

eMagazine

COMPANIES
(AMENDMENT)
ACT, 2017

UNION
BUDGET 2018



Articles:

SEBI Informal guidance on continual disclosure based on the type of transaction	04
A Review – Bankruptcy Code, Legal Recourse & Challenges	06
Country – By - Country Reporting & Furnishing of Master File (Transfer Pricing) Latest Developments	08

Columns:

From Chairman's Desk	02
Chapter Activities	03
Words Worth Millions	11
Living Room	12
Students corner	14
Web Reading	15
GST Suites	16
Brainy Bits	18
I & E Law Café	19
Newsroom	21
Regulatory update	22

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Vision

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

Motto

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"To develop high calibre professionals facilitating good corporate governance"

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Dear Professional Colleagues,

I take this opportunity to express my sincere gratitude to all of you and members for giving me an opportunity to serve as the Chairman of the Chapter for the year 2018. I am sure with the support from the committee members and students we will be able to scale greater heights. My hearty congratulations to the new team.

During this month, a Joint Program on "Budget 2018" was conducted for both members and students. Further, the oral coaching classes commenced for the ensuing June 2018 exams and many students have registered for the classes.

During the year we plan to initiate more students' activities to give them an opportunity to learn, train and excel. The chapter is also planning to provide more avenues for Members participation in Chapter events.

CS Executive and Professional examinations results are expected this month end and I wish all the students the best of luck.

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Chapter Activities

1. CAREER AWARENESS PROGRAM

Chapter conducted one Career Awareness Program during January 2018. The details are as follows.

S No.	Date	Venue	Speaker(s)	No. of Participants
1	29.01.2018	Hindustan First Grade College	CSManjunath S,	70

2. INAUGURATION OF ORAL COACHING CLASSES



On 03rd Jan 2018, Chapter organized an inaugural session of its Oral Coaching Classes for Executive & Foundation program for June 2018 examination. CS Manjunath S, Secretary, welcomed the students. In his welcome address, he explained the importance of CS profession in the new Companies Act. He advised the participants about the various method of preparation for facing the CS Examination. The regular classes started immediately after the conclusion of the inaugural session.

3. REPUBLIC DAY CELEBRATIONS



On 26.01.2018, Chapter celebrated Republic Day in Chapter Premises. CS Manjunath S, Chairman, hoisted the National Flag and delivered the Republic Day address to the participants. CS Veerash M.J, Secretary, welcomed the gathering. Managing Committee Members and Students were participated in the event.

4. ACADEMIC TRAINING PROGRAM FOR PROFESSIONAL STUDENTS



Chapter conducted the academic training program for the Professional level students during January 2018. The five days Entrepreneurship Development Program was held from 29th January, 2018 to 02nd February 2018. Various faculties from Mysore handled the sessions.



SEBI Informal guidance on continual disclosure based on the type of transaction

The premise of SEBI (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations) was aptly captured by the Report of the High Level Committee to review the SEBI (Prohibition Of Insider Trading) Regulations, 1992¹ under the Chairmanship of N. K. Sodhi (Sodhi Committee Report) wherein, *inter alia*, other provisions it has been mentioned that:

The Committee believes that it is necessary to make provision for disclosure of trades by employees of listed companies and their immediate relatives on two grounds. Such disclosures would not only enable the administration and policing of the Proposed Regulations but it would also enable the market at large to take an informed investment decision on the basis of dealings by the company's insiders. The Committee has carefully differentiated between internal disclosures and external disclosures and has sought to minimize external disclosures unless such disclosures serve any specific regulatory purpose. (emphasis supplied)

In this regard, we analyse SEBI's Interpretive Letter to Kotak Mahindra Bank Limited (KMBL) on the need to disclose under Regulation 7 of PIT Regulations, when the amount involved is NIL.

Background of the case

KMBL had filed a request for Interpretive Letter² raising the following issues:

1. Is disclosure in Form C required for change in shareholding in case of transactions like bonus issue, shares received pursuant to Scheme of Amalgamation, gift, off market transaction like transfer of shares to a

family trust account when no consideration is involved?

2. If yes, then what value should be assigned to such transactions (considering the actual amount involved is NIL) and accordingly be considered for disclosure?

SEBI's reply

SEBI in its reply dated April 28, 2017³ stated the following:

1. Referring to Regulation 7(2) of PIT Regulations, SEBI stated that:
 - a. For transactions, information about which is already in the public domain such as issue of bonus shares, allotment of shares pursuant to Scheme of Amalgamation, separate disclosure is not warranted.;
 - b. For other transactions stated by KMBL such as gift, off market transaction disclosure must be made in accordance with PIT Regulations.

In arriving at this conclusion, SEBI reiterated its principle behind PIT Regulations being preventing abuse by trading when in possession of Unpublished Price Sensitive Information (UPS). In cases where the allottee has no role in the transaction in question such as those mentioned in (a) above, the question of trading based on possession of UPS does not arise.

2. For transactions requiring disclosure, the expression 'value of securities traded' shall

¹

https://www.sebi.gov.in/sebi_data/attachdocs/1386758945803.pdf

² https://www.sebi.gov.in/sebi_data/commondocs/may-2017/SEBI-Reply05_p.pdf

³ https://www.sebi.gov.in/sebi_data/commondocs/may-2017/SEBI-Reply05_p.pdf

mean the prevailing market value of securities of the company on the day the securities in question were bought or sold. Where disclosure is made under such circumstances wherein the value involved is NIL but nevertheless warrants disclosure, the method of determination of the fact that threshold value has been breached should also be mentioned in the disclosure.

Key takeaways

The Informal Guidance is relevant for companies in the following manner:

1. It lays down the need to disclose on the basis of the type of transaction. The quantum of the transaction is immaterial in determining the need to report. So long as the transaction in question has the slightest possibility of trading on the basis of UPSI, disclosure is required provided the ceiling is breached or if not breached at least the value of the transaction should be noted to aid calculation in the future;
This Informal Guidance is however in polarity with the Order of SAT in the case of Akriti Global Traders Ltd versus SEBI dated September 30, 2014⁴ wherein the SAT stated that obligation to make disclosure under Takeover Regulations, 2011 or PIT Regulations, 1992 would arise as soon as there is acquisition of shares by a person in excess of the limits prescribed under the respective regulations and it is immaterial as to how the shares are acquired i.e. whether purchased from open market or shares were received on account of amalgamation or by way of bonus shares.
2. It reiterates the principle of true and timely disclosure as stated in Sondhi Committee Report and by SAT in the case of G.Suresh v. SEBI vide order dated April 29, 2014⁵ as follows:

True and timely disclosures by an acquirer of shares in a company or an important regulatory tool intended to serve a public purpose of disseminating this information to the company as well as to Stock Exchange expeditiously. Such disclosures are very important as they help investors to take an informed decision in investing in the scrip of said company.

A Word of caution

Since we are on the topic of an Interpretive Letter issued by SEBI, it is pertinent to draw attention to the case of Arbutus Consultancy LLP Vs SEBI⁶, wherein the SAT stated that when a straight forward reading of the Regulation / law is available, then that is the only way it should be read. Informal guidance scheme cannot be used to reduce the importance of the statute itself. Under the SEBI Informal Guidance Scheme, 2003, the guidance is the view of the concerned department of SEBI and will not be binding on the Board. The letter issued by a department under this scheme should not be construed as a conclusive decision or determination of any question of law or fact by SEBI. Such a letter cannot be construed as an order of the Board under Section 15T of the Securities and Exchange Board of India Act, 1992 and shall not be appealable. An informal guidance cannot be used as an estoppel against law.

Hence as much as the discussion in the current Informal Guidance under discussion throws light on an important matter i.e. when it comes to disclosure, it is the type of transaction that is relevant however it is not to be construed as a precedent for all companies. Accordingly a word of caution in this regard. It is important to understand and as stated by SEBI in its Interpretive Letters that the views expressed therein are local to the facts of the case and does not affect the applicability of any other law or requirements of any other SEBI Regulations, Guidelines and Circulars administered by SEBI or the laws administered by any other authority.

4

http://www.watchoutinvestors.com/Press_Release/sat/ST1857.PDF

⁵ https://www.sebi.gov.in/enforcement/orders/apr-2014/in-the-matter-of-g-suresh_26805.html

eMagazine from ICSI Mysore Chapter | Edition – 166 February 2018

6

http://www.sat.gov.in/english/pdf/E2017_JO2016123.PDF



A Review Bankruptcy Code, Legal Recourse & Challenges

Introduction

While reviewing several of cases, there was typically at least few years of time lost between the BIFR is providing a liquidation opinion and the High Court issuing a winding up order. *In Re: Consolidated Steel and Alloys*, the Delhi High Court actually failed to issue a winding up order following the BIFR's reference and creditors subsequently had to file a separate winding up petition in the court. The BIFR made a reference for liquidation in 1998, but the High Court issued a winding up order only in 2005 in response to a winding up petition filed by a creditor in 2002. The reason for the High Court's failure to act in this case is unclear, but such delays only lead to further depletion in the value of the debtor's assets and dilute any recovery that creditors might otherwise have been able to obtain. Pro-Debtor Stance and Deference to the BIFR:

Post further observation, the High Courts and Supreme Court have typically adopted a pro-rehabilitation stance and have been reluctant to order winding up proceedings. This is apparent from their judgments when winding up petitions are challenged as well the high level of deference accorded to the BIFR. For example, there is a whole line of Supreme Court precedent which suggests that a winding up order does not signal the closure of the process. In *Rishabh Agro Industries Ltd*, a Division Bench of the Supreme Court held that it was open to the directors of the company to explore the possibility of rehabilitation even after the winding up order had been passed. This judgment has since been cited in several later cases when former management of a debtor has attempted to revive a company in the final stages of being wound up. Another theme seen across several judgments was the significant deference accorded to the

BIFR's decisions, despite the later's dismal track record and reputation for delays. This submissiveness appears to stem from the Supreme Court's decisions that have referred to the BIFR as the "guardian of sick companies."

Challenges to SARFAESI

Fourteen of the cases from the High Courts and 5 out of the 15 cases from the DRTs/ DRATs involved applications by debtors to stay SARFAESI enforcement action. In a majority of these cases (12 of 19), the court allowed SARFAESI action to continue or held the SARFAESI Act to prevail over other proceedings, but these judgments are nevertheless worth examining further as they reflect situations where SARFAESI enforcement was not as smooth as the statute intended it to be. While some of these difficulties appear to arise from parallel proceedings in multiple fora and laws that often conflict with one another (some of these cases involving conflicts between SARFAESI and other statutes,) these judgments also reveal instances of courts either mis-interpreting the Act or significantly expanding the scope of their review powers in adjudicating challenges to SARFAESI enforcement action. First, there were instances of applications to stay SARFAESI enforcement actions being filed in civil courts and instances of civil courts adjudicating such challenges despite the explicit provision in the Act that the DRT ousts jurisdiction of the civil court when it came to actions under SARFAESI. In *Bank of India v. N. Natarajan and Ors.*, the civil court issued an interim stay on the enforcement of SARFAESI proceedings, which it continued to extend over a one-year period. The secured creditor ultimately appealed the decision to the High Court which ruled that the civil court had no jurisdiction over SARFAESI actions let alone the power to issue an interim stay. While this was the correct result, much time was lost as a result of a completely contrary understanding of the SARFAESI Act by a civil court judge. Second, there were situations where the courts and DRTs went beyond the scope of their

permitted review when dealing with challenges to SARFAESI. Under the SARFAESI Act, the role of the DRT or court when considering a challenge to enforcement action is to examine whether the secured creditor's action was taken in accordance with the provisions of the SARFAESI Act and related rules.

In practice, however, the DRTs and DRATs often overstepped this line to go on to adjudicate the substance of the claim itself. For example, in *Lakshmi Sankar Mills v. Indian Bank and Ors.*, the DRT did not allow the debtor's application to stay SARFAESI enforcement, but imposed a condition. The DRT held that the asset sale under SARFAESI could proceed only if the debtor did not deposit a fixed amount by a specified date. The debtor appealed this condition to the DRAT which went on to lower the amount of the deposit. Ultimately, the Madras High Court remanded the decision back to the DRT to consider only the narrow question of whether the secured creditors had complied with the provisions of SARFAESI, but this was three years after the banks had initiated enforcement action. In another similar case, the DRT granted the debtor additional time to pay the deposit before the bank could initiate the sale while the narrow question it was supposed to have considered was whether the bank had adhered to the enforcement of security rules under SARFAESI. The purpose of the SARFAESI Act was to provide a relatively quick mechanism for secured creditors to enforce their security interests without the intervention of the court.

To the extent that the debtor has the ability to challenge the enforcement action in court, Section 17 of the Act requires the debtor to bring such an application within 45 days and also makes clear that the review by the court or DRT is to be limited to whether the secured creditor complied with the provisions of SARFAESI. These and other provisions of SARFAESI are all aimed at enabling the efficient and timely enforcement of security without much scope for delays. However, it has been suggested that the enforcement of security pursuant to SARFAESI has, in practice, not been immune from the judicial delays and uncertainties that arise in other insolvency proceedings. These delays and inefficiencies arise out of a combination of factors, including the existence of multiple fora and parallel

proceedings, a lack of understanding of SARFAESI by many courts and tribunals (particularly the lower courts) and a tendency of courts to expand the scope of their review in the context of SARFAESI enforcement actions. It is, of course, difficult to ascertain the proportion of cases in which SARFAESI enforcement has been allowed to go unchallenged as opposed to those occasions on which it has been challenged in court. However, it appears that in cases where a debtor does challenge SARFAESI enforcement, creditors have experienced long drawn out struggles in the courts.

Conclusion

India's patchwork of insolvency laws that each applies to a different class of stakeholders or processes has resulted in parallel proceedings, conflicts between different statutes and uncertainty for creditors over their recovery. Apart from the multi-layered legal framework, various factors to do with the law and its implementation have caused major delays in insolvency proceedings, particularly when it comes to winding up and liquidation. These include the reluctance of courts to issue winding up orders and their willingness to allow debtors to explore rescue and rehabilitation even when such an approach may no longer be feasible.

Further, there is a need to have an effective legal framework to control the liquidation process post-issuance of the winding up order which is when the greatest delays often occur. I believe that the conflicts and multiple proceedings that have arisen from the multi-layered insolvency law framework point to a strong need for a unified bankruptcy code that applies to all aspects of a company in distress and for all stakeholders. While different stakeholders in an insolvency process do and should have different rights and interests, setting these out in a single code would provide a framework for balancing the competing interests of debtors, secured creditors and other stakeholders. Such an approach would also minimize the possibility of conflicts between the different rights and priorities of various stakeholders as well as the instances of parallel proceedings.



Country By - Country Reporting & Furnishing of Master File (Transfer Pricing)

Latest Developments

The Central Board of Direct Taxes (in short Board), after examining the comments and suggestions received from stakeholders and general public, has notified the Rules for Maintaining and Furnishing of Transfer Pricing Documentation in the Master File and Country – By - Country (CBCR) Report.

The Board, on 31st October, 2017, has notified the final set of Rules for Maintaining and Furnishing of Transfer Pricing Documentation under Income Tax Rules 1962.

Objective: To introduce provisions for additional TP documentation and Country – by – Country reporting to implement the recommendations contained in the Organization for Economic Co-operation and Development (OECD)'s Base erosion and profit shifting (in short BEPS) report on Action 13.

The Draft Rules were issued on 6th October 2017 and kept open till 16th October 2017 for public & stakeholders comments and suggestions, if any, by electronically.

Background In Brief

To keep India's commitment in implementing OECD's recommendations relating to "Transfer Pricing Documentation and Country-by-Country Reporting", Section 286 has been inserted in the Income Tax Act 1961 vide Finance Act, 2016 to provide and to furnish Country-by-Country report in respect of an International Group (IG) by its constituent.

Further, Section 92D of the Act was also amended vide Finance Act, 2016 suitably to provide for keeping and maintaining of Master File by every constituent entity of an International Group (IG), which was to be furnished in this regard.

Subsequent to the aforesaid amendments to the Income Tax Act, the Board has sought comments and suggestions on the proposal to insert rules

10DA, 10DB and form nos. 3CEBA to 3CEBE in the Income-tax Rules, 1962.

Salient Features

1. Rules : The Income-tax (Twenty-fourth Amendment) Rules, 2017

2. Threshold Limit

For CBC Report: The threshold for the Country-By-Country Report is total consolidated group revenue of Rs. 5,500 crore or more.

The threshold for the Master File: The threshold for Master File is consolidated group revenue exceeding Rs. 500 crore and either the aggregate value of international transactions as per the books of accounts exceeding Rs. 50 crore or aggregate value of international transactions in respect of intangible property exceeding Rs. 10 crore.

3. Designate Constituent Entity or Alternate Reporting Entity

An international group having multiple Indian constituent entities may designate one constituent entity to file the Master File.

4. Reporting

Reporting of CBC Report in Form 3CEAD

Reporting Master File in Form 3CEAA

Part - A of Form 3CEAA is to be filled by every constituent entity of an international group regardless of whether it qualifies under the threshold for furnishing Master File.

To reduce the compliance burden, such international group having multiple Indian constituent entities can designate one constituent entity to file Part A on its behalf.

5. Form 3CEAD for furnishing Country-by-Country Report follows OECD template.

6. Compliance

Due Date for Filing First CBC Report

For Financial Year 2016-17, due date has been extended till 31.03.2018 vide Circular No. 26/ 2017 dated 25.10.2017

Due Date for submitting first Master File
 The date of compliance for furnishing the
 Master File for Financial Year 2016-17 has
 also been extended to 31.03.2018.

The Income-tax (Twenty-fourth Amendment) Rules, 2017 In Brief

Information & documents to be kept and maintained under proviso to sub-section (1) of section 92D and to be furnished in terms of sub-section (4) of section 92D

Requisite Information and Documents - (Rule 4A)	
Every person, being a constituent entity of an international group	<ol style="list-style-type: none"> 1. If the consolidated group revenue of the international group, as reflected in the consolidated financial statement of the international group for the accounting year, exceeds Rs. 500 Crore & 2. The aggregate value of international transactions : <ul style="list-style-type: none"> • During the accounting year, exceeds Rs. 50 Crore, or • In respect of purchase, sale, transfer, lease or use of intangible property, exceeds Rs. 10 Crore. <p>Requisite Information And Documents of The International Group (IG)</p> <ol style="list-style-type: none"> 1. A list of all entities of the IG along with their addresses 2. A chart depicting the legal status of the constituent entity and ownership structure of the entire IG 3. A description of the business of IG during the accounting year including – <ul style="list-style-type: none"> • Nature of the business • Important drivers of profits of such business • A description of the supply chain for the 05 largest products or services of the IG in terms of revenue and any other products including services amounting to more than 5% of consolidated group revenue • A list and brief description of important service arrangements made among members of the IG other than research and development services • A description of the capabilities of the main service providers within the IG • Details about the Transfer Pricing Policies (TP) for allocating service costs and determining prices to be paid for intra-group services • A list and description of the major geographical markets for the products and services offered by the IG • A description of the functions performed, assets employed and risks assumed by the constituent entities of the IG that contribute at least 10% of the revenues or assets or profits of such group; and • a description of the important business restructuring transactions, acquisitions and divestments; 4. A brief description of the overall strategy of the IG for the development, ownership and exploitation of intangible property, including location of principal research and development facilities and their management. 5. A list of all entities of the IG engaged in development and management of intangible property along with their addresses. 6. A list of all the important intangible property or groups of intangible property owned by the IG along with the names and addresses of the group entities that legally own such intangible property

	<ol style="list-style-type: none"> 7. A list and brief description of important agreements among members of the IG related to intangible property, including cost contribution arrangements, principal research service agreements and license agreements 8. A detailed description of the TP Policies of the IG related to research and development and intangible property 9. A brief description of important transfers of interest in intangible property, if any, among entities of the IG including the name and address of the selling and buying entities and the compensation paid for such transfers 10. A detailed description of the financing arrangements of the IG including the names and addresses of the top ten unrelated lenders 11. A list of group entities that provide central financing functions, including their place of operation and of effective management 12. A detailed description of the TP Policies of the international group related to financing arrangements among group entities 13. A copy of the annual consolidated financial statement (CFS) of the IG and 14. A list and brief description of the existing unilateral advance pricing agreements (APAs) and other tax rulings in respect of the IG for allocation of income among countries.
Reporting & Furnishing of Form 3CEAA	<p>And same shall be furnished to the Director General of Income-tax (Risk Assessment) on or before the due date for furnishing the return of income as specified in sub-section (1) of section 139</p> <p><i>Further, the information in Form No. 3CEAA for the accounting year 2016-17 may be furnished at any time on or before the 31st day of March, 2018.</i></p> <ol style="list-style-type: none"> 1. Part A of Form No. 3CEAA Shall be furnished by every person, being a constituent entity of an IG. 2. Part B of Form No. 3CEAA Shall be furnished by a person, being a constituent entity of an IG in those cases where the conditions as provided in sub-rule (1) are satisfied.
Intimation In case of more than one constituent entity Resident In India	The intimation shall be made by the designated constituent entity to the Director General of Income tax (Risk Assessment), in Form 3CEAB at least 30 days before the due date of filing of the Form 3CEAA.
Mode of Submission of Forms	The Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems), shall specify the procedure for electronic filing of Form No. 3CEAA and Form No. 3CEAB.
Preservation of Information & other relevant Documents	Period of eight years (08) from the end of the relevant Assessment Year.
Rate of Exchange	The telegraphic transfer buying rate of such currency on the last day of the Accounting Year.
Furnishing of Report in respect of an International Group (IG) (Rule DB)	

Furnishing of Report in respect of an (IG) In Form 3CEAC	Every constituent entity resident in India, shall, if its parent entity is not resident in India, intimate the Director General of Income-tax (Risk Assessment), the following, namely:- 1. whether it is the alternate reporting entity of the IG; or 2. The details of the parent entity or the alternate reporting entity, as the case may be, of the IG & the country or territory of which the said entities are residents.
Intimation By Form 3CEAD	Shall be made at least two months (02) prior to the due date for furnishing of report.
Frequency of Intimation	Every parent entity or the alternate reporting entity, resident in India, shall furnish the report for every reporting accounting year to the Director General of Income-tax (Risk Assessment)
Intimation In case of more than one constituent entity Resident In India	The report may be furnished by that entity which has been designated by the IG to furnish the said report and the same has been intimated to the Director General of Income-tax (Risk Assessment) in Form No. 3CEAE.
Total consolidated group revenue of the IG	Five Thousand Five Hundred Crore Rupees (Sub-section (7) of Section 286

Union Budget 2018: Proposals

It is proposed to amend certain provisions under section 286 relating to Country-by-Country Report. They are –

The time allowed for furnishing the CBCR -

1. In case of parent entity or Alternative Reporting Entity, resident in India, is proposed to be extended to twelve months from the end of reporting accounting year.
2. In case Constituent entity resident in India, having a non-resident parent, shall also requires furnishing of CBCR in case its

parent entity outside India has no obligation to file the said report. The time limit shall be 12 months from the end of reporting accounting year.

3. The due date for furnishing CBCR by the Alternate Reporting Entity of an international group, the parent entity of which is outside India, with the tax authority of the country or territory of which it is resident, will be the due date specified by that country or territory.

Words Worth Million

We May Encounter Many Defeats but We Must Not Be Defeated

Maya Angelou



Guru mantras for designing your life

Life is an interesting problem. It's certainly an ambiguous one. Designers solve problems using design thinking. Look around your office or home—at the tablet or smart phone you may be holding or the chair you are sitting in. Everything in our lives was designed by someone. And every design starts with a problem that a designer or team of designers seeks to solve. Design thinking can also help us create a life that is both meaningful and fulfilling, regardless of who or where we are, what we do or have done for a living, or how young or old we are. The same design thinking responsible for amazing technology, products, and spaces can be used to design and build your career and your life, a life of fulfillment and joy, constantly creative and productive, one that always holds the possibility of surprise

Things you can do to better design your life

1. Be curious - this is a fantastic start point, and indeed Einstein himself famously said that he had no real talents other than passionate curiosity. Studies have shown that curiosity primes our brain for learning new things, so this is a crucial mind set to invoke from the off.

2. Try stuff - prototyping is a fundamental part of design thinking, and so it's no surprise to see a request that we try and devise as many cheap and easy experiments to conduct as we can to test out our assumptions. Experimentation is a key part of organizational change and it should be a fundamental part of designing your life too.

3. Reframe problems - There are a number of very well known cognitive biases that can limit our thinking and restrict our choices. Indeed, studies have even shown that the way we frame things can play a significant part in whether we get started or procrastinate. By reframing our problems we can often look at situations in a new light and come up with much better solutions to them. Reframing also makes sure that we are working on the right problem. Life design involves key reframes that allow you to step back, examine your biases, and open up new solution spaces

4. Know it s a process - Recognize growing need for lifelong learning, and designing your life very much fits into this mold. There is no real end point and it is much less about the outcome than it is about the way you go about achieving it. This focus on process rather than outcome will allow you to gain something from every eventuality, good or bad.

5. Ask for help - Design and invention are increasingly collaborative processes, and designing your life is no different. Having an open approach, not only to new ideas and insights you can receive from people about new directions, but also in terms of feedback from others on those ideas

6. Understand what makes you happy - A lot of what we do to make ourselves happy is actually psychologically wrong. People think if they keep all their options open then they'll be happier. But it turns out if you make a decision but you keep your other options open, all the psychological research will say that you will make yourself deeply unhappy.

7. Bust Your Excuses These are ALL the things holding you back from your dream. The things that you say to yourself to bring yourself back to reality. These include: I don't know anything. I'm not good enough. I'm poor. I'll never be smart. I married the wrong person. It's never going to happen. It's not a good idea. Its too hard. It's not going to work.

8. Call to Action In order to design your life, you have to understand what you NEED. Thus you organize your life around the needs you want to fulfil and find things to satisfy them in healthy ways. Self-care is not selfish, it's necessary. I can design my day to work for me

9. Be an Author vs. Weather -Reporter We have to recognize when we're being **authors** of our lives or plain old **weather reporters**. Most of us, without realizing it, report out the weather more often than we would like. Some examples of weather reports are: Traffic was horrible today, that's why I was late. Gosh, my boss yelled at me today, he must be in a bad mood. **Weather reports** are not lies, they're

just statements of fact with no feeling or no active participation on our part. In essence, life is happening *to* us and there's nothing (seemingly) that we can do about it. Being an **author** takes a more passionate, active stance: I left early so I could make my meeting and listened to a great podcast while I was in traffic this morning. I called my mom to tell her that I really needed her support over the next couple weeks as I was transitioning to a new project.

Everyone consciously or unconsciously designs their life.

You can't have everything you want but you **CAN** have what is most important to you. Don't take things personally if you fail. Just keep on experimenting. And slowly but surely, you'll design the life you want to live. We've lost control of our lives and we need to figure out how to get it back. With change likely to be a growing presence in all of our lives, the basic design principles outlined above could prove invaluable in helping us to live the life we want and live with intention...not contention... or even worst, frustration.



Notification of certain sections of the Companies (Amendment) Act, 2017

The MCA has notified the following sections of Companies (Amendment) Act, 2017, vide notification dated 9th February 2018

1. Section 2 [except clause (i) and clause (xiii)] and section 3;
2. Section 7
3. Section 9
4. Sections 11 and 12
5. Section 14
6. Section 17
7. Sections 27 to 29 (both inclusive)
8. Section 32
9. Sections 34 and 35
10. Section 38
11. Sections 41 to 45 (both inclusive);
12. Sections 47 and 48;
13. Sections 50 and 51
14. Section 53
15. Sections 59 and 60
16. Sections 53 to 65 (both inclusive)
17. Sections 72 to 74 (both inclusive)
18. Sections 77 to 79 (both inclusive)
19. Section 82
20. Sections 84 and 85
21. Sections 90 to 93 (both inclusive)



Commentary on Resident Director Series- 3

Provisions: Section 149 (3):

Every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty-two days in the previous calendar year.

Commentary:

1. **Applicably:** Applicable to all types of companies' i.e. private company, public company and OPC.
2. **Mandatory:** Word is 'shall'. Hence it is mandatory for every company to have at least one resident director.
3. **Minimum Criteria:** Provision mandates minimum one resident director. It is discretionary of company to have more than one resident director.
4. **India:** As per my opinion, India means territory of India as referred to in Article 1 of the Constitution, its territorial waters, seabed and subsoil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976) and the air space above its territory and territorial waters.
5. **Stay in India:** Provision prescribes minimum number of days stay in India which is 182 days or more. Question may arise whether accumulation of 24 hours will be considered as a day or mid night to mid night is considered as a day. The stay in India may be continuous stay or otherwise also.
6. **Resident definition in other laws:** If person is resident under Income Tax Act

1961 or resident any other law does not become resident automatically under this provision unless he stays in India for minimum period of 182 days or more. Resident director may be Indian citizen or otherwise.

7. Calendar year:

- a. Provision does not prescribe financial year as specified other provisions of the Act.
- b. As per Circular No. 25/2014 dated 26/06/2014 :
 - i. For the calendar year 2014, person will be considered as resident in India if stays in India exceeding 136 days from 01st April 2014 to 31st December 2014.
 - ii. When should have: The companies need to have resident director from the date of incorporation itself if company incorporated on or after 01.10.2014.

8. Companies (Amendment) Act 2017: To avoid genuine hardship and dispute, recommendation of the Company Law Committee has seen its light under Amendment Act as follows:

- a. Act replaces the word Calendar year with financial year.
- b. Newly incorporated companies: The conditions 182 days or more shall apply proportionately at the end of the financial year in which it is incorporated instead of previous calendar year.



The World's hunger is getting ridiculous. There is more fruit in a rich man's shampoo than in a poor man's plate Anonymous

The above statement is clear enough to explain the conditions of poverty, hunger and mal-nutrition of many human beings around the world. Every day too many men and women across the globe struggle to feed their children a nutritious meal. In order to tackle this grave problem of the current World, United Nations under the banner of *United Nations World Food Programme* has come out with a unique and creative website called freerice.com.

Freerice.com is a 100% non-profit website that is owned by and supports the United Nations World Food Programme. It is a free site that offers rice grains based on the right answers given by the users. Users are also allowed to create group and invite their friends to answer the questions. The website has two goals:

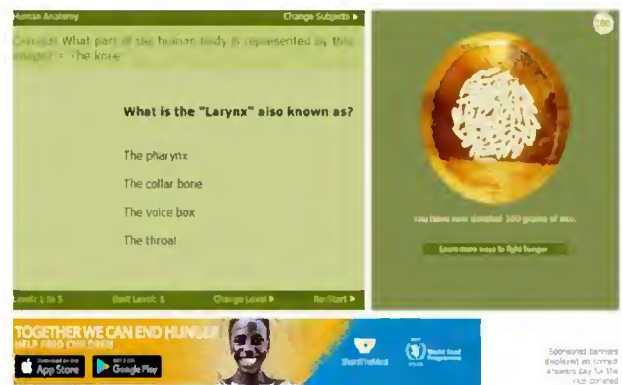
1. To provide education to everyone.
2. To assist in eradicating the world hunger problem by providing free rice to hungry people.

The user registering on the website has to answer questions on varied subjects and for every right answer of the user, the banner ad that you see generates enough money for the World Food Programme to buy 10 grains of rice to help reach Zero Hunger.

The subjects covered by Freerice are: Humanities (identifying the painting, literature, famous quotations etc), English (Grammar and Vocabulary), Mathematics, Chemistry, Languages (including German, Spanish, Italian etc), Geography, Human Anatomy and SAT

Apart from this website provides a link to another website called wfp.org, where one can donate cash for the World Food Programme.

Question and answer section of the website is like the following:



The wooden plate on the right side show how much rice grains have been donated by the user. Only setting that you need have to make to the browser is to disable the Ad Block plug-in.

Based on your performance your profile will show the details like total rice grains gained, subject wise performance, group performance etc... The website has very few levels, but it is fun and refreshing where you gain knowledge and also contribute for eradicating problem of hunger from the world.



Know your E-Way Bill for effective usage

E-Way Bill (EWB) system has been enabled for movement of Goods under GST law across the country mandatory from 01.02.2018 uniformly. However, the same has been put on hold indefinitely vide Notification:11/2018 dtd: 02.02.2018

Basics of EWB

- EWB is required for causing movement of goods whose value is more than Rs.50,000/- either by a Registered person or a Transporter
- Value to be considered for above threshold limit for EWB generation to include corresponding Taxes
- EWB is not required for Exempted goods as per Notification 02/2017 CTR dtd: 28.06.2017 as amended from time to time; or goods as per Rule 138(14)

Specific person to prepare EWB in exceptional case:

- Principal in one state, who cause movement of goods to a Job Worker located in another state. Principal shall generate the EWB
- Person who is exempted from Registration u/s 24 of CGST Act, 2017 dealing with handicraft goods, which are transported from one state to another

Modes of generation of EWB:

- Through common portal
- Through registered mobile via SMS
- Through Android application
- Through Application Program Interface
- Goods and Service Tax Suvidha Provider

General Mistakes during preparation of EWB

- Clerical error in preparation of EWB towards
 - Conveyance details
 - Invoice number/ value

- GSTN
- Wrong place of delivery
- Expiry of EWB before termination of movement of goods
- Details of taxable vis-à-vis exempted goods

Challenges to be examined

- A professional registered under GST carries his work tools such as Motor Vehicle, Electronic gadgets and other business assets each having value of more than Rs.50,000/- to his clients place for professional work. Does this can be construed as movement of goods “other than supply” call for utilization of EWB?
- Manufacturing company owns transportation vehicles for its business. Does, movement of such vehicles call for generation of EWB meant for other than supply?
- Can a Registered person take delivery of material from a supplier at work site which is not a place of business for execution of a Works Contract and issue an EWB at such location as Place of Delivery?
- Movement of material caused by a registered person. Due to some exigency conveyance has to be changed and appropriate changes can't be done in the EWB due to net connectivity issue. Can the manually edited EWB to vehicle number can be construed as non-compliance with GST provisions for movement of goods?

EWB Requirements

GST Provision reference

Section 68 – Inspection of goods in movement

Section 129 – Detention seizure and release of goods and conveyances in transit

Rule 138 – Information to be furnished prior to commencement of movement of goods and generation of EWB

Procedural Requirements:

Details to be filled up in Part A and Part B of EWB duly for the movement of goods caused

Important aspects to be considered for filling EWB:

- Place of supply is not relevant for Place of Delivery. Carefully, address of the delivery has to be quoted for the movement of goods
- For service contracts where material movement is necessary having value more than Rs.50,000/- EWB is mandatory if such goods are taxable. However, SAC can't be applied, rather relevant HSN has to be quoted duly
- Selection of "Reason for Transportation" has to be carefully chosen and the same has to be duly established on the EWB. Movement of goods other than Supply has to be carefully examined with the relevant documents and registers to be updated
- Due reconciliation has to be done towards the EWB issued/generated for the Inward and Outward movement of goods with relevant Books of Accounts maintained
- Cancellation/ Rejection of EWB has to be duly exercised within given 24/ 72 hours of its generation
- There is no methodology of Amendment/ Deletion of EWB once generated. Only updation of conveyance details during goods in transit is permitted
- There is no mandatory specification for issuance of EWB separately for each Invoice/ Delivery challan issued for movement in same consignment. An EWB

can be issued consolidating all the documents issued for causing movement of goods in the same conveyance

Consequences for Non-carrying EWB or any contravention in EWB:

- Any contravention with respect to preparation or usage of EWB shall call for applicability of Section 129 of CGST Act, 2017 resulting in Detention of the Conveyance
- Penalty shall be imposed before release of such Conveyance as below:

Situation	Goods are Taxable
Owner of the goods come forward for payment of Tax and Penalty	Applicable tax and Penalty equivalent to 100% of Tax payable
Owner of the goods does not come forward for payment of Tax and Penalty	Applicable tax and Penalty equal to 50% of value of goods reduced by tax amount paid

Expectation for usage of EWB from Departmental perspective

- Proper compliance for movement of goods
- Proper usage of EWB for its intended usage only
- Accountability on the Registered person for the EWB's used in relation to Inward/ Outward movement of goods

Conclusion:

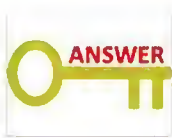
A careful examination of EWB provisions have to be understood towards its utilization and person responsible for generation of such EWB. All EWB's reflecting on the common portal in one's login window should be carefully examined on periodical basis for either its acceptance or rejection duly





Mr.X an event manager Registered in Tamil Nadu, gets a contract for a wedding plan in the State of Karnataka for sum of Rs.25lakhs. Mr.X treats the contract as a Composite supply of service, though there is a necessity for service & supply of Goods forming part of the contract. Mr.X seeks not to register in the State of Karnataka, rather to make the supply related Invoice from TN itself. Does the stand taken by Mr.X withstand as per the provisions of GST law

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



Opinion To Last Month's Brainy Bits

Facts to Consider

- XYZ Ltd., [hereinafter referred as company] a Registered Person is providing Taxable supplies
- Company makes Fixed Deposit for obtaining PBG from its banker
- Banker provides for the Interest income on the above deposits

Relevant Provision

- Section 17 of CGST Act, 2017
- Rule 42
- 25th GST council meeting read with Notification 03/ 2018 dtd: 23.01.2018

Conclusion Till insertion of the above notification defining what to be included/ excluded in the Exempt Income, Interest earned shall be forming

part of the Exempt supply for the reversal of Input Tax credit under Rule 42 and Rule 43. Accordingly, Input Tax credit availed under Section 16 of CGST Act, 2017 shall be subject to Section 17 of CGST Act, 2017.

Amount of reversal under Section 17 has been formulated under Rule 42 & 43 where Input Tax credit on common credits shall be subject to above Rules. However, a big relief has been granted for the Input reversal required on providing clarity for exclusion of Interest earned from the Exempt supplies. Accordingly, Interest earned on the PBG shall not be having any effect on the Input Tax credited earned by the company on periodical basis for the returns to be filed



Budget 2018 for Employers and Employees

Expectations

It was widely expected by the industry unions, based on statements by senior government officials, that a National Employment Policy would be unveiled in the 2018 budget. This was expected to result in several incentives for labour intensive sectors and medium, small and micro enterprises (MSMEs) to reignite their hiring capacities. It was also with a view to increase the proportion of organized sector employment which stood at approximately 10.1% of total employment. A vast majority of the workforce of our country continues to be outside the purview of industrial and employment laws. A similar demand had also been raised by the Niti Aayog in its three year action agenda. While a full fledged national employment policy was not unveiled in the Union Budget, it was evident that several significant steps have been taken in this direction.

Provident Fund

The big announcement on the front of Provident Funds was that Government undertook to contribute 12% of the wages of the new employees in the EPF for all sectors for the next three years. This scheme is applicable for those earning up to Rs. 15,000/- a month. While this is an extension of an earlier scheme, introduced in budget 2016-17, whereby the Government would contribute 8.33%

of the employees' wages from out of the employers contribution for the first three years of employment, the increase of the Government's share to the entire 12% has several implications.

First, though the scheme is not classified as per sector, it is evident from its design as to what the target of the scheme is. Most employees, even fresh employees in the professional services sector, especially in the major metropolitan cities would earn well in excess of the threshold of Rs. 15,000/- per month, hence disqualifying them from benefiting under this scheme. At any rate hiring in sectors such as Information Technology is driven more by global economic conditions and developments than Indian policy.

Secondly, the fact that not only is the scheme applicable only for three years, but is available only for new employees indicates that the goal is to generate fresh employment for the youth rather than a bonanza for all, including those who may already be in employment.

Third, the fact that the scheme though operates as a benefit for the employees in the long run, is really a great benefit for the employers in the short run as it entirely removes the burden of contribution to the employees.

It remains to be seen as to whether this benefit to the employers would be passed on to the new employees either in terms of higher salaries or increased employment.

Women

There is an additional benefit in the present budget for freshly hired women employees. The EPF employee contribution for women has been reduced to 8% for the first 3 years of their employment. This will result automatically in a 4% increase in the take home salary of women employees. However this move should be seen along with the inherent drawback in this scheme. A 4% reduction in the EPF contribution at the beginning of their careers would no doubt be only a small reduction in the savings. However, the power

of compounding would ensure that the resultant reduction in their payout once they reach age of 58 would amount to a substantial sum.

Perhaps this has to be seen in light of the abysmally low female labour participation ratio which has dropped in recent times to around 27%. This is especially worrisome as the drop in female labour participation has occurred despite robust economic growth, great improvements in female education and literacy, and strong steps towards ensuring the safety of women in the workplace. While the new step of the government is in the direction of remedying this, it does not seem substantial in view of the challenges before the Government.



Few Budget Highlights 2018-19

- MSP for all unannounced kharif crops will be one and half times of their production cost like majority of rabi crops: Institutional Farm Credit raised to 11 lakh crore in 2018-19 from 8.5 lakh crore in 2014-15.
- 22,000 rural haats to be developed and upgraded into Gramin Agricultural Markets to protect the interests of 86% small and marginal farmers.
- “Operation Greens” launched to address price fluctuations in potato, tomato and onion for benefit of farmers and consumers.
- Two New Funds of Rs10,000 crore announced for Fisheries and Animal Husbandary sectors; Re-structured National Bamboo Mission gets Rs.1290 crore.
- Personal income tax slab rates remains the same
Introduction of Standard deduction of Rs 40,000 for the salaried class (replacing the transport allowance and the miscellaneous medical Reimbursement)
- Introduction of tax on long-term capital gains above Rs 1 lakh on the sale of equity shares @ 10% without giving the benefit of indexation. Capital gains tax for until 31 January 2018 will be grandfathered Short-term capital gains to continue to be taxed @ 15%
- Proposal to increase cess on personal income tax and corporation tax to 4 percent from present 3 percent.
- Reduction in corporate tax rate to 25% for companies having a turnover of Rs 250 crores and less Deduction under Section 54EC is restricted to the transfer of land/Buildings/ both and the Holding period of the long-term investment asset such as NHAI/ REC Bonds is now increased to five years from the earlier period of three years.

- Equity Oriented Mutual funds to face a Dividend Distribution Tax @ 10% Alternate Minimum Tax (AMT) @ 9% to be levied on non-corporate taxpayers operating in IFSC on par with MAT for corporates
- Loans to Women Self Help Groups will increase to Rs.75, 000 crore in 2019 from 42,500 crore last year.
- Higher targets for Ujjwala, Saubhagya and Swachh Mission to cater to lower and middle class in providing free LPG connections, electricity and toilets.

- More concessions for International Financial Services Centre (IFSC), to promote trade in stock exchanges located in IFSC.
- To control cash economy, payments exceeding Rs. 10,000 in cash made by trusts and institutions to be disallowed and would be subject to tax.

(Compiled from different sources)

News Room



EXPRESS NEWS

- WPI inflation eases to six-month low of 2.84% in January
- Essar Steel bidders need to pass insolvency code test
- RBI tells PNB to pay entire Rs 11,300 crore to counterparty lenders
- 7th Pay Commission: Minimum wage hike soon to become a reality, impacting 48 lakh employees
- Subdued manufacturing inflation is a cause for worry: Arvind Narayanan, DBS Bank
- Government to bring major changes in Drug Pricing Control Order

American businesses eyeing India optimistically: Envoy

There is "optimism and excitement" among American businesses about India and they are eager to tap the opportunities for FDI in the country in sectors like healthcare after the latest budget, India's envoy to the US has said.

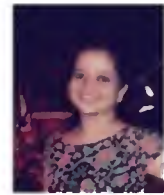
Dyson to invest Rs 1,300 crore in India

British tech firm Dyson will pump GBP 150 million (about Rs 1,300 crore) into its Indian operations over the next five years as it looks to make inroads

into the burgeoning consumer durable market here.

OnePlus wants to make more in India

Vikas Agarwal, OnePlus' general manager for India, said the company's local unit is now assembling the entire portfolio of smartphones, and that it wants to move deeper into the 'Make in India' strategy since government policies are clear that duties and taxes will be favourable for local producers.



Updates on Amended Rules

MCA has amended Companies (Incorporation) Rules, 2014 which is to be known as Companies (Incorporation) Amendment Rules, 2018. The following rule shall substitute rule 9 of the principal rules.

“An application for reservation of name shall be made through the web service available at www.mca.gov.in by using RUN (Reserve Unique Name) along with fee as provided in the Companies (Registration offices and fees) Rules, 2014, which may either be approved or rejected, as the case may be, by the Registrar, Central Registration Centre.”

Companies (Registration offices and fees) Amendment Rules, 2018, 20th January, 2018.

MCA has amended Companies (Registration offices and fees) Rules, 2014 which is to be known as companies (Registration offices and fees) Amendment Rules, 2018. In rule 10 Sub rules (3) of the Principal rules the following proviso shall be inserted.

“Provided that no re-submission of the application is allowed in the case of reservation of a name through web service – RUN”. This amendment shall come into force from the 26th day of January 2018.

Companies (Registration offices and fees) Amendment Rules, 2018, 20th January, 2018.

MCA has amended Companies (Registered Valuers and Valuation) Rules, 2017 which is to be known as Companies (Registered Valuers and Valuation) Amendment Rules, 2018. As per the amendment, in Rule 11 of the principal rules the figures, letters and word “31st March, 2018” shall be replaced by the figures, letters word “30th September, 2018”.

Companies (Registered Valuers and Valuation) Amendment Rules, 2018, 9th February, 2018

Circulars

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 Additional District and Sessions Court VII, Ernakula (state of Kerala), District and Sessions Court, Kavaratti (Union Territory of Lakshadweep), District and Sessions Judge, Cuttack (State of Odisha), Additional District and Sessions Judge, No.1, Kamrup (M), Guwahati (State of Assam) as special courts for the purposes of providing speedy trial of offences punishable with imprisonment of two years or more.

S.O.528 (E), dated 5th February, 2018.

MCA has directed that the provisions of Accounting Standard 22 or Indian Accounting Standard 12 shall not apply to a government Company for a period of seven years which is;

- A public financial institution under sub-clause (iv) of clause (72) of section 2 of the Companies Act, 2013;
- A Non-Banking Financial Company registered with the Reserve Bank of India under section 45-IA of the Reserve bank of India Act, 1934;
- Engaged in the business of infrastructure finance leasing with not less than seventy five per cent. of its total revenue being generated from such business with Government companies or other entities owned or controlled by Government

S.O.529 (E), dated 5th February, 2018.