allotment of Securities) Rules, 2014  Other matters and reports to be stated in the prospectus	(6) The related party transactions entered during the last five financial years immediately preceding the issue of prospectus as under – (a) all transactions with related parties with respect to giving of loans or, guarantees, providing securities in connection with loans made, or investments made ; (b) all other transactions which are material to the issuer company or the related party, or any transactions that are unusual in their nature or conditions, involving goods, services, or tangible or <b>INTANGIBLE ASSETS</b> , to which the issuer company or any of its parent companies was a party



4	Companies (Share Capital and Debentures) Rules, 2014	8. Issue of sweat equity shares.- (1) A company other than a listed company, which is not required to comply with the Securities and Exchange Board of India Regulations on sweat equity, shall not issue sweat equity shares to its directors or employees at a discount or for consideration other than cash, for their providing knowhow or making available rights in the nature of <b><u>INTELLECTUAL PROPERTY RIGHTS</u></b> or value additions, by whatever name called, unless the issue is authorized by a special resolution passed by the company in general meeting
5.	Companies (Acceptance of Deposits) Rules, 2014	2.Definitions (ix) any amount raised by the issue of bonds or debentures secured by a first charge or a charge ranking paripassu with the first charge on any assets referred to in Schedule III of the Act excluding <b><u>INTANGIBLE ASSETS</u></b> of the company or bonds or debentures compulsorily convertible into shares of the company within five years: Provided that if such bonds or debentures are secured by the charge of any assets referred to in Schedule III of the Act, excluding <b><u>INTANGIBLE ASSETS</u></b> , the amount of such bonds or debentures shall not exceed the market value of such assets as assessed by a registered valuer.
6	Companies (Acceptance of Deposits) Rules, 2014	Form DPI-3 <b><u>RETURN OF DEPOSIT</u></b> 7. Net Worth as per the latest audited bshBalance sheet preceding the date of The return- (i) Paid up share capital (ii) Free reserves , Accumulated loss (ii) balance of defined revenue expenditure (iv) Accumulated un provided depreciation (v) Miscellaneous expenses and preliminary expenses (vi) <b><u>OTHER INTANGIBLE ASSETS</u></b>
7	CHAPTER XV: Compromises, arrangements and amalgamations Section <b><u>230 (2)(v)</u></b>	<b><u>THE VALUATION REPORT</u></b> in respect of the shares and the property and all assets, tangible and <b><u>INTANGIBLE</u></b> , movable and immovable, of the company by a registered valuer.
8	CHAPTER XVII : Registered valuers SECTION 247(2)	The valuer appointed under sub-section (1) shall,— (a) make an impartial, true and fair valuation of <b><u>ANY ASSETS</u></b> which may be required to be valued; (b) exercise due diligence while performing the functions as valuer; (c) make the valuation in accordance with such rules as may be prescribed; and (d) not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time during or after the valuation of assets
9	Chapter XXIX Miscellaneous Dormant company Sec 455 (1)	Where a company is formed and registered under this Act for a future project or to hold an asset or <b><u>INTELLECTUAL PROPERTY</u></b> and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company

10	SCHEDULE III: General instructions for preparation of <b>Balance sheet</b>	<b>II. ASSETS:</b> <b>NON-CURRENT ASSETS</b> (1) (a) <b>Fixed assets</b> (i) Tangible assets (ii) <b>Intangible assets</b> (iii) Capital work-in-progress (iv) Intangible assets under development
11	SCHEDULE III: General instructions for preparation of <b>Balance sheet</b> <b><u>J. INTANGIBLE ASSETS</u></b>	(i) Classification shall be given as: (a) Goodwill; (b) Brands /trademarks; (c) Computer software; (d) Mastheads and publishing titles; (e) Mining rights; (f) Copyrights, and patents and other intellectual property rights, services and operating rights; (g) Recipes, formulae, models, designs and prototypes; (h) Licenses and franchise; (i) Others (specify nature).

**Conclusion**

Of late, though companies have recognized the importance of intangibles by reflecting them in their Balance Sheet, enough disclosures are yet to be made with respect to amortization charge, methods, useful lives, gross carrying amount, and expenditures on research and development. The accounting treatment of intangibles also needs to be more transparent and uniform for the companies in lieu of the convergence of Indian Accounting Standards (Ind AS) with IFRS.

Apart from this the disclosure of intangible assets is mandatory or optional is the question of law which can be settled only by clarification from Ministry of Corporate affairs or by a landmark judgment. But commercially it is time to identify, recognize, measure, value and finally present the intangible assets in the financial statements

*Living Room...*



# Shake it off & Step up

During the 1965 war an Indian Air Force pilot was shot down over Pakistan Major Zaidia and taken as a prisoner of war. On realizing the identity of the wounded soldier at Dargil, Pakistan’s Gen. Ayub Khan called his senior (was his senior before independence) and said he will take care of his son’s safety and offered to release his son. Father reported to have rejected the idea and told him to give his son no better treatment than any other Prisoner of War. “He is my son no longer;” the old Soldier got angry and said “He is the child of this country, a soldier fighting for his motherland like a true patriot. My many thanks for your kind gesture, but I request you to release all or release none. Give him no special treatment”. The father is none other than **Field Marshal KM Cariappa**.

## Words worth Millions

“Either I will come back after hoisting the tricolour (Indian flag), or I will come back wrapped in it, but I will be back for sure.” - **Vikram Bhatra He was honored with the Param Vir Chakra**.



## Model Shops and Establishment Bill, 2016

Dear Professionals Friends,

As a strategic leap for ease of doing business in India, the Union Cabinet chaired by the Prime Minister has considered and cleared on 29th June'2016 the Model Shops and Establishment (Regulation of Employment and Conditions of Service) Bill, 2016. The Bill is sent to all State Governments and Union Territories to enable them to modify their individual Acts, if they so desire either by adopting the said Bill as it is or after modifying its provisions as per their requirements.

This Bill was finalized after detailed deliberations and discussions with public through internet and with employees/labour representatives, employers' associations/federations and State Governments through tripartite consultative process. Thus we can call this Bill a collective legislation with feedback/thoughts from all interested corners.

### Key feature of the draft Model Bill are as follows:

It will cover only establishments employing 10 or more workers except manufacturing units which are covered under Factories Act, 1948.

The Bill provides for freedom to operate 365 days in a year and opening/closing time of establishment.

- Women to be permitted during night shift, if the provision of shelter, rest room ladies toilet, adequate protection of their dignity and transportation etc. exists.
- No discrimination against women in the matter of recruitment, training, transfer or promotions.
- Online one common Registration through a simplified procedure.
- Powers of Government to make rules regarding adequate measures to be taken by the employer for the safety and health of workers.
- Clean and safe drinking water.
- Lavatory, crèche, first aid and canteen by group of establishments, in case, it is not possible due to constraint in space or otherwise by individual establishment.
- Five paid festival holidays in addition to national holidays etc.
- Exemption of highly skilled workers (for example workers employed in IT, Biotechnology and R&D division) from daily working hours of 9 hours and weekly working hours of 48 hours subject to maximum 125 over-time hours in a quarter.

This is a welcome move by the Union Government in boosting employment opportunities and simultaneously creating a conducive business environment for capital investors. Present shops and commercial establishments law in India was enacted in 1960's and needed a major overhaul and surgery which to some extent is done but this amendment will pave way for night bars, clubs, pubs and restaurants to operate for long hours which will create different set of problems which need to be tackled diligently.



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# e-Tools for the Professionals

## Cloud Print application for Smart Phones and Tabs

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**It is not the end, but start of the Journey...!!!! Arun Jaitaly**

Dear Professionals, landmark constitutional amendment bill to implement GST was passed by Rajya Sabha on 03rd August 2016 and GST will be a reality soon. It is important that we keep abreast with the developments of GST law very closely. How about having a single source to highlight advancement of GST in India? Here we come with a website [www.gstindia.com](http://www.gstindia.com) which updates us on history and latest news of India's GST which we all are waiting for.

This website contains featured articles and editorials describing views on GST and how economy & industry shall prepare to implement GST. Also, this section helps to understand how government is taking precautionary steps and how Government Officers are being trained, as introduction of GST will have drastic impact on Central and State Tax structures.

This web page helps to understand specific sector's /industry 's perspective and its challenges including impact on Real estate sector, IT sector, Indian movie industry, etc. FAQ helps to clear our common queries.

'Politics' tab of the website helps us to know how GST will affect government and how there will be a State wise opportunity. This Website has a dedicated section analysing how consumers will be benefited out of it. 'Download' section allows readers to save Articles, Handbook, Organizational structure of GST administration in India and many more. Even website has video column, Useful links and Latest news section for updating our knowledge. This website can be read in 11 different languages!

So, let us be ready for this revolutionary change in Tax System and update our knowledge by subscribing to website for free news!



# News Room



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## NEWS EXPRESS

- ✓ Hyderabad HC directs ICAI to suspend a Hyderabad based CA firm from practicing for 3 years for false certification.
- ✓ Cognizant starts internal investigation in India operations for payment of bribes to set up development centers in India.
- ✓ Govt considering ban on celebrities for misleading ads.
- ✓ Yahoo takes on Google & Facebook, launches new application 'Newsroom'

## Adani buys R-Infra's transmission biz

Adani Transmission is now the largest private operator of power transmission networks in the country after buying the transmission assets of Reliance Infrastructure (R-Infra).

Anil Ambani-promoted R-Infra has signed a binding agreement with Adani Transmission to sell its power transmission business and use the proceeds to pay its debt.

## India seeks enhanced cooperation from Switzerland to tackle black money menace

India sought enhanced cooperation from Switzerland in tackling the menace of black money by providing information on people stashing illegal funds in that country.

## Tax Dept. scanning IDS disclosures filed through post

IT department is compiling final number of disclosures made under IDS Disclosure and scrutinizing postal declarations to weed out fraudulent filings that may have been made in the name of unsuspecting honest tax payers. It is doing physical verification by calling up declarants in whose name the disclosures have been filed through post to ensure that no one else has filed them fraudulently

## SEBI finds Yes Bank violated rules in \$1 billion QIP

SEBI's initial probe report suggested that Yes Bank had violated norms of the listing obligations and disclosure rules in its \$1 billion qualified institutional placement (QIP), which the lender withdrew last month.

## Singapore firms keen on Smart Cities

Businesses in Singapore want to invest in Indian Smart Cities, with special focus on water treatment, renewable energy and technology financing.

## Equalisation Levy ('EL') towards tackling the Digital Economy

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What is Equalisation Levy?

The Tax leviable on the amount of consideration for specified services received or receivable by a non-resident not having permanent establishment ('PE') in India, from a resident in India who carries out business or profession, or from a non-resident having permanent establishment in India.

Considering the potential of new digital economy and the rapidly evolving nature of business operations under the platform of e-Commerce, it is found essential to address the challenges in terms of taxation of such digital transactions as mentioned above. In order to address these challenges, the Ministry of Finance has introduced a new Chapter titled "Equalisation Levy" in the Finance Bill 2016, to provide for an equalisation levy of 6 % of the amount of consideration for specified services as mentioned above.

The Committee constituted by CBDT to deal with the e-commerce transactions which recommended the adoption of Equalisation levy and it has proposed to include Online marketing and advertisements, Cloud computing, Website designing, Hosting and maintenance, Digital space, digital platform for sale of goods and services, among the Specified Services.

Did  
You  
Know?

### Applicability of Equalisation Levy- Transactions & Persons

Presently, Equalisation Levy @ 6% is charged on the following Specified Services:

- a. Online advertisement,
- b. Any provision for digital advertising space, or
- c. Any other facility or service for the purpose of online advertisement
- d. any other services as may be notified

Online means a facility or service or right or benefit or access that is obtained through

- i. The internet
- ii. Any other form of digital or telecommunication network

Following persons:

- ✓ A person resident in India and carrying on business or profession; or
- ✓ A non-resident having a permanent establishment in India; have to charge/deduct at the rate of 6% of the amount of consideration for any specified service as mentioned above, paid or payable to a non-resident.

### Tax Neutrality Equalisation Levy

As per the EL Committee Report, the Tax Neutrality was the major concerns amongst others; the principle of tax neutrality provides that tax should seek to be neutral and equitable between various forms of business activities. In the context of digital economy, tax neutrality has emerged as a major concern, while a purely domestic enterprise is taxed at the marginal tax rate under the domestic laws, a multinational enterprise may not be taxable at all in the country of source due to the ability of digital enterprises to conduct their business through digital and telecommunication networks without requiring any physical presence in the country of source. When tax neutrality is violated, the unfair tax advantage enjoyed by some market enterprises can distort the market economy. This has led the Ministry in framing law to curb such distortion in Digital Transactions.

Pick of  
the  
month

# Regulatory Updates

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## CUSTOMS & FTP

### Notifications/Circulars/News

The Central Government has introduced Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Second (Amendment) Rules, 2016. The following amendments have been made:

- ☑ These Rules will now be applicable to a Service Provider as well.
- ☑ The manufacturer/ service provider will now have the option to furnish a continuity bond with security (Bank Guarantee) as against the mandatory requirement of furnishing a surety bond earlier.
- ☑ The time limit allowed to re-export imported goods has been increased from 3 months to 6 months.

*No. 100/ 2016-Customs (NT), dated 14 July, 2016*

The Central Government has amended the Policy for Import of Hazardous Waste to provide that the import of Hazardous Waste in India shall be subject to the provision of Chapter III of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016.

*No. 14/2015-20, dated 14 July, 2016*

The Central Government has clarified that entitlement of Served from India Scheme/ Service Export from India Scheme shall be calculated only on the basis of receipt of foreign exchange earned by exporters after deduction of state/ central tax collected from customers.

*No. 11/2015-20, dated 21 July, 2016*

### Case Law

The Chennai Tribunal held that Liquid Crystal Device Panels were held classifiable under CTH 9013 80 10 as “Liquefied Crystal Devices” instead of under CTH 8529 90 90, as imported goods were most specifically covered under CTH 9013 80 10.

*Samsung India Electronics Pvt Ltd v CC (2016 (337) ELT 87)*

The Chennai Tribunal held that parts of Hydro Electric Generator, i.e., epoxy stator coils, were classifiable under CTH 8503 as parts of generator, instead of under

CTH 8544, since the same were solely and principally designed for power generators.

*Karnataka Power Corporation Ltd v CC (2016 (337) ELT 104)*

The Delhi Tribunal held that fingerprint reader was classifiable under CTH 8471 as “Automatic Data Processing Machine”, instead of under CTH 8543, since the product was solely and principally used in automatic data processing systems, rather than as an electrical machine having individual function.

*STJ Electronics Pvt Ltd v CC (2016 (337) ELT 140)*

The Chennai Tribunal held that the value of imported goods could not be enhanced merely on the basis of parallel set of invoices maintained by the overseas supplier’s agent, and without considering the contemporaneous imports and remittances made by the importer in relation to such imports.

*National Fruits Agency v CC (2016 (337) ELT 232)*

The Mumbai Tribunal, held that royalty for technical know-how was not includible in the value of imported raw material in case there was no condition in the import agreement to purchase raw material from related overseas supplier.

*KalyaniBrakes Ltd v CC (2016-TIOL-1696-CESTAT-MUM)*

The Chennai Tribunal held that benefit of an exemption could not be denied merely on account of procedural lapses. The benefit of concessional rate of import duty had to be extended even if the compliance under Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 was done post import of goods.

*CC v MedreichSterilabLtd (2016 (337) ELT 280)*

The Gujarat High Court held that mere pendency of proceedings on a similar issue before various Tribunals could not be a ground for keeping adjudication proceedings in abeyance in all cases. Facts and circumstances of each matter should be looked into for deciding the matter.

*KyoriOreminLtd v Chief Commissioner of Customs (2016 (337) ELT 228)*

The Kerala High Court held that in case of import of goods covered under any other Act like FSSAI etc., the standards that are effective on the date of release of goods by Customs would be applicable, and not those that were effective at the time of import.

[Firdouse International Trading Co. v CC \(2016 \(336\) ELT 408\)](#)

The Delhi Tribunal held that the description of goods could not be challenged merely on the basis of assumption and presumption. Instead, it should be backed by test reports or an expert opinion. In this matter, the department disputed clearance of Heavy Melting Scrap alleging that it was hazardous slag.

[Nexus International v CC \(2016 \(336\) ELT 667\)](#)

The Bangalore Tribunal held that the conversion of Free Shipping Bills into Export Promotion Scheme Shipping Bills could not be rejected if there was a technical problem in EDI system at the time of filing Shipping Bill. Further held that conversion had to be allowed under Section 149 of Customs Act on the basis of documentary evidence in existence at the time of export of goods that the goods were eligible for such export benefit.

[Indian Immunologicals Ltd. v CC \(2016-TIOL-1808-CESTAT-BANG\)](#)

The Hyderabad Tribunal held that confiscation and imposition of penalty was illegal even in case the Pre-shipment Inspection Certificate was not obtained from an authorized agency of the exporting country, provided no objectionable items were found at the time of post-shipment inspection in India.

[Micro Metals v CC \(2016-TIOL-1642-CESTAT-HYD\)](#)

The High Court of Delhi held that exports made after filing of application and before date of issuance of Advance Licence could not be considered in fulfilment of Export Obligation under the Advance Licence scheme.

[Rotomac Electricals Ltd. v Union of India \(2016 \(336\) ELT 390\)](#)

The High Court of Delhi held that an ex-parte Adjudication Order for non-fulfilment of export obligation under Export Promotion Capital Goods Scheme could not be passed without considering the

Export Obligation Discharge Certificate duly obtained from DGFT office and submitted to Customs Authorities.

[Auto Ignition Ltd. v Union of India \(2016 \(336\) ELT 398\)](#)

The Hyderabad Tribunal held that if imported second hand goods were the basic infrastructure and machinery for revenue generation, then such goods had to be considered as “Second hand Capital goods” and be allowed for imports without any licence in terms of the Foreign Trade Policy.

[Studio 24 Frames v CC \(2016 \(336\) ELT 532\)](#)

The High Court of Delhi held that a DGFT had full and wide statutory powers for reviewing the orders passed by any officer subordinate to him.

[Pan Parag India Ltd. v DGFT \(2016 \(336\) ELT 625\)](#)

The High Court of Karnataka held that the claims under Incremental Exports Incentivisation Scheme could not be denied on the basis of a Public Notice in case all required documents were in place, and all requirements under the scheme had been fulfilled.

[Blueline Foods \(India\) Pvt. Ltd. v Union of India \(2016 \(337\) ELT 63\)](#)

## Ministry of Corporate Affairs

### Notifications/Circulars/News

MCA has notified the rules associated with NCLT and NCLAT. Since the rules are very comprehensive, provided below is the link to access the same. Kindly go through the same for further details;

[http://www.mca.gov.in/Ministry/pdf/Rules\\_22072016\\_1.pdf](http://www.mca.gov.in/Ministry/pdf/Rules_22072016_1.pdf)

[National Company Law Tribunal Rules, 2016 dated 21st July 2016](#)

MCA has amended the rules relating to Share Capital and Debentures (3rd Amendment), Provided below are the highlights of the same;

Shares with differential rights can be issued after 5 years once the various defaults like non-payment of dividend/ interest etc are made good

Start ups can issue sweat equity upto 50% of paid-up share capital, the said benefit can be availed upto 5 years from the date of registration as start-ups



Start ups can issue ESOP to its promoters, the said facility can be availed upto 5 years from the date of registration

While making **preferential offer by way of private placement, shares** can be issued as **partly paid-up** shares as well.

While making preferential offer of convertible securities, the same can be issued with an option of fixing the conversion price up **front** (at time of issue) **or** fixing the price 30 days in advance to the **date of conversion** based on a valuation report (valuation report shall not be older than 60 days)

E-form SH-7 from now onwards can be used for filing of increase of members in case of company not having share capital as well

Company issuing secured debentures can create charge on either its assets or assets of holding company or subsidiary company or associate company.

*Companies (Share Capital and Debentures) Third Amendment Rules, 2016 dated 19th July 2016*

MCA has brought in amendment in Incorporation rules, mentioned below are some of the important amendments mentioned in the notification;

#### **1. Subscription Sheet to Memorandum of Association:**

Now, the type written or printed particulars of the subscribers and witness shall be allowed as if it is written by the subscribers and witness so long as they appends his or her signature or thumb impression.

#### **2. Identity and address proofs of subscribers:**

In case the subscribers are already holding DIN, and the particulars provided therein have been updated as on the date of application and the declaration to this effect is given in the application, the proof of identity and residence need not be attached.

#### **3. Form INC 10 Omitted:**

The requirement of attaching INC 10 to incorporation forms has been omitted.

#### **4. Publication of Name by Company:**

Every company which has a website for conducting online business or otherwise, shall disclose or publish its name, address of its registered office, CIN etc., on the home page of the said website.

#### **5. Shifting of Registered office from One State to another:**

NOC from RBI to be attached with Form INC 23, in case company is registered as NBFC and in case of listed

company, now there is a need to serve notice along with copy of application to SEBI.

*Companies (Incorporation) Third Amendment Rules, 2016 dated 27th July 2016*

In Companies (Accounts) Rules, The Second Proviso to Rule 6 has been modified as provided below

“Provided further that nothing in this rule shall apply in respect of preparation of consolidated financial statements by a company if it meets the following conditions:-

(i) If it is a wholly-owned subsidiary, or is a partially-owned subsidiary of another company and all its other members, including those not otherwise entitled to vote, having been intimated in writing and for which the proof of delivery of such intimation is available with the company, do not object to the company not presenting consolidated financial statements;

(ii) it is a company whose securities are not listed or are not in the process of listing on any stock exchange, whether in India or outside India and

(iii) its ultimate or any intermediate holding company files consolidated financial statements with the Registrar which are in compliance with the applicable Accounting Standards.”

Rule 8 has been modified.

The Board’s Report shall be prepared based on the stand alone financial statements of the company and shall report on the highlights of performance of subsidiaries, associates and joint venture companies and their contribution to the overall performance of the company during the period under report.

*Companies (Accounts) Amendment Rules, 2016 dated 27th July 2016*

## **CENVAT**

### **Notifications/Circulars/News**

The CBEC has issued revised instructions in relation to recovery of confirmed demands during the pendency of stay application. It has clarified that recovery proceedings in relation to an HC or Tribunal order confirming demand of duty may be initiated only after 60 days from the date of HC/ Tribunal order, as the case may be, where no stay has been granted by the SC or HC against the Tribunal/ HC order, respectively.

[Circular no. 1035/23/2016 -CX dated 4 July, 2016](#)

The CBEC has issued instructions in relation to scope of the word 'site' appearing in the Notification No. 12/2012-CE dated 17.03.2012. It states that in some field formations, the distance at which goods manufactured at site is used in the project, has been considered as criterion for examining the eligibility of goods for exemption. It has been clarified that this is an extraneous criterion not flowing from the language used in the notification, particularly when the expression, 'site' stands explained in the notification. The eligibility criteria must flow from the plain reading of the explanation of the expression 'site' in the notification, and therefore, each case had to be decided on the facts of each individual case.

[Circular no. 1036/24/2016 -CX dated 6 July, 2016](#)

The CBEC has clarified that a manufacturer or a service provider who opts to issue invoice authenticated by digital signature, may print a copy of such invoice, sign them manually and forward the same to customers who are unable to accept or receive the digitally signed invoice.

[Circular no. 1038/26/2016 -CX dated 19 July, 2016](#)

### Case Law

The Punjab & Haryana High Court held that assembly of different parts of decorative lamp shades and chandeliers did not amount to manufacture as no new product came into existence.

[CCE v Kapoor Lamp Shade Co. \(2016 \(337\) ELT 14\)](#)

The Delhi Tribunal held that waste generated in the form of stationery, carbon paper, envelopes, wooden scraps, loose polythene scrap (packing wrappers of inputs), etc. in various departments of a factory, were not exigible to duty since these goods could not be said to be generated in the process of manufacture of BOPP films.

[Max India Ltd v CCE \(2016 \(336\) ELT 661\)](#)

The Mumbai Tribunal held that rental charges for retention of cylinders beyond free loan period, not being related to sale of goods, were not includible in the assessable value of gases.

[CCE v Inox Air Products Ltd. \(2016 \(336\) ELT 316\)](#)

The Delhi Tribunal held that if, on finalisation of assessment, the assessee was required to pay shortfall of duty during a particular period and was denied the excess payment made during another period of the same financial year, the entire purpose of keeping the assessment provisional would be rendered futile, and hence, denial of adjustment of excess and short payment of duty was held not to be tenable in law.

[Hindustan Zinc Ltd. v CCE \(2016 \(336\) ELT 328\)](#)

The Delhi Tribunal held that CENVAT credit was admissible on lubricants used in dumpers which had been used within the mining area, in or in relation to production of coal.

[Northern Coalfields Ltd v CCE&ST \(2016 \(337\) ELT 289\)](#)

The Mumbai Tribunal held that credit was admissible on bought out plastic bottles fitted with own manufactured cap, when cleared on payment of duty that was higher than the CENVAT credit availed on such plastic bottles.

[Shree Rubber PlastCo. P. Ltd. v CCE \(2016 \(336\) ELT 313\)](#)

The Chennai Tribunal held that input credit was admissible on jumbo bags sent to job workers for dispatch of bulk detergent power back to the appellant, when the cost of such jumbo bags were included in the assessable value of the final products.

[Hindustan Unilever Ltd v CCE \(2016-TIOL-1159-CESTAT-MAD\)](#)

The Mumbai Tribunal held that credit was admissible on bought-out items shipped along with boilers. It was also held that demand for reversal of credit was not sustainable, since these goods had been supplied to SEZ or exported outside India.

[Thermax Ltd v CCE \(2016-TIOL-1227-CESTAT-MUM\)](#)

The Mumbai Tribunal held that sludge settled at the bottom of storage tank during storage of oil was a waste product, and hence, there was no requirement for reversal of credit on such goods.

[Indo Rama Synthetics \(I\) Ltd. v CCE \(2016 \(336\) ELT 541\)](#)

The Delhi Tribunal held that CENVAT credit on short receipt of coal to the extent of 3%, due to washing loss

at job worker's end, could not be denied when there was no evidence that the assessee had diverted the duty paid inputs with intent to evade duty.

*SardaEnergy and Minerals Ltd. v CCE (2016 (337) ELT 143)*

The Bangalore Tribunal held that transfer of accumulated CENVAT credit was permissible in case of de-bonding of 100% EOU to DTA unit.

*Tecumseh ProductsIndia P. Ltd. v CCE (2016 (336) ELT 685)*

The Hyderabad Tribunal held that 100% credit availed on capital goods in first year instead of 50% was tantamount to availmentof credit in advance; demand for reversal of credit could not be upheld in such case inasmuch as balance 50% credit would be admissible in the next year. Thus, the appellant was liable to pay only interest on such premature availmentof CENVAT credit.

*Madras Cements Ltd v CCE (2016 (336) ELT 175)*

The Chennai Tribunal held that transfer of unutilisedCENVAT credit lying in the account at the time of shifting of factory from Hosurto Bangalore was permissible under Rule 10 of CENVAT Credit Rules, 2004.

*M/s. FeatherliteProducts PvtLtd v CCE (2016-TIOL-1288-CESTAT-MAD)*

## **GST (VAT, Sales Tax and Entry Tax)**

### **Case Laws**

The Gujarat High Court held that a 'loader' used for execution of works contract, even though it happened to be a vehicle, would fall under the expression, 'machinery'. The HC observed that if an equipment satisfied the description of being a machinery used in the execution of a works contract, the fact that it also happened to be a motor vehicle would not change this fundamental feature.

*In State of Gujarat through Commissioner v GMM Company Ltd c/o Manibhai& Brothers Estate [2016-TIOL-1495-HC-AHM-VAT]*

The Rajasthan High Court held that supply of crude oil produced in an oilfield in Rajasthan to Central Government-nominated refineries in Karnataka would qualify as inter-state sales transaction. The HC observed that even though the point of sale was within the State

of Rajasthan, the transaction would qualify as inter-State sales so long as the crude oil produced in Rajasthan had occasioned the movement outside the State.

*Cairn India Ltd & another v State of Rajasthan [2016-TIOL-1472-HC-RAJ-VAT]*

## **Service Tax**

### **Case Laws**

The Mumbai Tribunal held that availmentof CENVAT credit pertaining to output services, where the abatement under notification no. 1/2006 was not taken, did not disentitle the assessee from claiming abatement for other services, if conditions for claiming abatement under notification 1/2006 were fulfilled for services where abatement is claimed.

*Afcons Infrastructure Ltd v CST (2016-TIOL-1818-CESTAT-MUM)*

The Hyderabad Tribunal held that CENVAT credit of service tax paid on financial services for processing loan to acquire immovable property could be claimed.

*Highend Properties Pvt. Ltd. v CCEx&ST (2016-TIOL-1622-CESTAT-HYD)*

The Mumbai Tribunal held that service tax under intellectual property services could be levied only on services which were recognisedby a law in India, and not on intellectual property right recognisedunder the law of some other country.

*Reliance Industries Ltd. v CCEx& ST (2016-TIOL-1654-CESTAT-MUM)*

The Mumbai Tribunal held that CENVAT credit of services of laying pipeline for transporting gas could be claimed by a company engaged in transporting gas by pipeline.

*Reliance Gas Transportation Infrastructure Ltd. v CST (2016-TIOL-1593-CESTAT-MUM)*

The Bangalore Tribunal held that the amounts collected from customers towards electricity and water used while providing space on rent were not subject to service tax.

*Karnataka Trade Promotion Organisationv CST (2016-TIOL-1783-CESTAT-BANG)*