

eMagazine

HAPPY NEW YEAR!

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Introducing

'CS MINERVA'

- A new column for students from this issue

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Vision

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

Motto

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Mission

"To develop high calibre professionals facilitating good corporate governance"

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Dear Professional Colleagues,

Warm greetings!

We are in the most happening season of the year. With Exams just around the corner, I am sure the students' preparation will be at its best and I wish all the students the Best of Luck.

During the month of November Chapter conducted a joint workshop on GST with Mahajana PG Centre on the 15th, for MBA students. The new batch of coaching classes is commencing from January 2018 for the Foundation & Executive Level. I request the student community to avail this wonderful opportunity offered for their benefit.

The people of the world are gearing up to celebrate Christmas this month with all fervour and grandeur. On this occasion, I wish all the students & Professional Colleagues a Merry Christmas and a very Happy & Prosperous New Year 2018.

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Chapter Activities

1. Seminar on Impact of GST on Business Environment

The Chapter in association with the Department of Studies in Business Administration, Pooja Bhagavat Memorial Mahajana Education Centre, Metagalli, organized a half day seminar on “Impact of GST on Business Environment” on 15.11.2017 at MTA Auditorium.

Dr. CK Renukarya, Director, Mahajana PG campus, was the Chief Guest and delivered the inaugural address. He explained about the importance of GST in the present day environment and the bold decision taken by the government. The program was presided by Sri R. Vasudevamurthy, President, Mahajana Education Society. The first session was handled by CS Manjunath S, Secretary of the Chapter on the topic “Overview of GST”. In his address he explained about the history, implementation, tax rates and benefits of GST. The second session was handled by CA Vageesh Hegde, on the topic “Impact of GST on Business Environment”. Mr. SR. Khadri, Director, MBA department, Lecturers & students were presented during the occasion.





Voluntary Winding Up- IBC



Short Summary

Vide Notification No. IBBI/2016-17/GN/REG010 dated 31st March, 2017 IBBI has notified the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017. The same has been published in the official gazette. As a result of the same w.e.f. 1st April, 2017 voluntary winding up shall be conducted under Insolvency and Bankruptcy Code, 2016 (hereafter referred as "IBC").

Members' Voluntary Liquidation is the option for solvent companies when it comes to liquidation. If you are a director of a company that you feel no longer has a purpose and the company has enough funds to pay back creditors in full then this process would be the option for you. A Members' Voluntary Liquidation is a tax efficient method for distributing or restructuring the assets and/or trade of a company

Introduction

Liquidation (or "winding up") is a process by which a company's existence is brought to an end.

The provisions concerning to Voluntary Winding up of a Company was specified in section 304-325 of Companies Act, 2013, although these provisions never notified. As the IBC got the president assent on 28/05/2016, as per section 255 and schedule XI of IBC the sections of Voluntary winding up "Omitted" from Companies Act, 2013. Prior to 1st April, 2017 voluntary Winding up was done as per the Companies Act, 1956.

Vide Notification No. IBBI/2016-17/GN/REG010 dated 31st March, 2017 IBBI has notified the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017. The same has been published in the official gazette. As a result of the same w.e.f. 1st April, 2017 voluntary winding up shall be conducted under Insolvency and Bankruptcy Code, 2016 (hereafter referred as "IBC").

These Regulations shall apply to the voluntary liquidation of corporate persons under Chapter V of Part II of the Insolvency and Bankruptcy Code, 2016.

Highlights

¹ Insolvency Professionals shall act as liquidator.

The corporate person shall, from the liquidation commencement date, cease to carry on its business except as it is required for the beneficial winding up of its business

The liquidator shall endeavour to complete the liquidation process of the corporate person *within*

¹ The following categories of individuals are eligible for registration as an insolvency professional:

(a) Advocates, Chartered Accountants, Company Secretaries and Cost Accountants with 10 years' of post-membership experience (practice or employment) or a Graduate with 15 years' of post-qualification managerial experience, on passing the Limited Insolvency Examination.

(b) Any other individual on passing the National Insolvency Examination.

twelve months from the liquidation commencement date.

The liquidator shall preserve a physical or an electronic copy of the reports, registers and books of accounts as per Regulations 8 and 10 for at least eight years after the dissolution of the corporate person, either with himself or with an information utility.

Process of Voluntary Winding up

The Winding up of a Company can also be done voluntarily by the members of the Company, if:

The Company passes a Special Resolution in the General Meeting for winding up of the Company.

The Company in a general meeting passes a resolution requiring the Company to be wound up voluntarily as a result of the expiry of the period of its duration, if any, fixed by its articles of association or on the occurrence of any event in respect of which the articles of association provide that the company should be dissolved.

The Voluntary winding up process applies where the directors and shareholders decide to cease trading their solvent limited company.

Step 1: Convene a Board Meeting with two Directors or by a Majority of Directors

1.1. Pass a resolution for proposal of Voluntary Liquidation of the Company.

1.2. Prepare a declaration from majority of the directors of the company verified by an affidavit stating that they have made a full inquiry into the affairs of the company and they have formed an opinion that either the company has no debt or that it will be able to pay its debts in full from the proceeds of the assets to be sold in the voluntary liquidation; and the company is not being liquidated to defraud any person - section 59(3) (a) of Insolvency Code, 2016.

1.3. File the declaration with ROC in e-form GNL-2

1.4. Attachment to Declaration: Audited financial statements and record of business operations of the corporate person for the previous two years or for the period since its incorporation, whichever is later; a report of the valuation of the assets of the corporate person, if any, prepared by a registered valuer;

Step 2: Convene a General Meeting

Within 4 weeks of passing of above said declaration hold the meeting of Shareholders for the following purposes:

2.1. Pass a Special Resolution for approving the proposal of Voluntary Liquidation of the Company.

2.2. Appoint an insolvency professional to act as the liquidator. Resolution should contain the terms and conditions of the appointment of the insolvency professional, including the remuneration due to him.

2.3. File the special resolution with ROC in e-form MGT-14

Step 3: Approvals of Creditors if Company Owes Debt

3.1. If the company owes any debt to any person, creditors representing two-thirds in value of the debt of the company shall approve the resolution passed above by the shareholders within seven days of passing of such special resolution.

3.2. Approval can be by holding of Meeting, by Consent of 2/3 of creditors in writing etc. Company will place the copy of resolutions before the creditors for their approval.

Commencement of Voluntary Liquidation

A voluntary liquidation for a corporate person shall be deemed to have commenced from the date of passing of the resolution (after approval from the creditors of the Company).

Step 4: Public Announcement by the Liquidator

The liquidator shall make a public announcement in Form A of Schedule I within five days from his appointment (i.e. 5 days from the date of General Meeting).

4.1. The public announcement shall- Call upon stakeholders to submit their claims as on the liquidation commencement date; and provide the last date for submission of claim, which shall be thirty days from the liquidation commencement date.

4.2. The announcement shall be published- In one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate

person and any other location where in the opinion of the liquidator, the corporate person conducts material business operations. On the website, if any, of the corporate person; and on the website, if any, designated by the Board for this purpose.

Step 5: Proceedings by Liquidator

5.1. The liquidator shall submit a Preliminary Report to the Company within 45 days from the liquidation commencement date, detailing as given below. The liquidator shall preserve a physical as well as an electronic copy of the reports for eight years after the dissolution of the corporate person: The capital structure of the Company, the estimates of its assets and liabilities as on the liquidation commencement date based on the books of the Company, Whether he intends to make any further inquiry in to any matter relating to the promotion, formation or failure of the Company or the conduct of the business thereof; and the proposed plan of action for carrying out the liquidation, including the timeline within which he proposes to carry it out and the estimated liquidation costs.

5.2. Maintenance of Registers and Books of Account:

5.2.1. The liquidator shall maintain the registers and books (as mentioned in regulation 10), as may be applicable, in relation to the voluntary liquidation of the corporate person, and shall preserve them for a period of eight years after the dissolution of the corporate person.

5.2.2. Where the books of account of the corporate person are incomplete on the liquidation commencement date, the liquidator shall have them completed and brought up-to date, with all convenient speed.

5.2.3. The liquidator shall keep receipts for all payments made or expenses incurred by him

5.3. Liquidator has following duties & Rights:

5.3.1. The liquidator may call for such other evidence or clarification as he deems fit from a Claimant for substantiating the whole or part of its claim.

5.3.2 Verification of claims

5.3.2.1. The liquidator shall verify the claims submitted within thirty days from the last date for receipt of claims and may either admit or reject the

claim, in whole or in part, as the case may be, as per section 40 of the Code.

5.3.2.2. A creditor may appeal to the Adjudicating Authority against the decision of the liquidator as per section 42 of the Code.

5.3.3. List of stakeholders

5.3.3.1. The liquidator shall prepare the list of stakeholders within forty-five days from the last date for receipt of claims.

5.3.3.2. The liquidator shall prepare a list of stakeholders on the basis of proofs of claims submitted and accepted under these Regulations, with- the amounts of claim admitted, if applicable, the extent to which the debts or dues are secured or unsecured, if applicable, the details of the stakeholders, and The proofs admitted or rejected in part, and the proofs wholly rejected.

5.3.4. Paid Money into Bank Account

5.3.4.1 The liquidator shall open a bank account in the name of the corporate person followed by the words 'in voluntary liquidation', in a scheduled bank, for the receipt of all moneys due to the corporate person.

5.3.4.2. All payments out of the account by the liquidator above five thousand rupees shall be made by cheques drawn or online banking transactions against the bank account.

5.3.5. Distribution

5.3.5.1. The liquidator shall distribute the proceeds from realization within six months from the receipt of the amount to the stakeholders.

5.3.5.2. The liquidation costs shall be deducted before such distribution is made.

Step 6 Completion of Liquidator

6.1. The liquidator shall endeavour to wind up the affairs of the corporate person within one year from the voluntary liquidation commencement date.

6.2. In the event of the voluntary liquidation continuing for more than one year, the liquidator shall.

6.2.1. call a meeting of the contributories of the corporate person within fifteen days from the end

of the year in which he is appointed, and at the end of each succeeding year; and

6.2.2. Shall present a Status Report indicating progress in liquidation, including Settlement of list of stakeholders, Details of any property that remain to be sold and realized, Distribution made to the stakeholders, and Distribution of unsold property made to the stakeholders; Developments in any material litigation, by or against the corporate person; and filing of and developments in applications for avoidance of transactions in accordance with Chapter III of Part II of the Code;

6.2.3. The Status Report shall enclose an audited account of the voluntary liquidation showing the receipts and payments pertaining to liquidation since the liquidation commencement date.

Step 7 Preparation of Final Report

7.1. Final Report: On completion of the liquidation process, the liquidator shall prepare the Final Report consisting of:

7.1.1. An audited account of the voluntary liquidation, showing the receipts and payments pertaining to liquidation since the liquidation commencement date; and

7.1.2. A statement demonstrating that the assets of the Company has been disposed of; the debt of the Company has been discharged to the satisfaction of the creditors; no litigation is pending against the Company or sufficient provision has been made to meet the obligations arising from any pending litigation.

7.1.3. sale statement in respect of all assets containing i) the realized value; (ii) cost of realization, if any; (iii) the manner and mode of sale; (iv) an explanation for the shortfall, if the value realized is less than the value assigned by the registered valuer in the report of the valuation of assets (v) the person to whom the sale is made; and (vi) any other relevant details of the sale.

Step 8 Submissions of Final Report/ Application with NCLT

8.1. The liquidator shall send the Final Report by registered post at their registered address and by electronic means to the contributories of the corporate person; the registrar; and the board.

8.2. Submission with NCLT

Where the affairs of the Company have been completely wound up, and its assets completely liquidated, the liquidator shall make an application to the NCLT in form NCLT-1 for the dissolution of such Company

Step 8 Orders by NCLT

The Tribunal shall fix a date for the hearing of the petition where the Tribunal satisfied with the application. NCLT to pass an order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly

Step 9 Filing of Order with ROC

The order of the Tribunal shall be filed with the Registrar by the company within a period of 14 days of the receipt of the copy of order, or such other time as may be fixed by the Tribunal.

Conclusion

Suspension of Process of Liquidation: If liquidator is of the opinion that the voluntary liquidation is being done to, defraud a person, he shall make an application to the Adjudicatory Authority to suspend the process of voluntary liquidation. Where the liquidator is of the opinion that the corporate person will not be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation, he shall make an application to the Adjudicating Authority to suspend the process of voluntary liquidation.

As now Registered Insolvency Professional will be required to act as a Liquidator in case of winding up proceedings. It is a great opportunity for the Company Secretaries. It will help to boost our profession on a new height.



A Rose by Any Other Name Smells As Sweet

The issue in brief:

Can a Managing Partner and a Partner of an unregistered Partnership firm, be designated as 'Managing Director', and 'Director' respectively. Are there any statutory provisions governing designations in a firm?

The popular adage from the Bard, "A rose by any other name, smells as sweet", apparently seems to have a universal application in all spheres. However, when it comes to titles bestowed or designations given, each specific title or designation appears to convey different connotations. They grant superiority in terms of placement, responsibility description, and hierarchy etc., to name a few.

Corporate titles or commonly known as business designations are titles given to individuals within a business depending on the role that they play in an organization and that which also portray the duties and responsibilities within that specific role. The larger the business, more titles are present, such as CEO, COO and executive directors.

Those that have higher roles within a company such as the elite positions are often referred to as "chief" and those that have lower roles within the business house are employees that simply carry out day-to-day tasks. There are many titles within an organisation such as Chairman, executive director, managing director, company director. There is also a category of compulsory statutory appointees like the CEO, CFO, Company Secretary, Auditor, Cost Auditor etc. These are essentially found in corporate entities which are incorporated under the Company Law. As such, the Company Law specifically refers to most of these designations and has provisions relating to requisite qualifications, mode of appointment and removal, term of office, approvals, required, remuneration etc.

Restricting our examination, the terms "Managing Director", and "Director" are prescribed as compulsory titles under the Company Law. No

such compulsory titles are prescribed under the laws governing a Partnership. It is for the partners to decide their titles.

We shall now examine the distinguishing features between a Director and a Partner.

Although Directors carry on and manage the affairs of the Company, jointly and severally, their position is not at par with that of a partner of a firm. The partners in a firm are its owners. This is not so in the case of directors of a company. In a company, the ownership vests with the company. Directors are mere hired men of the company to manage its affairs. Unlike the case of a firm there is no *inter se* agency relationship between directors of a company. In a firm, a partner can act on behalf of other partners and can bind them on behalf of the firm. This is not the position in the case of the directors of a company. A director has no authority to act for and on behalf of other directors of the company. Other directors are not liable for his action unless he has been authorized by them to act in a particular manner on behalf of the Board of Directors of the company. The directors act as agents of the company; they are not agents for the fellow directors. Directors are not managing partners. They are the officers of the company employed to manage its affairs in accordance with the Articles of the company and subject to the control of the shareholders, and board of directors of the company. Even if a director is designated as a Managing Director or a Whole Time Director, he is subject to the overall superintendence of the Board and the shareholders. His appointment and terms of employment are to strictly be as per provisions of law, the guidelines of the government and as may be approved by the members and / or the Central Government in some cases. Such a director is partly in the position of a director and partly in the position of a servant of the company. In general, however, the position of a director vis a vis a company is neither that of a master nor that of a servant nor can be equated with partners of a partnership firm. Directors stand in a fiduciary

position towards the company in respect of their powers and in respect of the capital under their control. A director forms part of the definition of "officer" of a company while a partner is also a co-owner. While a director can hold a place of profit, he is at best an employee for that purpose and not a regular paid servant.

Thus, it can be gainsaid that a (mg.) Partner of a Partnership firm stands on a higher pedestal than a (mg.) Director of a company does. By reasons of more familiarity, and going by the size and greater visibility of a company, the general public have associated a (mg.) Director with the topmost position in a corporate hierarchy.

Now, looking at the queries raised:

1. Can a Managing Partner and a Partner of an unregistered Partnership firm be designated as 'Managing Director', and 'Director' respectively?

Subject to the above analysis relating to the different levels of platforms a Partner of a firm and

a Director of a unit under the Company Law stand, if a firm desires to change the titles, the answer is YES, it can.

2. Are there any statutory provisions governing designations in a firm?—

The answer is NO.

There are legislations that provide for certain appointees with specific titles or designations. But even these titles or designations are not prohibited from use by any other type of organization or body. For example:

-The Constitution provides for President, Vice President and Governor. But we find even small bodies using such titles in their management structure.

-The Company Law prescribes the titles of Managing Director and Director and we find even governmental departments use such titles (Director of Education)

(The author was the first Company Secretary of Automotive Axles Ltd, Mysore (1981-84)

Living Room



Crack the Exam and don't wrack your Brain

With Exams just around the corner here are few tips to help you in preparing for it.

Small is Big-Learn in small sessions

Learning continuously for a long time can be tedious and there is a tendency to lack interest. It is always best to break down your studying hours into smaller session. This not only helps in concentration but also relaxes the stressful learning process.

Be a Lark- Learn in the Morning

Every morning brings with it fresh energy. The mind will be relaxed after a good night's rest and is

ready to absorb the activities of the day. So learning in the morning hours of the day helps in grasping and retaining it in memory.

Art of writing -Become a writer

Remember the days when the phone numbers of all your friends and families was retrieved from memory? That is because the phone numbers were all written in a phone book and every time you wanted to dial a number, you flipped over the pages and this over a period of time got registered in your memory. Writing is one of the effective ways of remembering whatever you learn. Write as notes or points and this will help you during revision.

Be a salesman- Have a target

Before setting out to study it is important to decide the portion that needs to be covered based on importance of the subject and topic. It is always better to set out the topics to be covered in a particular day or time. That way, there will always be an interest and urge to complete the topic within the set time limit.

Team Work-Group study

It is always good to be study in a group or as a team as you have people with different potentials incoming together. Form smaller student groups for practical papers which will be helpful in clarifying many doubts and sometimes easier ways to find solutions can also be figured out.

Practice makes a man perfect- revision

Practice before exam is very important in determining the confidence level of the student. It is advisable that all practical papers are practiced well which helps in developing a pattern in studying.

Do not disturb/ get disturbed by social media

Keep your hands, eyes and minds off the social media and cell phones, which are major distractions for tech savvy students. Keeping away from social media helps in concentrating and saving a lot of time.



Words Worth Million

If you fail, never give up because FAIL means First Attempt in Learning

End is not the end, in fact END means Effort Never Dies

If you get No as an answer, remember No means Next Opportunity

-APJ Abdul Kalam



The column 'CS Minerva' is newly introduced for the students in order to encourage and inculcate in them, the habit of technical reading and to understand the law.

Commentary on First Directors Series- 1

Provisions:

Section 152(1)

Where no provision is made in the articles of a company for the appointment of the first director, the subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company until the directors are duly appointed and in case of a One Person Company an individual being member shall be deemed to be its first director until the director or directors are duly appointed by the member in accordance with the provisions of this section.

Table F of Regulation 60

The number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum or a majority of them.

Commentary

- 1 Meaning: First directors are the directors who assume the office from the date of incorporation of the company. They are not appointed as such but selected and designated as directors by subscribers to MOA and AOA of the company.
- 2 Applicability: Applicable to all types of companies whether Private or Public company or OPC.
- 3 Method of Appointment:
 - a. Normally names of first directors are specified in AOA.
 - b. Where names of first directors are not specified in AOA, the subscribers to the MOA who are individuals shall deem to be the first directors of the company until the directors are duly appointed. The word 'shall' denotes that it's mandatory whether or not individual

subscribers have given their consent to become directors.

c. If all the subscribers to MOA are non-individuals or number of individuals as subscribers to the MOA is less than the minimum number directors as required u/s 149(1), ROC would insist to specify the names of the first directors in the AOA itself.

d. In case of OPC, an individual being member shall deem to be the first director. Moreover, only resident individual can incorporate OPC, no other person can incorporate OPC as provided under Incorporation Chapter.

- 4 'Who are individuals': Only individuals can become directors of the company which is in consistent with sec. 149(1) r/w 153. In other words, Partnership firms/ LLP/ Company/ AOP/ BOI or any other entities cannot become director of the company. In addition, DIN can be obtained only for individuals.
- 5 Tenure of first directors: Usually specified in the Articles. Ex: up to resignation or up to next general meeting etc.
- 6 Section 149(1) - As per the provision, every company must have minimum number of directors which is a permanent requirement from the date of incorporation till its existence.

First director clause in the AOA including names of first directors cannot be deleted or amended forever even there is a change in management or reorganization of the company



<https://web.umang.gov.in/>

“Technology breaks barriers. We believe it validates the Indian philosophy of "Vasudhaiva Kutumbakam" - the world is one family. This expression reflects our ancient, inclusive traditions. Through technology, we are able to give meaning to this expression, and indeed to the best of democratic values.”

The above mentioned paragraph is an extract from the speech of our Honourable Prime Minister Sri Narendra Modi during the inauguration of two day Global Conference on Cyber Space in New Delhi, held on November 23rd and 24th of this year. It is in this conference where PM Sri Narendra Modi launched one of the unique mobile app called UMANG(<https://web.umang.gov.in/>)

UMANG (Unified Mobile Application for New-age Governance) is envisaged to make e-governance. It is developed by Ministry of Electronics and Information Technology (MeitY) and National e-Governance Division (NeGD) to drive Mobile Governance in India. UMANG provides a single platform for all Indian Citizens to access pan India e-Gov services ranging from Central to Local Government bodies and other citizen centric services. UMANG intends to provide major services

offered by Central and State Government departments, Local bodies and other utility services from private organizations. It provides a unified approach where citizens can install one application to avail multiple government services. The app is simple to use. The user has to login with his Aadhar number and once the mobile and aadhar verification is done he can use all the services available on UMANG.

UMANG has more than 160 services across 33 departments. At present services of 4 states are also available. Service like Bharat Billpay, where users can pay their phone bills, DTH bills, postpaid Mobile bills etc.. Passport Seva helps the users to know their book Passport application status, locating the passport seva centres, documents required for availing passport, calculation of fees etc.

UMANG service has been made available on multiple channels like mobile application, web, IVR and SMS which can be accessed through smartphones, feature phones, tablets and desktops. The app can be downloaded from play store or from app store. UMANG has been created to make your lifestyle easy. UMANG will revolutionize the way how an Indian citizen avails government services today, because it leverages the current accelerated internet and smartphone penetration in our country.



All about Composition Scheme under GST

Target Industry Sector

Section 10 of CGST Act, 2017 specifies the basic requirement towards eligibility and applicability of the Composition scheme. The intent of this scheme is to facilitate small Business personnel towards payment of taxes, periodicity of filing simple returns and less burden of Books of Accounts maintenance. One lacuna with the scheme proposed under GST about this scheme is towards its restriction imposed on the Business boundary to be within the state registered. Accordingly, small business people can't compete across the nation by getting registration under composition. If they have to do so, regular registration is the only choice available by making the level playing field at par with other persons registered

Currently, every manufacturer or a restaurant or a trader has been facilitated to opt for this scheme on the basis of the threshold limit eligible. Recent Central council 23rd discussion has given some relaxation for entry/compliance under the composition scheme which is yet to be notified.

Eligibility

Current provisions prescribed a limit of Rs.1.5 crore (as per 23rd GST council meeting held on 10th Nov 2017) as the threshold limit for eligibility of Composition scheme as per Notification 46/2017 Central Tax Others. Such person, who's Turnover during a financial year should be within the limit specified as per Section 10 of CGST Act, 2017.

Terms & Conditions Reference Chapter II of CGST Rules, 2017

Furnishing details of stock prior to the day opting for Composition along with Inward supply of goods received from Unregistered Person held in the stock for payment of Tax under Section 9(4) Reference to Notification 38/2017 CTR dtd: 13.10.2017 gives a relief from above provision of purchases made from Unregistered person Composition scheme applicable either from the commencement of Financial Year or from the date opted in Form GST CMP-02

- Cannot opt for Casual Taxable Person nor a Non-Resident Taxable person
- Closing stock held on the Appointed day have not been purchased in the course of Inter-State Trade or commerce or Imported from place outside India or received from a branch situated outside state
- Tax shall be paid on Inward Supply as per Section 9(3) on goods or services
- Not a Manufacturer of goods notified as per Section 10(2)(e) [not yet notified]
- Shall issue a Bill of Supply for the Supply of Goods/ Services
- Bill of Supply shall carry "composition taxable person, not eligible to collect tax on supplies".

Currently few items not eligible if undertaken for Manufacture are as below:

Tariff Heading	Description
21050000	Ice cream and other edible ice, whether or not containing coca
21069020	Pan masala
24	All goods

Validity under composition shall expire if the Registered Person fails to comply with the Rules as per above or Section10

Rates currently in vogue for Composition scheme are as below:

Category	Rate
Manufacturer	1%
Restaurant	5%
Traders	1%

Returns filing & Payment of Tax

A registered person opting for Composition scheme shall file his periodical return in form GSTR04. As per the latest notification 59/2017 dtd: 15.11.2017 has extended the time period for filing the return for the Quarter ending on September 2017 shall be 24.12.2017.

Section39 of the Act stipulates payment of Tax by a person Registered under Composition should be made within eighteen days from the end of the quarter relevant to which a return to be filed in the form GSTR04

Books of Accounts

Section35 of the CGST Act, 2017 read with Rule56 of CGSTR Rules, 2017 refers to the relevant Books of Accounts to be maintained and the specific timer period of their retention at the Principal Place of Business.

Relaxation has been provided to the Composition Registered person from maintenance of Stock records in respect of Inward & Outward Supplies made. However, there exists clarity missing in respect of the Manufacturer opting for composition scheme whether to maintain Production records as per the Rules formulated or not required.

Various Forms relevant for Composition scheme

Below are the forms relevant forms in general for the composition scheme:

Form GST CMP-01	Intimation to pay tax under Section10 [For Person Migrated from Old law to GST]
Form GST CMP-02	Intimation to pay tax under Section10 [For fresh registrations under GST law]
Form GST CMP-03	Intimation of details of Stock on date of Opting for Composition levy [only for Migrated Registrants]
Form GST CMP-04	Intimation/ Application for withdrawal from Composition levy

Challenges under Composition Scheme

- Services can't be rendered by a Person who opts for Composition scheme. Recent GST council meeting 23rd Session for decision to permit up to Rs.5 lakhs as a permissible value of Service Income allowed is yet to be notified
- Supply of goods non-taxable to GST shall cause the registered person under Composition scheme to opt out of composition and get into normal registration even if done by mistake.
- Supply of goods in the course of Inter-State Trade or Commerce is not permitted under composition scheme. Exploring Business options outside the residing state is ruled out for a Composition Registered Person
- Purchases made by the composition person from Registered Persons is not made available for view purpose as of today on the GSTN portal which is supposed to be an auto populate in GSTR4A. this shall cause the Registered person to have a dis-belief that all the purchases made from Registered person have complied properly with respect to filing of returns & payment of taxes



A person Registered under Composition scheme draws Interest free deposits from Tenants to escape from Service Income. Assuming rentals received in ordinary course of business is Rs.1lakh per month, would the Tax Officer has a valid reason to reject the benefit of Composition scheme to such Person and Demand the Tax payable under Regular scheme.

Please send your opinion to, enewsletter.icsimysore@gmail.com



Opinion To Last Month's Brainy Bits

Facts to consider

- Manufacturer is not into business of Supplying Travel Bags/ T-shirt
- Manufacturer has Authorised Dealers for destruction of the goods manufactured
- Brand building is an essential expenditure relevant for Business growth and the same can be performed in any mode of media
- There exists a difference between distribution of Ordinary bags/ T-shirts compared with that of Branded ones with a logo/ symbol of the Manufacturer
- For the end user the above said bags/ T-shirts usage may be personal in nature. However, for the Manufacturer the Branding gets spread which serves the purpose of establishing business or furtherance of business
- Sole purpose of the Manufacturer to spend on T-shirts/ Travel Bags would be for the Business enhancement and benefit cannot be readily quantified, however, it can be justified for Business.

Relevant provisions

Definition of “**business**” includes–

(a) Any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;

(b) Any activity or transaction in connection with or incidental or ancillary to sub-clause (a);

(c) Any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;

Definition of “**input tax**” in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him

Section 16: Eligibility and Conditions for taking input tax credit

Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

Section 17: Apportionment of credit and blocked credits

(h) Goods lost, stolen, destroyed, written off or **disposed of by way of gift** or free samples;

Examination of the Transaction from GST perspective:

- Goods procured by the Manufacturer are deemed to be an Inward supply
- Manufacturer shall not be using the said goods purchased in Manufacturing Activity for making further Outward Supply Taxable under GST
- Specific provision shall prevail over general provision
- Section 16 permits the Manufacturer for availment of Input Tax credit on goods procured either in the course of furtherance of business. In other terms, since the Manufacturer has procured the goods for Business Advancement by conducting the marketing activity the same shall be construed to be in due course of Business or for advancement of business
- Manufacturer is not passing on the Goods in the given transaction as a Gift to the Authorised Dealers or Employees as a Gift, rather the same are being provided for Marketing the Brand of the entity
- Gift can be provided as a Quid-Pro-Quo between two Persons for a transaction

takes place where provisions of Section 17(5) can be adopted

- In case of a Manufacturer who does a Branding of his Product using various modes, the above idem of Quid-Pro-Quo can't be established and it shall not be construed as a Gift in Business Parlance
- The above analogy holds good even in the case of the above goods distributed to the employees in addition to the Authorised Dealers. Employees also does branding activity of the Manufacturer which shall be construed as inducement or advancement of business

Conclusion

Since the Travel Bags/T-Shirt provided by the Manufacturer are meant of Branding activity of the Manufacturer the same shall not be construed as a Gift rather can be construed as Expenditure in the Course or Further of Business and accordingly, benefit of Input Tax credit shall be admissible





Vacations, Holidays and Leave

It's the season for vacations. A time to add a few days of leave to the guaranteed holidays and travel with your family. It is also the time, for every employer to set out a calendar of holidays for the year 2018. But before we do that, it would be useful to take a quick look at the legal provisions which make these holidays possible and also the different types of holidays and leave.

Public Holidays

The Karnataka Industrial Establishments (National and Festival Holidays) Act, 1963 and the rules thereunder lay down the law regarding holidays in Karnataka. They also provide a flavor of the law relating to holidays in the rest of India which is somewhat similar. Section 3 of the said Act provides that every employee shall have a holiday on August 15th (Independence Day), January 26th (Republic Day) and October 2nd (Gandhi Jayanti) and the same are considered National Holiday.

The employer is also required to identify five other days, from a list of 52 holidays enumerated in the Schedule to the Act, which shall be holidays on account of festivals. These holidays should be decided in consultation with the trade unions or where there is no trade union, in consultation with the employees, by giving a proposed list of holidays and a period of 15 days to submit objections or suggestions if any. A list of holidays for the succeeding year should be notified by the employer on or before the 31st of December of the each year.

May 1st (Labour Day) and November 1st (Kannada Rajyotsava) are additional public holidays in Karnataka. The Companies and offices under the Union Government are not bound by these two holidays. Hence they have the flexibility to declare seven days of festival holidays throughout the year. If any employee works on any of the holidays, such employee is entitled under Section 5 of the Act, either to double the wages or a substituted holiday on any other day.

2018 is an election year for Karnataka and seven other states. Elections to the Lok Sabha and to the State Assembly are also declared as holidays as per Section 3A of the Act, inserted *vide* amendment in 1997.

Weekly Holiday

Every establishment is required to declare a weekly holiday for its employees. Shops, Restaurants and Theatres are covered under the Weekly Holidays Act, 1942 and later under Section 12 of the Karnataka Shops and Establishments Act, 1961 and corresponding legislations in other states. Factories are covered under Section 52 of the Factories Act, 1948 which specifies the weekly holiday as the first day of the week.

Leave

The Karnataka Shops and Establishments Act, 1961 provides that an adult employee shall be entitled to one day of leave for every twenty days worked by him and a young person shall be entitled to a day of leave for every days worked by him [Section 15(1)]. Apart from these days of earned leave, an employee is entitled to twelve days of paid leave on ground of sickness or any other reasonable cause [Section 15(3)].

Earned Leave under the Karnataka Shops and Establishments Act, 1961 can be carried forward to the next year, but the number of days of leave carried forward cannot exceed 30 days.

The Factories Act, 1948 operates slightly differently. It is only when a worker has worked for 240 days in a calendar year, that in the subsequent year, he would be entitled to leaves as described above.

Happy Holidays!!



EXPRESS NEWS

- **GMR group emerges preferred bidder for Clark airport in Philippines**
- **Strengthening banks most important agenda for next year: FM**
- **Gold slumps on low demand, weak global cues**
- **Buoyed by the rise in cloud revenues, Microsoft harbours hopes for a larger role in India's digital transformation story**
- **ASSOCHAM asks govt to remove bail-in from FRDI Bill, says bank deposits only financial security of pensioners**

India is star attraction for Disney in \$52 bn Fox deal

The Walt Disney Company, the American multinational mass media and entertainment conglomerate, is all set to acquire 21st Century Fox, the Manhattan-based global mass media corporation headed by Rupert Murdoch, in an all-stock transaction valued at US \$52.4 billion. While Disney has a market cap of \$164 billion, 21st Century Fox is worth over \$62 billion, with Star India alone estimated to be worth \$14-16 billion.

Indiamart plans IPO, process to begin next fiscal

E-commerce firm Indiamart is planning to launch its initial public offer for which it will start the process next fiscal, a top official of the company today said.

"We will go for IPO soon. Basically, we are not in need to raise external money but we want to give an exit route to existing investors. Most of the

equity sale will happen in secondary market," Indiamart founder and CEO Dinesh Agarwal told at TiEcon Delhi NCR.

Supreme Court allows Vodafone to initiate second arbitration process

The Centre got partial relief on Thursday from the Supreme Court in its dispute with Vodafone over the latter's Rs 11,000-crore tax liability as the court allowed selection of chairman for the second arbitration tribunal, despite pendency of earlier arbitration proceedings on the same issue.

Modi may give India its first employment policy in the coming budget

India will soon have its first national employment policy that will outline a comprehensive road map for creation of quality jobs across sectors through economic, social and labour policy interventions. The move is aimed at addressing the crucial issue of job creation in the country.





Companies Act, 2013

Updates on Amended Rules

MCA has amended Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015 which is to be known as Companies (Filing of Documents and Forms in Extensible Business Reporting Language), Second Amendment, Rules, 2017. Under this rule, a new Annexure substituting the Annexure-III of the old rule has been introduced.

Companies (Filing of Documents and Forms in Extensible Business Reporting Language), Second Amendment, Rules, 2017, dated 4th December, 2017.

MCA has amended companies (cost records and audit) Rules, 2014 which is to be known as Companies (cost records and audit) Amendment Rules, 2017. According to which in rule 2 after clause (f) of the principal rules, the following clause shall be inserted.

"Indian Accounting Standards" means Indian Accounting Standards as referred to in Companies (Indian Accounting Standards) Rules, 2015.

New Forms CRA 1 and CRA 3 have been introduced to substitute the old forms, which was given in the principal rules.

These substitutes shall be deemed to have been introduced with effect from 1st day of April, 2016.

Companies (cost records and audit) Amendment Rules, 2017, dated 7th December, 2017.

Circulars

MCA has given relaxation for additional fees and extended the last date for filing Form AOC-4 XBRL. Last date for filing form AOC-4 XBRL for the financial year 2016-17 without additional fee is 31st march, 2018, provided these forms shall be prepared as per Indian accounting standards.

General Circular 13/2017, dated 26th October, 2017.

AS Companies (Cost Records and Audit) Amendment Rules, 2017 has been introduced. MCA has given relaxation for additional fees and extended the last date for filing Form CRA-4. Last date for filing form CRA-4 for the financial year 2016-17 without additional fee is 31st December, 2017.

General Circular 15/2017, dated 4th December, 2017.

Notifications

MCA has designated LIX Additional City Civil and Sessions Judge, Bengaluru City, state of Karnataka as special courts for the purposes of providing speedy trial of offences punishable with imprisonment of two years or more.

S.O.3804 (E), dated 4th December, 2017.