

eMagazine

Mysore Chapter



EMPOWERING WOMEN

International Women's Day



Articles:

Women Empowerment through Government Initiatives and a Contemporary Status	04
OIDAR or Cross-Border Services – GST Regime	08

Columns:

From Chairman's Desk	02
Chapter Activities	03
Living Room	11
Words Worth Millions	13
Students corner	12
Web Reading	14
GST Suite	15
Brainy Bits	16
I & E Law Café	18
Newsroom	20
Regulatory update	21

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Dear Professional Colleagues,

I heartily congratulate all those students who have passed in December 2017 exams and on behalf of the Management Committee members, staff and students of the chapter. I take this opportunity to also congratulate our students who won first prize in the moot court competition conducted by the Bangalore ICSI chapter in the month of February 2018.

During the month of February 2018, chapter conducted two investor awareness program and three career awareness program to educate degree students about CS course.

Further, during the month of March on 23rd and 24th a two days credit hour program, on latest companies' amendments, NCLT Representations, RUN and DIN services and GST, for the members and students is organized and we look forward to seeing more member and students participation.

I wish you all Happy International Woman's day, Holi and Ugadi festival.

Thank you

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Chapter Activities

1. Investor Awareness Program

Chapter conducted two Investor Awareness Program during February 2018. The details are as follows.

SNo.	Date	Venue	Speaker (s)	No. of Participants
1	10.02.2018	Bharani Foundation Skill Development Centre	CSManjunath S,	96
2	23.02.2018	Vishwabharathi First Grade College, H D Kote	CSManjunath S,	119

2. Post Budget Analysis

Chapter in association with CII Mysore & SDM Institute for Management Development organized a session on Post Budget Analysis on 02nd February, 2018 at SDM Institute premises with BDO India as knowledge partner. The representatives of the knowledge partner discussed on the various implications of the announcements of the budget in respect of taxation. The session concluded with a panel discussion in the form of question and answer session.

3. Seminar on GST & Budget 2018



Chapter in association with JSS Law College conducted a half day seminar on “Impact of GST on Real Estate Industry & Overview of Budget 2018” at JSS Law College Premises on 15.02.18. CSManjunath S, Chairman & CA Keshava Dongre K., Practicing Chartered Accountant were the speakers for the session.

4. Mysore Students Won the Moot Court Competition



Executive students of the Chapter Mr. Shravan K.S, Mr. Souhardh Patel & Mr. Krishna Revanth won the first prize in the State Level Moot Court Competition organized by ICSI-Bangalore Chapter on 16th & 17th February, 2018. Chapter appreciates their efforts for the achievement.

5. Signing of MOU Between Chapter & JSS Law College, Mysore for Conducting Programs





Women Empowerment through Government Initiatives and a Contemporary Status

Introduction

Women empowerment has been a persistent tale from many years. Conventionally we have perceived that the role of a women have been conflicting. In India once they were worshipped as SITA or DURGA and as time passed they are also subjected to social evils like Sati, Child marriage etc., Further women are even underprivileged of certain basic facilities like food, nutrition, elementary freedom, freedom of education etc., of

late there have been a lot of responsibility given for enhancing the status of the women and numerous Schemes and Programmes have been launched by the Government. As far as their social status is concerned, they are not treated as equal to men in all the places. Empowerment factually means 'Bestow with Supremacy". In the perspective of women's empowerment the term has come to signify women's increased control over their own lives, bodies and environment.

Why Need of Women Empowerment?

Women constitute almost 50% of the world's population and perform nearly 2/3 of its work

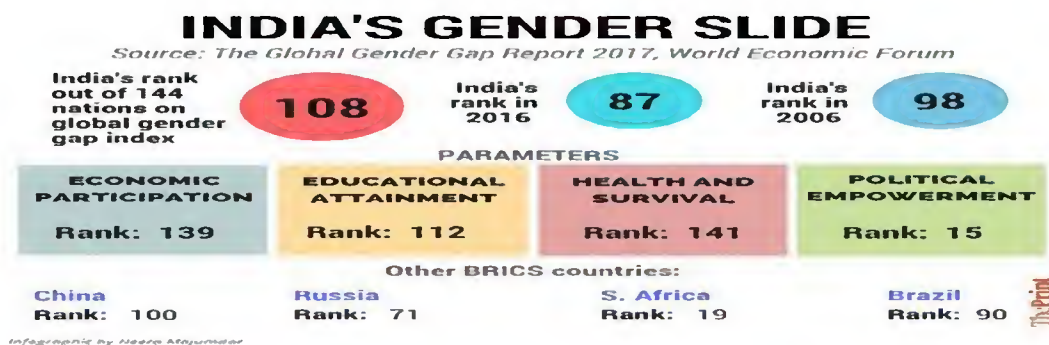
hours, receive 1/10th of the world's income and own less than 1/100th the world property. <70% of people living in poverty are women. Lower sex ratio i.e. 933, Prevailing studies demonstrate that women are comparatively less healthy than men although belong to similar class.

The status of women in India particularly in rural areas needs to address the issue of empowering women. About 66% of the female population in rural area is unutilized due to prevailing societal customs.

Status of Women Empowerment

The status of Women Empowerment cannot be visualized with single dimension rather multidimensional assessment in terms of various components of women's life and their status would bring a clear conception. There were only 1 woman judge out of 25 judges in the Supreme Court and there were only 54 women judges out of 634 Judges in various High Courts as on April 2016

Overall status of women in terms of Gender Gap Index released by World Economic Forum in 2017 where India was ranked low at 108th position out of 144 countries.



Limitations of Women Empowerment

The main problems faced by women in past and still today up to some extent are:

- Gender discrimination
- Lack of Education
- Female Infanticide
- Financial Constraints
- Family Responsibility
- Low Mobility
- Low ability to bear Risk
- Low need for achievement

Ways to Empower Women

• Social Empowerment:

The tenth five year plan (2002-07) called for a 3 prolonged strategy of social empowerment, Economic empowerment and providing gender justice to create an enabling environment free of discrimination. Social empowerment of women refers to Education for women, health of women, mobility of women, participation of women in various fields and also protection of women against Gender based violence.

• Political Empowerment:

Our Constitution through Articles 14, 15, 325, 326 provided specific safeguards and promotional measures for the empowerment of women in Indian Society. The most significant landmark in the drive of empowerment is historic 73rd and 74th Constitution amendment acts, 1992 followed by ratification of states which reserved 1/3rd seats for women in the Panchayat Raj and Municipal Bodies.

• Economic Empowerment

Economic Empowerment cannot be comprehended principally as an end in itself but rather a means to other developmental goals. In spite of many gender specific policies, historically established inequalities still persists and is testified in the form of continued gender inequalities which is evident by over-representation of working women in lower-paid, casual, part-time, irregular market activities.

Evidently, the assertiveness and comportment on the part of actors in the public arena further discriminates the women's capacity to take advantage of avenues available to be economically empowered.

• Legal Empowerment

Mere enactment of law cannot change human behavior. There need to be awareness in the public about the availability of the law to help them. Most of the convicts are not punished because of the

money and power behind many unresolved cases. Illegal things against women that prevails principally are Gender based violence, Rape, Molestation, Dowry deaths, Female infanticide, inheritance of property, child marriage etc. The tragic truth is that the laws are rendered ineffective due to loopholes in the justice system and also the political influence on law enforcing authorities.

Constitutional Provisions for Empowering Women in India

- Equality before law for all persons (Article-14).
- Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Article 15(I)) However, special provisions may be made by the state in favors of women and children Article 15(3).
- Equality of opportunity for all citizens relating to employment or appointment to any office under the state (Article 16).
- State policy to be directed to securing for men and women equally the right to an adequate means of livelihood (Article 39(a);
- Equal pay for equal work for both men and women (Article 39(d).
- Provisions to be made by the state for securing just and humane conditions of work and maternity relief (Article 42).
- Promotion of harmony by every citizen of India and renouncement of such practices which are derogatory to the dignity of women Article 51A(e).
- Reservation of not less than one-third of total seats for women in direct election to local bodies, viz; Panchayats and Municipalities (Articles 343(d) and 343 (T).

Various Laws have been enacted to improve the position, to bring back the dignity of women are:

1. Act prohibiting the practice of sati (in 1850)
2. Cast disabilities removal act, 1850
3. The Hindu widow remarriage act, 1856
4. The special marriage act III of 1872
5. The married women's property act, 1874
6. The child marriage act, 1929
7. The Hindu gains of earning act, 1930
8. The Hindu women's right to property, 1937
9. The Christian marriage act, 1872
10. The Parsee marriage and divorce act, 1936
11. The dissolution of the Muslim marriage act 1939

Landmark Judgment's that has changed the course for women in India. These judgments aim to empower Indian women in their personal and professional lives.

- **Sole Legal Guardian**

The SC ruled that an unwed mother in India can become the sole Legal Guardian of a child without consent of the father, and she is no longer required to disclose the father's name.

- **Inalienable Right to Stridhan**

The SC ruled that a woman can claim her *stridhan* back from her husband and his family members even if they are not divorced. In other words, a woman can claim her *stridhan* even after separation from her husband.

- **Head of the Family**

The Delhi HC has ruled the eldest female member of a family can be its *Karta*, a position which was only reserved for the eldest male. In other words, women can now be the legal head of their households. "If a male member of a Hindu Undivided Family, by virtue of his being the first born eldest, can be a *Karta*, so can a female member," it said.

- **Right to Dance**

The Supreme Court ruled that dance bars in Maharashtra would remain open, and stayed the law which banned dance performances in bars, hotels and restaurants in Maharashtra, rendering thousands of women unemployed.

- **In The Navy, Now**

The Delhi HC ruled for women to be granted permanent commission in the Navy, ensuring that women naval officers enjoyed rights similar to their counterparts in the Army and the Air Force.

- **No Compromise in Rape**

The Supreme Court has ruled that there can be no mediation and no compromise can be reached with the culprit in cases of rape or attempt to rape. Any kind of liberal approach has to be put in the compartment of spectacular error.

- **Live-In Relationships Recognized**

The SC ruled that an unmarried couple living together for a long time would be presumed to be legally married and a woman would be eligible to inherit her partner's property.

- **Money for Acid Attack Survivors**

The SC ruled that acid attack survivors should be included in the disability list, and any compensation over the minimal Rs. 3 Lakh would also be paid by state governments.

- **Rights of Muslim Women**

The SC asked that a PIL be registered to examine whether "discrimination" suffered by women under Islamic laws violates Fundamental Rights under Articles 14, 15 and 21 of the Indian Constitution and international conventions.

Government Initiatives for Women Empowerment after Independence

At present, the Government has over 50 schemes for women operated by different department and ministries are as follows;

- Rastria Mahila Kosh (RMK) 1992-1993
- Mahila Samridhi Yojana (MSY) October, 1993.
- Indira Mahila Yojana (IMY)
- Women Entrepreneur Development Programme given top priority in 1997-98.
- Mahila Samakhya being implemented in about 9000 villages.
- Support to Training and Employment Programme for Women (STEP).
- Swalamban.
- Crèches/ Day care centre for the children of working and ailing mother.
- National Mission for Empowerment of Women.
- Integrated Child Development Services (ICDS) (1975),
- Rajiv Gandhi Scheme for Empowerment of Adolescence Girls (RGSEAG) (2010).
- The Rajiv Gandhi National Crèche Scheme for Children of Working Mothers.
- Integrated Child Protection scheme (ICPS) (2009-2010).
- Dhanalakshmi (2008).
- Short Stay Homes
- UJAWALA: A Comprehensive Scheme for Prevention of trafficking and Rescue, Rehabilitation and Re-integration of Victims of Trafficking and Commercial Sexual Exploitation (2007).
- Scheme for Gender Budgeting (XI Plan).

- Integrated Rural Development Programme (IRDP).
- Training of Rural Youth for Self Employment (TRYSEM).
- Prime Minister's Rojgar Yojana (PMRY).
- Women's Development Corporation Scheme (WDCS).
- Working Women's Forum.
- Indira Mahila Kendra.
- Mahila Samiti Yojana.
- Khadi and Village Industries Commission.
- Indira Priyadarahini Yojana.
- SBI's Sree Shakti Scheme.
- SIDBI's Mahila Udyam Nidhi Mahila Vikas Nidhi.
- NGO's Credit Schemes.
- National Banks for Agriculture and Rural Development's Schemes.
- Beti Bachao Beti Padhao Scheme
- One Stop Centre & Women Helpline Scheme
- Working Women Hostel
- SWADHAR Greh (A Scheme for Women in Difficult Circumstances)
- Support to Training and Employment Programme for Women (STEP) and **Revised Guidelines**
- Mahila Shakti Kendras (MSK)
- Mahila Police Volunteers
- Shelter Home for widows in Vrindavan
- Extension of Maternity Leaves
- Panic Button on Mobile Phones

- Special Mahila Police Volunteer Programme
- Mandatory Mention of Widows Name on Death Certificates
- National Policy on Women
- Expanding Anganwadi Infrastructure
- National Nutrition Mission
- Film on Good Touch Bad Touch – KOMAL
- Film on Maternal and Neo-natal Care
- Awareness of Toilets and Sanitary Pads

The efforts of Government and its different organizations are well complemented by NGOs that are playing a correspondingly imperative role in sustaining women empowerment.

Conclusion

Thus, the need of the hour is to identify those loopholes or limitations which are observing the recognition of empowerment of women and their creativity must be started from the women folk itself as well as more importantly policy edge taken by the state and society. The utmost requisite of the time is change of social approach to women. "When Women move forward, the Nation moves". It is essential as their thought and their value systems lead the development of a good family, good society and ultimately a good nation. The best way of empowerment is perhaps through instating women in the mainstream of development. Women empowerment will be factual and operative only when they are endowed income and property so that they may stand on their feet and build up their personality in the society.





OIDAR or Cross-Border Services *GST Regime*

An Introduction

With ever-evolving information technology, businesses have found unique ways to conduct their business which did not exist earlier and this has given rise to new business models that rely more on digital technology, which do not require physical presence and derive substantial value from data collected and transmitted through digital mode. In the last decade or so, business models that can be conducted primarily by exchange or transmission of data have come into existence.

Key features of the digital economy

There are a number of features that are increasingly prominent in the digital economy, they are –

- Mobility
- Reliance on data, including so-called big data.
- Network effects which include user participation, integration.
- Use of multi-sided business models i.e. market may be in different tax - jurisdictions.
- Volatility due to low barriers to entry and rapidly evolving technology. (Section 4.3 of the BEPS Report on Action 1)

Digital economy or e-commerce

The sale or purchase of goods or services, conducted over computers by methods specifically designed for the purpose of receiving or placing of orders. The goods or services are ordered by those methods, but the payment and the ultimate delivery of the goods or service do not have to be conducted online. An e-commerce transaction can be between enterprises, households, individuals, governments or alike.

E-commerce can be used either to facilitate the ordering of goods or services that are then delivered through conventional channels such as off-line mode or to order and deliver goods or services completely electronically (on-line mode). Paragraph 117 of the BEPS Report on Action 1 (2015)

Prevalent Form of Businesses

There are three prevalent forms of businesses, namely

1. Business-to-business models (B2B)
2. Business-to-consumer models (B2C)
3. Consumer-to-consumer models (C2C)

1. Business-to-business models (B2B)

The majority of e-commerce or digital economy consists of transactions in which a business sells its products or services to another business. These may include online mode of traditional transactions in which a wholesaler purchases consignments of goods online, which it then sells to consumers from retail outlets. It also includes logistics services, application service, hosting, outsourcing of support functions for e-commerce, security, customer care solutions, real-time auctions via the Internet, content management services etc.

2. Business-to-consumer models (B2C)

The second form is one of the earliest forms of e-commerce. In this model, businesses sell their goods or services to individuals. This model includes online vendors with no physical stores or offline presence, “brick -and-mortar” stores that supplemented existing consumer-facing business with online sales, and manufacturers that use online business to allow customers to order and customise directly.

3. Consumer-to-consumer models (C2C)

One of the most common models of the business form is Consumer-to-consumer models, in this e-commerce play the role of intermediaries, helping individual consumers to sell or rent their assets by publishing their information on the website and facilitating transactions.

OIDAR or Cross - Border Services *GST*

Prior to implementation of GST, the Central Government has brought key changes in the taxability of Online Information Database Access or Retrieval Services (in short “OIDAR”) w.e.f 1st

December 2016. Definition of OIDAR under erstwhile Service Tax Rules 1994 (as amended) summarized as *a category of services provided through internet and received by the recipient online without having any physical interface with the supplier of such services.*"

Further, by an amendment in *Place of Provision of Service Rules and Mega Exemption Notification*, OIDAR services have been omitted from "Place of Provision of Services" and also excludes services received from a person located in a "non-taxable territory" by the government or a local authority or an individual for non-business purposes.

The Following brief write-up will throw light on OIDAR or cross borders services under newly implemented GST regime such as relevant provisions under Integrated GST Act, Services included and excluded from the ambit of OIDAR,

Illustrations

The sub-section (17) of Section 2 of Integrated GST Act, dealt with OIDAR definition. In a summarized form, services whose delivery is mediated by information technology over the internet and the nature of which renders their supply essentially automated and involving minimal human intervention which includes e-services such as –

- *advertising on the internet*
- *providing cloud services*
- *provision of e-books, movie, music, software etc.*
- *providing data, retrievable or otherwise, in e-form*
- *online supplies of digital content such as movies, music, television etc.*
- *digital data storage and online gaming,*

The new definition is an inclusive one and covers a wide range of services and activities like web-hosting, distance learning brought under GST regime.

Key aspects In Brief

Taxable Event Includes a supply of goods or services or both.

Taxable Territory - The territory to which the provisions of the GST law applies, i.e., the whole of India.

Non-Taxable Territory- Similarly, locations outside India will be considered as a non-taxable territory.

Supply Defined?

Under GST regime, a transaction will be considered as "supply", they are, supply should be –

1. of goods or services.
2. made for a consideration.
3. made in furtherance of business.
4. made by a taxable person.
5. a taxable supply.
6. made within the taxable territory

With few exceptions, a transaction is deemed to be a supply even without consideration. Similarly import of services for a consideration, whether or not in furtherance of business is also treated as supply.

Compulsory Registration

Every person who supplies OIDAR services from a place outside India to a person in India, other than a registered person is required to obtain a compulsory registration under GST regime. A representative of the supplier, who resides in India, may obtain a registration to pay the integrated tax on such transactions on and behalf of his supplier.

Incidence of Tax Liability

Supply of OIDAR services by a person located in a non-taxable territory i.e. outside India, to a non-taxable online recipient, would be liable to tax in the hands of the supplier. *In other words*, the supplier would be responsible for collection and remittance of Integrated GST to the Central Government.

Further, the Central Government, vide notification No. 9/2017-Integrated Tax (Rate) dated 28th June 2017 also excludes OIDAR services from the "exemption list". The said Notification in a summarized form read as - *Services received from a provider of service located in a non- taxable territory by*

- a. .
- b. .
- c. *a person located in a non-taxable territory:*

Provided that the exemption shall not apply to

- i. *OIDAR services received by persons specified in entry (a) or entry (b); or*
- ii. .
In other words, item no. (i) and (ii) are taxable.

Whether an Intermediary also to be treated as a Supplier

Yes. Subject to certain conditions, an intermediary located outside India who facilitates the supply of such service to an online recipient in India will be treated as the supplier of the said service.

Conditions:

1. If such intermediary's, invoice expressly identifies the service in question/ its supplier in a non-taxable territory.
2. If such intermediary neither collects or processes payment nor is responsible for the

- payment between the non-taxable online recipient and the supplier of such services.
3. The terms and conditions of the supply are not set by the intermediary involved in such supply of services

Business-to-Business (B2B) Transactions

B2B transactions with respect to OIDAR services will be taxable in the hands of the recipient under reverse charge mechanism (RCM).

Tax Incidence In a summarized from

Service Recipient	B2C	B2B	Intermediary
Tax Liability lies on	Supplier of Services (under FCM)	Recipient (under RCM)	Recipient (under FCM)

Recipient of service & Taxable territory

Recipient of service will be considered as situated in a taxable territory if any two of the following conditions are satisfied. They are –

- Address of recipient
- Billing address
- Internet protocol address
- Bank of recipient
- Country code of SIM card
- Fixed line used by recipient

3. Online course with pre-recorded video and downloadable study material, etc.
4. Web-hosting including webpage, Remote systems administration etc.
5. Supply of images, text and information and making available of database etc.

An indicative list of OIDAR Services

1. Documents automatically emailed by provider's system – SBI Credit Card Statement
2. Documents or photographs automatically downloaded from a website – screensavers etc.

Comprehensive list of not OIDAR Services

1. E - Supply of goods.
2. E - Supply of physical books, newspapers or journals, etc.
3. E - Supply of services of lawyers and financial consultants.
4. E - Ticket booking services, accommodation or car, etc.
5. E or Online courses, where the content is delivered by a teacher through internet mode.

Compliance

<i>For OIDAR Service Providers Located in India</i>	Required to file monthly returns such as GSTR-1, GSTR-2, GSTR-3 and annual GST return.
<i>For OIDAR Service Providers Located Outside India</i>	Required to file monthly return in Form GSTR-5A on or before the 20th of each month.

Equalization levy or Google Tax

Indian online advertising services companies are required to pay recently introduced "Equalization levy" @ 6 percent under Income Tax provisions. Therefore, both GST, as well as equalization levy, would be applicable.

Conclusion

The spread of digital economy poses challenges for both domestic as well as international taxation domains. To name few, the digital economy is uniquely relied on intangible assets, the massive usage of data and the difficulty of determining the jurisdiction in which value creation occurs.



Where are we heading to?

An education in international school , an offer letter from an MNC, hefty pay check, a house property in the city Center, a farm house to relax , foreign vacation, luxury carsand the list goes on. Dreams today are big but at what cost? We all live in a fast paced world that a red light at the traffic signal irritates us ,the cry of a baby in a flight journey ticks us off, we complain waiting in long queue's in government offices , we are unable to wait to reach home to read a text received while driving. From fast food to quicker promotions and quick money , the generation today has lost the pleasure of the fruit of patience, giving, caring,sharing and friendships. This race of getting everything quickly has slowly diluted values like mutual respect, sympathy, friendship, trust and selflessness. There was a time when we spent a lot of time searching for a birthday card for a dear

friend, shopping for a beautiful dress for little sister's send off at school, helped a friend during lunch break to correct his wrong trigonometry problem, spent the 2 months of summer vacation on the streets under the hot sun in Grandparents town. What joy and happy times were they?But today face book has to remind us of our dear friends birthday tomorrow, amazon does the shopping for us, many are scared to teach easy way of solving math in the fear of friend scoring more. where are we heading too ?what values do we transfer to the next generation ?Its high time we realize that these callous materialistic things cannot give us happiness. Contentment and making ourselves happy with things around us is more blissful than slogging for things that are not worth the time



"Success isn't about how much money you make; it's about the difference you make in people's lives." — Michelle Obama



Commentary on Nominee Director Series- 4

Provisions: Section 161(3):

Subject to the articles of a company, the Board may appoint any person as a director nominated by any institution in pursuance of the provisions of any law for the time being in force or any agreement or by the Central Government or the State Government by virtue of its shareholding in a Government company.

Commentary:

1 Meaning:

- a. Section 2 of the Act has not defined meaning of nominee director. However it has been defined under explanation to Section 149(7) of the Act with reference to independent director.
- b. Meaning of Nominee director – Section 149 means ‘a director nominated by any financial institution in pursuance of provisions of any law for the time being in force, or of any agreement, or appointed by any Government, or any other person to represent its interests’.
- c. Company Law Committee Recommendation: The Committee noted that whilst provisions relating to “nominee director” are provided under Sections 161(3) and 149(7), the term ‘nominee director’ has been defined only in the explanation to Section 149(7) with specific reference to Independent Directors. The Committee felt that a definition of ‘Nominee Director’ should be specifically included as a definition clause.
- d. The Recommendation of Company Law committee with reference to

nominee director has not seen its light under provisions of Companies Amendment Act 2017.

- 2 Provision in the AOA: Power to appoint nominee director is not derived from the articles unlike additional director but is subject to articles of association of the company.
- 3 Applicability: Applicable to all types of companies i.e. Private Company, Public company.
- 4 Authority: Only Board of Directors can appoint nominee director. Managing director or committees of Directors or WTD do not have power to appoint nominee director.
- 5 Resolution: Appointment of nominee director may be passed either at the Board Meeting or by resolution by Circulation.
- 6 Mandatory: Word is ‘may’. Hence it is not mandatory for the company to appoint nominee director but it is subject to AOA of the company.
- 7 Meaning of any Person: Person refers to individual only as individuals alone are eligible to become directors of the company as per Sec. 149(1) r/w Sec.153.
- 8 Nominating Authority: Nominee director may be nominated by any institutions under ANY law or by State Government or Central Government or pursuant to an agreement.
- 9 Meaning of institution: Institution may be financial institution as defined u/s 2(39) of the Act or non-financial institution or public financial institution as defined u/s 2(72) of the Act.
- 10 Definition of ‘Government Company’: Sec 2(45): “Government Company” means any company in which not less than fifty-one percent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by

the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company;

11 Forms:

- a. Within 30 days of his appointment, the company needs to file Form DIR 12 along with consent letter in Form DIR 2.
- b. For appointment of nominee director in a Government company, the consent letter in Form DIR-2 is not required vide exemption Notification dated 05.06.2015.
- c. Once appointing authority withdraws the nomination, the company needs to file Form DIR 12 for cessation of nominee director but nominee director need not file Form DIR 11 as it is not falling within the provisions of Section 168 of Act.

- 12 Nominee director has to disclose his interest in Form MBP 1 within 30 days of his appointment in line with Sec.184 and the company needs to update the relevant Statutory Registers.
- 13 Tenure: Nominee director will hold the office until nomination is withdrawn by the nominating appointing authority.
- 14 Nominee director cannot be appointed as an independent director as per Section 149(6) of the Act, however nominee director can be appointed as women director.
- 15 Key Takeaways: Directors appointed by private equity investors shall also be covered under the definition of nominee directors and would no longer be eligible for appointment as an independent director.
- 16 Normally nominee directors are non-rotational directors of the company.
- 17 Liability of nominee director – Nominee director may rely on Master Circular No 01/2011 on Prosecution of Directors issued by MCA under erstwhile provisions of Companies Act 1956.



Words Worth Million

“Above all be the Heroine of your own life, not the Victim”

-Nora Ephron-Nora Ephron



“ಯುಗ ಯುಗಗಳು ಕಳೆದರು ಯುಗಾದಿ ಮರಳಿ ಬರುತ್ತಿದೆ”

The above line is from the poem written by the great Kannada JhanaPitha awardee Da Ra Bendre. I quote these lines because as the autumn comes every year, so does the season of holidays. The main quest during the season will be places to visit and mainly where to stay once we go there. The solution for this is that you need to visit www.oyster.com

Oyster.com is the hotel tell-all. The website lists out more 40,000 hotels all around the world. The specialty of this website is that they send their investigators to the hotels to investigate about the authenticity of the hotel before posting the same on the website. They also publish amazing photos of the hotels including the expert's reviews.

Oyster.com is very handy website when it comes for planning foreign vacations. The website list out the prices and offers offered by various other hotel booking websites. The only problem in the site is that it is designed for the convenience for foreigners, so the price mentioned are in either Euros or Dollars.

When you click on the hotel of your choice you get the result something like this:

a. Price chart

Provider	Avg. Nightly	Rating
Expedia	\$125	4.5
Hotels.com	\$125	4.5
ORBITZ	\$125	4.5
Booking.com	\$125	4.5
Travelocity	\$125	4.5
Hotels.com	\$125	4.5
Hotwire	\$125	4.5
priceline	\$125	4.5

b. Expert Review

Review Summary

Photos and Review by Oyster.com Investigators

↑ Pros

- Quiet beachfront location, an hour's drive from the airport
- Elegant rooms, suites, and villas with marble bathrooms, some with plunge pools
- Large lagoon-style swimming pool surrounded by greenery and rock features
- Wide array of fitness and sports facilities including well-equipped gym and tennis courts
- On-site 12-hole, par-3 golf course plus putting greens
- Kid-friendly facilities include playground, children's pool, and kids' club
- Multiple bars and restaurants serving Indian and international fare, plus 24-hour room service
- Spa with Ayurvedic treatments plus on-site beauty salon
- All-inclusive packages available
- Free on-site parking
- Free Wi-Fi throughout
- Extensive indoor and outdoor meeting and event space

↓ Cons

- Some bathrooms have peekaboo windows (but there are privacy blinds)
- Only one restaurant is open throughout the day
- In a quiet area without much of interest within walking distance

Further, the website has section called Photo Fake outs where the investigators of the website visit the hotel and takes pictures and compares the same with the pictures posted on the travelling websites. For example:

Sicily Photo Fakeout: Good Luck Finding a Lounge Chair (Or Even a Patch of Sand) Here



Apart from this the website also has sections that contain articles regarding travelling, categories of hotels depending on the occasions & preference and cruise schedules.



Circular 33/2018 Disputed Transition Credits

Government has issued Circular 33/2018 dtd:23.02.2018 under Section 168 of the CGST Act, 2017 towards non-transition of Cenvat credit u/s140 or non-utilisation thereof in certain cases. A careful examination of the above circular is of very high importance for the Registered Person having Cenvat credit migrated to GST era u/s140.

Section 168 has the authority to issue orders, instructions or directions to central tax officers for the uniformity in implementation of this Act. Directions were given through above circular in two aspects as below:

1) Non-utilisation of Transitional credit

Cenvat credit pertaining to which a Show Cause Notice has been issued under Rule 14 of CCR, 2004 which has been adjudicated and the last adjudication order or last order-in-appeal existed as on 01.07.2017, it was held that Cenvat credit is not admissible, then such Cenvat credit credited to Electronic Credit Ledger u/s140(1), (2), (3), (4), (5), (6) or (8) shall not be utilized by a registered taxable person for payment of tax under this Act or IGST Act, 2017

2) Non-Transition of Blocked Credit

Cenvat credit shall not be permissible as per Section140(1)(i) to Electronic Credit ledger, which is not eligible under this Act as per Section 17(5) such as Telecommunication towers and pipelines laid outside the factory premise. Such credit carried forward to Electronic Credit ledger u/s 140 shall not be permitted for utilization towards payment of tax under this Act or IGST Act, 2017

Circular has been issued on above two factors towards Non-Utilisation of Credit carried forward to Electronic Credit ledger. Also, instructions were given for recovery of Interest & Penalty if the above said credit has been utilized by the Registered person.

Points for consideration:

- Cenvat credit availed as per the provisions of CCR, 2004
- Mere existence of a dispute doesn't confirm apparently eligibility or In-eligibility of Cenvat credit unless the matter attains its finality
- Credit earned under provisions of existing law is a right and cannot be questioned prior to 01.07.2014
- Cenvat credit availed duly as per CCR, 2004 and closing balance existed as on 30.06.2017 cannot be readily ascertained or segregated towards Input Tax ineligibility for a particular provision under Section17 of CGST Act, 2017
- Non-existence of a specific provision in the GST Act towards restriction on utilization of Cenvat credit to be carry forward which is under adjudication process

Directions by Circular:

- Officers were given instructions for recovery of Interest & Penalty
- Obtaining an undertaking from the Registered person towards non-utilisation of Cenvat credit as per above two instances reported where credit under dispute is more than Rs.10lakhs

Factors to be challenged:

The above circular is going to create havoc for the Registered person having Cenvat credit migrated to

GST era and having any one of the following above aspects to be dealt with. Considering the instructions given by Board to the Central tax officers, there are some basic aspects which cannot withstand the above directions having a legal enforceable right as below:

- Cenvat Restriction not imposed u/s140 & 142

There exists no imposition in the Transition provisions towards eligibility or ineligibility of the Cenvat credit pending for adjudication towards the Input Tax migrated u/s140. S142 deals with the recovery/refund mechanism in relation to the adjudication process alone and has no reference to Input Tax migrated u/ s140.

Circular cannot take a judicial discipline ultra-vires to the Act with respect to determining ineligibility of Cenvat migrated to GST and its utilization thereof. Registered person can migrate the input tax when there exists a bonafide belief of eligible credits as per the present provision read with relevant judicial decisions at various forum, the same cannot be questioned for utilization thereof under GST

- Cenvat earned in existing law cannot be restricted arbitrarily – S17(5) read with S140(1)(i)

Cenvat credit earned in the existing law shall be restricted if the same is ineligible under GST law as per S140 (1) (i). However, there should be a mechanism to examine the identification of the Cenvat credit earned and existing in the returns

filed for segregation & reversal thereof. For instance, if a Registered Person has availed the Cenvat credit available as per CCR, 2004 and the same has been duly disclosed in the relevant ST3/ ER1 concerned, such person shall not be in a position to segregate the availment and utilization of a particular credit for the period where returns have to be filed. There is a practical issue of identifying a Cenvat credit which has gone to common pool for availment & utilization towards segregation in GST era. Department has to issue proper guidelines for such common credit identification & segregation on the basis which has a legal backup.

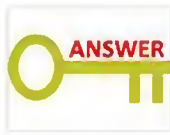
Mere demanding for restriction of Cenvat credit with Interest & Penalty shall not be a justified act considering the judicial discipline

- Applicability of Interest & Penalty
Instigating activity of the Circular towards applicability of Interest & Penalty has to follow the judicial discipline where there exists a contravention of any of the GST provision laid out. When the Cenvat recovery under above two paras are under dispute the same shall stand null & void for its recovery, accordingly recovery of Interest & Penalty shall be an illegitimate recovery



ABC Educational Institution (Trust) has sought necessary approvals for providing education upto Higher Secondary education. The above Trust provides extracurricular activities in addition to its curriculum in the areas of Martial Arts, Singing & Drawing. Trust has sought your views on applicability of GST on the Bus fees & other extracurricular activities being collected from the students.

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



Opinion To Last Month's Brainy Bits

Facts to Consider:

- Mr. X has been a supplier registered in the state of TN
- Client of Mr.X approaches for a wedding plan for execution in the state of Karnataka
- Mr.X may procure Goods & Services for the above event either from TN/ Karnataka or other states also
- The event includes identification of venue, decoration of the venue, organizing for food, guidance on costumes & beauty tips etc.,
- The event to be organized by Mr.X involves design function for the venue, identification cum sourcing for various suppliers, fund management, physical execution
- For the purpose of above event, Mr.X may cause for movement of goods from TN to Karnataka & carry forth back

Relevant Provision:

- Definitions
 - Section 2(20) Casual Taxable Person
 - Section 2(30) Composite Supply
 - Section 2(71) Location of the supplier of Service
 - Section 2(74) Mixed Supply
 - Section 2(90) Principal Supply
- Section 8 – Tax liability on composite and mixed supply

- Section 10 – Composition Supply
- Section 10 & 12 of IGST Act, 2017 – Place of Supply of goods other than supply of goods imported into or exported out of India

Conclusion:

Mr.X has engaged the contract with their client for supply of Goods & Services which are composite in each other. Principal supply for the contract would be Event Management for the Wedding activity and which involves organizing & pooling various resources for a common objective which is of Service in nature. The pre-dominant requirement of the recipient is met by the supplier on completion of the event, not mere supply of goods.

Mr.X shall be receiving inward supplies for the above event and couple of the goods/ services shall be attracting Karnataka GST. Status of registration shall not be depending by examining the taxes suffered in the hands of Mr.X, rather should be on the basis of Place of Business from where such supply takes place. Mr.X has been causing various supplies from TN and those supplies are not occasional in nature and since the recipient being in Karnataka POS happens to be in Karnataka. Accordingly, Mr.X shall be levying IGST on the supply value and there exists no purpose of Mr.X to obtain CTP registration in Karnataka



Prevention of Sexual Harassment at the Workplace

Background

One of the shared values of our society, recognized by the Constitution, is equal opportunity. The Constitution also contemplates a life of dignity which includes freedom from harassment and unwelcome advances at the workplace. It is in recognition of these fundamental rights that the Supreme Court of India in *Vishaka v. State of Rajasthan* [1997 (7) SCC 323], declared that sexual harassment at the workplace amounts to a discrimination against women and that it violates the constitutional right to equality. The Court then went on to provide guidelines for establishing mechanisms to prevent harassment, pending the enactment of a suitable legislation.

Legislation

The guidelines laid down by the Supreme Court in *Vishaka* were intended as a stop gap measure till the enactment of a legislation. However, they continued to hold the field till 2013 when the Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act, 2013.

The new legislation brings a codified structure to an important feature of the modern office life.

Setting up the Internal Committee

Each employer, at a workplace having more than ten members, is required to set up an internal complaints committee which shall consist of:-

Presiding officer, who shall be a woman employed at a senior level.

Two members from amongst employees preferably committed to the cause of women or who have experience in social work.

One external member who shall be from an NGO or a person familiar with the issues relating to sexual harassment.

At least half the members of the committee shall be women.

Separately, the district authorities are required to constitute a local committee on the same lines which shall have jurisdiction over institutions in which an internal committee has not been set up for reason of having less than 10 members.

What constitutes sexual harassment

Sexual Harassment can be broadly classified into two categories.

Quid pro quo: This encompasses all such acts where sexual favours are sought verbally or otherwise with an implicit or explicit offer of career advancement or benefits in return or a threat of causing detriment to one's career.

Hostile work environment: Doing any act of a sexual nature which creates a hostile environment which includes:

Physical contact or advances

Sexually colored remarks

Showing pornography

Other unwelcome physical, verbal or non-verbal conduct of a sexual nature.

Complaints mechanism

A person aggrieved by any instance of sexual harassment shall make a complaint in writing to the internal complaints committee with particulars of the instances of sexual harassment, within 90 days of the incident.

The complaint shall be considered by the internal complaints committee and if the complainant's committee finds that at first glance there appears to have been sexual harassment, the complaint shall be forwarded within a period of seven days, to the person said to have perpetrated such harassment, i.e., the respondent.

The respondent shall provide his written response within a period of ten days. The committee can then call for and record the testimonies of the parties, call records, other documents available with the employer, CCTV footage, etc. Pending the enquiry, the committee can recommend the transfer of the complainant or the respondent to another department or grant leave to the complainant to ensure that the parties do not have to come face to face with each other.

Upon considering the complaint, response, testimonies and other documents, the committee shall return a finding on whether any sexual harassment has taken place and recommend as to what punishment may be handed down. The committee can also recommend positive measures

for the complainant including compensation, counselling etc.
The employer is then required to either accept the recommendations of the committee and give effect to them or differ from them for reasons recorded in writing.

False Complaints

If the committee finds that the complaint is false and malicious, the committee may recommend action against the complainant under the service rules of the company or institution.

Confidentiality

The entire proceedings from the complaint to the recommendation are to be kept confidential by all the parties concerned. Any breach of confidentiality may be penalized by fine of Rs. 5000/- in addition to action that may be taken under the service rules.

Duties of the Employer

The Employer is obliged to:

- Provide a safe working environment.
- Display the order constituting the internal complaints committee.
- Organize workshops and awareness programmes at regular intervals.

- Provide required information and assistance to the internal complaints committee.
- Cause to initiate action under the IPC where the perpetrator is not an employee.

The Internal Committee is required to submit an annual report with details of numbers of complaints received and what action has been taken.

Conclusion

The Prevention of Sexual Harassment of the Workplace Act is not a tool for vengeance, nor an instrument to create a rift between two sections of employees. It is also not a tool for moral policing of the employees. The underlying intent of the entire mechanism is to provide every person with a safe space to work and secure professionalism in the workplace.





EXPRESS NEWS

- Huawei to expand handset making capacity in India
- Signs of revival in rural India predict recovery for economy
- India's growth to touch 7.3% next fiscal, 7.5% in 2019-20: Fitch
- Future of e-commerce will be more personalized
- Yes Bank acquires 17.31% stake in Fortis Healthcare

Paytm launches two new services under wealth management offering

Mobile application based financial services platform Paytm has announced the launch of two new services - Gold Gifting and Gold Savings Plan as part of its wealth management offering, Paytm Gold.

US challenges Indian export subsidies at WTO

The United States launched a challenge to Indian export subsidies at the World Trade Organization on Wednesday, saying they hurt U.S companies by letting Indian exporters sell goods more cheaply, U.S Trade Representative Robert Lighthizer said.

NCLT believes Aircel has potential to revive business

The National Company Law Tribunal (NCLT) expressed surprise that Aircel chose to file for bankruptcy on its own and said it admitted the telco's plea because it believes there is potential to revive the business, given the company's current revenue generation and over Rs 32,000 crore worth of assets, including spectrum.

Bandhan Bank raises Rs 1,342 crore from anchor investors

Bandhan Bank raised Rs 1,342 crore from anchor investors, ahead of its initial share-sale. The anchor investor issue fetched Rs 1,341.91 crore after allotment of 3.57 crore shares to 65 anchor investors at a price of Rs 375 per share. The price band for the initial public offer (IPO), which will close on March 19, has been fixed at Rs 370-375 per equity share. The issue is expected to raise Rs 4,473 crore

LTCG tax: Govt extends indexation benefit to share sale in unlisted companies

Giving some relief to investors, the government extended indexation benefit for computing tax liability on sale of shares listed after January 31. Capital gains arising from such transactions, however, will continue to be taxed at 20 percent.

Commerce and Industry Minister Suresh Prabhu today said he has directed the ministry to formulate a plan to grant patents at the earliest.

Over 2.32 lakh patent applications were pending with the Indian Patent Office as on November 30 last year.



Companies Act, 2013

Updates on Amended Rules

MCA has amended

Companies (Authorized to Register) Rules, 2014 which is to be known as Companies (Authorized to Register) Amendment Rules, 2018. MCA has introduced new Form URC-1, which shall substitute the old Form URC-1.

Companies (Authorised to Register) Amendment Rules, 2018, dated 16th February, 2018.

MCA has amended Companies (Management and Administration) Rules, 2014 which is to be known as Companies (Management and Administration) Amendment Rules, 2018. MCA has introduced new Forms MGT-6 and MGT-15, which shall substitute the old Forms MGT 6 and MGT 15.

Companies (Management and Administration) Amendment Rules, 2018, dated 16th February, 2018.

MCA has amended Companies (Audit and Auditors) Rules, 2014 which is to be known as Companies (Audit and Auditors) Amendment Rules, 2018. MCA has introduced new Forms ADT-1 and ADT-2, which shall substitute the old Forms ADT-1 and ADT-2.

Companies (Audit and Auditors) Amendment Rules, 2018, dated 16th February, 2018

MCA has amended Companies (Accounts) Rules, 2014 which is to be known as Companies (Accounts) Amendment Rules, 2018. Following proviso shall be inserted in Rule 10 of the principle Rules, "Provided that the Companies which are required to comply with Companies (Indian Accounting Standards) Rules, 2015 shall forward their statement in Form AOC-3A".

Companies (Accounts) Amendment Rules, 2018., dated 27th February, 2018.

Notifications

MCA has amended the notification of the Government of India dated 5th June, 2015. As per the amendment, for serial number 8 in the table, Chapter IX, section 129 shall not apply to the companies engaged in defence production to the extent of application of relevant accounting standard on segment reporting.

***SO (E), dated 23rd February, 2018
Orders***

MCA has passed an order which shall be known as Companies (Removal of Difficulties) order, 2018. In the Companies Act, 2013, following proviso shall be inserted in section 169(1). "Provided that an independent director re-appointed for second term under sub-section (10) of section 149 shall be removed by the company only by passing a special resolution and after giving him a reasonable opportunity of being heard".

SO (E), dated 21st February, 2018.