

# Info Capsule

## **MCA NOTIFIES COMPANIES (MEETINGS OF BOARD AND ITS POWERS) SECOND AMENDMENT RULES, 2017<sup>1</sup>**

Ministry of Corporate Affairs notifies Companies (Meetings of Board and its Powers) Second Amendment Rules, 2017 dated July 13, 2017. As per the notification following amendment has been made in the Companies (Meetings of Board and its Powers) Rules, 2014 -

### **1. In Rule 3-**

(a) In sub-rule(3), for clause (e), the following has been substituted:-

“(e) Any director who intends to participate in the meeting through electronic mode may intimate about such participation at the beginning of the calendar year and such declaration shall be valid for one year:

Provided that such declaration shall not debar him from participation in the meeting in person in which case he shall intimate the company sufficiently in advance of his intention to participate in person.”

(b) In sub-rule (11), in clause (a), after the words “decision taken by majority”, the words “and the draft minutes so recorded shall be preserved by the company till the conformation of the draft minutes in accordance with sub-rule (12)” has been inserted.

### **2. For Rule 6, the following rule has been substituted:-**

"6. Committees of the Board - The Board of directors of every listed company and a company covered under rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 shall constitute an 'Audit Committee' and a 'Nomination and Remuneration Committee of the Board'."

## **POSITION REGARDING APPLICABILITY OF GST ON LEGAL SERVICES PROVIDED BY INDIVIDUAL ADVOCATES INCLUDING SENIOR ADVOCATES AND A FIRM OF ADVOCATES<sup>2</sup>**

There are points being raised about the applicability of GST on legal services provided by advocates – whether it is in forward charge or reverse charge. It may be mentioned that there is no change made in taxation of legal services in the GST era.

In this context, it is further clarified that legal service has been defined to mean any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority.

<sup>1</sup> Available at: [http://www.mca.gov.in/Ministry/pdf/CompaniesMeetingBoardPowersSecondRules\\_14072017.pdf](http://www.mca.gov.in/Ministry/pdf/CompaniesMeetingBoardPowersSecondRules_14072017.pdf)

<sup>2</sup> Available at: <http://pib.nic.in/newsite/erelease.aspx>

It is further clarified that notification No. 13/2017-Central Tax (Rate) dated June 28, 2017 (Serial No. 2) specifies, inter alia, the following service under reverse charge mechanism,-

“Services supplied by an individual advocate including a senior advocate by way of representational services before any court, tribunal or authority, directly or indirectly, to any business entity located in the taxable territory, including where contract for provision of such service has been entered through another advocate or a firm of advocates, or by a firm of advocates, by way of legal services, to a business entity.”

The words “by way of legal services” are preceded and succeeded by comma. Therefore, the said words apply to an individual advocate including a senior advocate and a firm of advocates. Legal services provided by either of them are liable for payment of GST under reverse charge by the business entity. The words “by way of representational services before any court, tribunal or authority...” appear in conjunction with senior advocate without a comma and merely describe the nature and mode of representational services provided by a senior advocate to a business entity. It, therefore, follows that legal services, which includes representational services, provided by advocates are under reverse charge.

### **POSITION REGARDING APPLICABILITY OF THE MARGIN SCHEME UNDER GST FOR DEALERS IN SECOND HAND GOODS IN GENERAL AND FOR DEALERS IN OLD AND USED EMPTY BOTTLES IN PARTICULAR<sup>3</sup>**

Doubts have been raised regarding the applicability of the Margin Scheme under GST for dealers in second hand goods in general and for dealers in old and used empty bottles in particular.

Rule 32(5) of the Central Goods and Services Tax (CGST) Rules, 2017 provides that where a taxable supply is provided by a person dealing in buying and selling of second hand goods i.e., used goods as such or after such minor processing which does not change the nature of the goods and where no input tax credit has been availed on the purchase of such goods, the value of supply shall be the difference between the selling price and the purchase price and where the value of such supply is negative, it shall be ignored. This is known as the margin scheme.

Further, notification No.10/2017-Central Tax (Rate), dated June 28, 2017 exempts Central Tax leviable on intra-State supplies of second hand goods received by a registered person, dealing in buying and selling of second hand goods [who pays the central tax on the value of outward supply of such second hand goods as determined under sub-rule (5)] from any supplier, who is not registered. This has been done to avoid double taxation on the outward supplies made by such registered person, since such person operating under the Margin Scheme cannot avail input tax credit on the purchase of second hand goods.

Thus, Margin Scheme can be availed of by any registered person dealing in buying and selling of second hand goods [including old and used empty bottles] and who satisfies the conditions as laid down in Rule 32(5) of the Central Goods and Services Tax Rules, 2017.

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<sup>3</sup> Available at <http://pib.nic.in/newsite/erelease.aspx>

## MCA CORRIGENDUM<sup>4</sup>

MCA has also notified a corrigendum for the notification in respect of Exemptions to the Private Companies vide G.S.R. 583(E) dated June 13, 2017, wherein:-

Part II, Section 3, Sub-section (i) at page 4, in paragraph number 5, in the Table, in the column (3), in item (ii), for the words "**statement or**" shall now be read as "**statement and**".

Thus after the above specified corrigenda the clause (i) of sub- section (3) of section 143, which provides for the details to be stated in the auditor's report, shall now be read as follows:

"In case of private companies - clause (i) of sub- section (3) of section 143 shall not apply to a private company:-

- (i) which is a one person company or a small company; or
- (ii) which has turnover less than rupees fifty crores as per latest audited financial **statement and** which has aggregate borrowings from banks or financial institutions or anybody corporate at any point of time during the financial year less than rupees twenty five crore."

### Team ICSI

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<sup>4</sup> Available at: [http://www.mca.gov.in/Ministry/pdf/NotificationxEmptionPrivateCompany\\_14072017.pdf](http://www.mca.gov.in/Ministry/pdf/NotificationxEmptionPrivateCompany_14072017.pdf)