

Annual Subscription ₹ 100/-
Single Copy ₹ 10/-

ICSI
ICSI - WIRC

Printed and Published on 20th & 21st of every month, Date of Posting 20th & 21st of every month
13, Jolly Maker Chamber no. 2, first floor, Nariman Point, Mumbai - 400 021

Regn. No. MH/MR/South-107/2012-14, to
Post at Patrika Channel, Sorting Office, Mumbai - 400 001
Registered with the Registrar of Newspaper
New Delhi under Regn. No. 39907/82

FOCUS

VOL. XXIX No. 10
OCTOBER 2012

“प्रगतिश्च विकासश्च जीवनं जीवनं खलु।”

A MONTHLY JOURNAL FOR CORPORATE EXECUTIVES & PROFESSIONALS



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under the Companies Act and
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(A Compendium on Sections 295, 297, 299, 300, 301, 314 & AS-18)



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Dear All,



"If you think it's expensive to hire a professional to do the job, wait until you hire an amateur."

-Red Adair

The month was historic for ICSI-WIRC, if I may say so. We organised the first-ever State Conference in the State of MP, celebrated 41st Anniversary Day of ICSI-WIRC, organised first re-union of MSOPs of ICSI-WIRC and co-hosted one of the most successfully organised National Convention at Aamby Valley. Let me present some of the highlights of major developments at ICSI-WIRC since my last communiqué.

✓ **ICSI-WIRC MP State Conference** : I am pleased to share that the first State Conference of ICSI-WIRC was organised in Bhopal, State of MP by ICSI-WIRC alongwith the Chapters of MP on 15th & 16th September on the theme 'Business, Governance & Madhya Pradesh'. The Conference was inaugurated by Hon'ble Minister Mr. Sartaj Singh, Mr. A.K.Jain, Chief Commissioner of Income Tax, MP & CG and Mr. Vishwas Sarang, MLA, & Chairman- MP Laghu Van Upaj Sangh. The galaxy of eminent speakers included M/s. P D Mishra, Amarjeet Khalsa and along with others. The Valedictory session was chaired by Mr. D.S. Choudhry, Commissioner of Income Tax. Comprehensive backgrounder, relevant sessions, unprecedented number of audience made this Conference a grand success. I compliment Mr. Amit K Jain, Program Director and his team.

The MP State functionaries appreciated the role and deliverables of CS and I do believe, this would go a long way in broad-basing the role of company secretaries even at State-level. This endorses the purpose and need of organising such a Conferences and also aids to our direction for future.

- ✓ **ICSI National Convention, 2012** : ICSI National Convention was co-hosted by ICSI-WIRC at Aamby Valley, Lonavla on 4th-6th October. I am pleased to share that, it received over-whelming response and perhaps for the first time, we had to close the registration much before the Convention dates. More importantly, the Convention was organised very smoothly and your western region was appreciated by one and all for supporting one of the most successfully organised Conventions of ICSI.
- ✓ **Release of new Edition of Publication on Related Party Provisions** : On the occasion of ICSI National Convention, ICSI-WIRC released its new publication, "Compendium of Related Party Provisions". The publication is being appreciated largely and I do complement Mr. Prakash Pandya, Chairman, Professional Research & Publications Committee, ICSI-WIRC and his team for making another research publication a reality.
- ✓ **ICSI-WIRC Foundation Day Celebrations** : I am pleased to share that for the first time in recent past, ICSI-WIRC celebrated its anniversary day. On 11th October, 2012, ICSI-WIRC completed its 41 years from the date of its first formal inauguration way back on 11th October, 1971.

The program was inaugurated by M/s. P K Malhotra, Hon'ble Acting Presiding Officer, SAT, S A Millath, Regional Director, MCA, Ashish Chauhan, Interim CEO, BSE, S P Tulsian, Investment Advisor, S N Ananthasubramanian, VP, ICSI, B Narasimhan and Atul Mehta, Central Council Members. Galaxy of Past Presidents and Past Chairmen from western region graced the occasion. It was our pleasure felicitating them alongwith members who have been contributing this year actively to ICSI-WIRC.

- ✓ **MSOP Re-union** : For the first time, ICSI-WIRC organised its MSOP re-union on the occasion of 41st Anniversary Day celebrations. Several members who participated in WIRC MSOPs met together and shared their experience.
- ✓ **Investor Awareness Programs** : I am pleased to share another initiative of ICSI-WIRC whereby we would be organising a series of Investor Awareness Programs jointly with MCA and BSE in remote and semi-urban areas across the region. I appeal members to participate as faculty, coordinator etc. and help WIRO accomplish a mammoth task of organising 100 such programs in a short span of 3 months, as desired by MCA.
- ✓ **Media Coverage & Brand Building** : The month witnessed vast media coverage. We organised 2 press conferences – one at Bhopal on the occasion of State Conference and another at Aamby Valley on the occasion of National Convention. Media including prominent print and online media covered our initiatives and programs. We also unveiled a video '**ICSI-WIRC: Reaching New Heights**' on the occasion of ICSI-WIRC 41st Anniversary Day celebrations.

Please do write at wirc.chairman@icsi.edu / cschairman.wirc@gmail.com Your suggestions and inputs would help achieve the overall objectives towards our theme of the year 2012 - "*Educate, Empower & Execute*".

Best Wishes,



Cordially -Mahavir Lunawat
October 16, 2012

Requests...

- Become a member of ICSI Benevolent Fund (CSBF)
- Help in fund-raising initiatives of ICSI-WIRC
- Become a member of WIRC Professional Membership Scheme (PMS)



Dear Readers,

"The individual who wants to reach the top in business must appreciate the might and force of habit. He must be quick to break those habits that can break him – and hasten to adopt those practices that will become the habits that help him achieve the success he desires".

J. Paul Getty

Every one of us desire to be at the top of the ladder of whatever we do; but the key question is how to reach there and sustain at that level – the answer is ' Self Discipline'

Discipline is a 'must have' trait for everyone, whether one is a student or a professional. Discipline will help one to sail through tough times and emerge as an ultimate winner in long run - Self Discipline is a synonym to a successful life, the life which we all want to live.

Our life is like a wheel and each fork represents one aspect of life like professional life, family, health, charity etc - one has to be equally disciplined towards each of the aspects so as to keep the wheel rolling in a balanced manner.

If we look at the big business houses in India, all have sustained growth through their disciplined approach towards their business requirements and at the same time have also taken care of society through CSR activities – this helps them to develop their brand worldwide.

In our dynamic professional world, one has to be fully updated with all changes/ amendments in legal and financial field, which can be possible only through dedicated and disciplined approach. The institute also keeps on conducting seminars on new topics so as to keep the professional abreast of new developments. The institute recently organized National Conference at Ambey Valley, Lonavla, Maharashtra, Where it covered such topics of interest.

Happy reading!!!

CS Amit Kumar Jain

"Every moment is an experience." - Jake Roberts

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CASE LAWS AT A GLANCE**RECENT JUDGEMENTS ON COMPANY LAW***CS Ajay Kumar, Practising Company Secretary, Mumbai***1. AMALGAMATION**

Petitioner Company filed its Petition seeking approval of scheme of its amalgamation with transferee-company. A perusal of scheme of arrangement indicated that interest of equity shareholders, staff workmen and employees had been taken care and provided for in scheme. In response to public notice issued, none of staff or employees or whosoever may be effected, raise any objections with regard to their rights. It was not prejudicial to their interest, since they would be continuing in transferee-company and shareholders would be allotted shares of transferee-company, rates for which had been worked out by experts. In view of above and taking notice of basic requirement of scheme and also considering fact that neither Regional Director nor Official Liquidator had raised any objections with regard to scheme, scheme as proposed was to be approved. - **DOOSAN INTERNATIONAL INDIA (P.) LTD. IN RE [2012] 112 SCL 363 (KARNATAKA)**

2. OPPRESSION AND MISMANAGEMENT

Petitioners had filed a Petition under sections 397 and 398 against appellant-company contending that they were having 29 per cent shares of company and company had undertaken fresh allotment of shares in contravention of Act. Petitioners were ready and willing to exit from appellant-company on reasonable and fair terms. During pendency of company Petition, Chairman of CLB passed a consent order dated 16.07.2009 by which a valuer was appointed to determine fair value of shares. Member of CLB by impugned interlocutory order held that settlement process had fully failed in matter and directed parties to present their case on merits on company Petition. Order dated 16.07.2009 was a consent order which was binding upon parties to lis unless it was challenged and interfered by Court. Effect of impugned order by directing parties to present their case on merits would be reviewing consent order passed by Chairman of CLB, which was not within domain of Member of CLB. Therefore, impugned order was to be set aside. - **MS. AARTI SPONGE & POWER V. BIMAL KUMAR [2012] 112 SCL 399 (CHATTISGARH)**

3. MODIFICATION - WHEN CHARGE DOES NOT AMOUNT TO MODIFICATION - SECTION 135

The charge has been created over the properties of the company in liquidation in respect of the principal

amount advanced as well as the interest accrued shown as a separate account called the funded interest account, there is no modification of the charge which is required to be registered with the Registrar of Companies in terms of section 135. - **A P STATE FINANCIAL CORPORATION V. GURUVAYURAPPAN SWAMY OILS, FOODS & FATS LTD. (IN LIQUIDATION) [2012] 106 CLA (SNR.) 10 (AP)**

4. BOARD OF DIRECTORS AUTHORISING DIRECTOR TO INSTITUTE LEGAL PROCEEDINGS ON ITS BEHALF - CAN HE EXECUTE POWER OF ATTORNEY IN FAVOUR OF ANOTHER - SECTION 291

The director, who has been authorised by the Board of Directors to institute legal proceedings on its behalf, has no further authority to execute the power of attorney in favour of sales manager to act on his behalf in legal proceedings since the power can only be given by the Board in exercise of its statutory power by passing the resolution under section 291 in favour of a directors. - **EIMCO ELECON (INDIA) LTD. V. MAHANADI COAL FIELDS LTD. [2012] 106 CLA (SNR) 11 (ORI)**

5. POWER OF COMPANY LAW BOARD ('BOARD') TO ORDER MEETING TO BE CALLED IF IT IS IMPRACTICABLE TO CALL - DIRECTION CANNOT BE GIVEN BY BOARD FOR CALLING, HOLDING AND CONDUCTING MEETING UNDER SECTION 186 - SECTION 186 READ WITH REGULATION 44 OF COMPANY LAW BOARD REGULATIONS, 1991

There is no pleading in a company Petition indicating any situation impracticable to call Extra Ordinary General Meeting by the Board of Directors, meeting was already called by the time Petition was moved before the Company Law Board ('Board') and the meeting had already been held by the time the Petitioner's counsel made his submissions before the Board, no direction could be given separately to any of the three situations, that is, calling, holding and conducting the meeting under section 186, even if it be presumed that impracticability for calling the meeting was subsisting. So no case could be found by the Bench to exercise its powers invoking section 186. - **PRADIP KUMAR GHATAK V. ASANSOL CLUB LTD. [2012] 106 CLA 245 (CLB)**



"Everything has been said before, but since nobody listens we have to keep going back and beginning all over again." - Andre Gide

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STATUTES

- Investment in Indian Co. by an NR by way of subscription to MoA shall be subject to FDI scheme - A.P. (DIR SERIES 2012-13) CIRCULAR NO. 36, DATED 26-9-2012
- Foreign entities to seek approval of RBI before establishing a LO, branch or project office in India - A. P. (DIR SERIES 2012-13) CIRCULAR NO. 31, DATED 17-9-2012
- Blanket approval of specified loans for lower rate of TDS, subject to 'all-in-cost ceilings' and other conditions - CIRCULAR NO. 7/2012 [F.NO. 142/17/2012-SO(TPL)], DATED 21-9-2012
- Format of accountant's report where provisions of alternative minimum tax are applicable to LLP - NOTIFICATION NO. 34/2012 [F.NO. 142/22/2012-SO(TPL)]/SO 1979 (E), DATED 28-8-2012
- Kelkar Committee Report recommends comprehensive review of Direct Taxes Code Bill, 2010 - PRESS RELEASE, DATED 3-9-2012
- Expert Committee Report on General Anti Avoidance Rules (GAAR) in Income-tax Act, 1961
- ST return to be filed by 25-10-2012 shall be for the period from 1-4-2012 to 30-6-2012 - NOTIFICATION NO. 47/2012 ST, DATED 28-9-2012
- Accountant's certificate format notified to get immunity for TDS default, if due taxes paid by payee - NOTIFICATION NO. 37/2012 [F.NO. 142/18/2012-SO(TPL)], DATED 12-9-2012

CASE LAWS

- Criminal liability against an advocate can't arise if his association with other conspirators isn't proved - CENTRAL BUREAU OF INVESTIGATION, HYDERABAD v. K. NARAYANA RAO [2012] 25 taxmann.com 452 (SC)
- Sahara's guilty of raising crores from public through dubious private placement without complying with securities laws - SAHARA INDIA REAL ESTATE CORPN. LTD. v. SEBI [2012] 25 taxmann.com 18 (SC)
- CCI penalizes and directs the Chemists & Druggists Association of Baroda to desist anti-competitive practices - VEDANT BIO SCIENCES v. CHEMISTS & DRUGGISTS ASSOCIATION OF BARODA [2012] 25 taxmann.com 184 (CC)
- 'Silly mistakes' by an expert not a valid ground to levy penalty; SC drops concealment penalty against PWC-PRICE WATERHOUSE COOPERS (P.) LTD. v. CIT [2012] 25 taxmann.com 400 (SC)
- Amendment to sec. 92C by Finance Act, 2012 makes it clear that 5% tolerance band isn't statutory deduction - BAYER CROPS SCIENCE LTD. v. ADDL. CIT [2012] 25 taxmann.com 575 (MUM. - ITAT)
- Satellite charges not taxable as 'royalty' as it's impossible to comply with retro amendment of FA, 2012 - CHANNEL GUIDE INDIA LTD. v. ASSTT. CIT [2012] 25 taxmann.com 25 (MUM. - ITAT)
- Assessee can't withdraw an appeal filed with CIT(A) even if revenue has no objection to such withdrawal - M. LOGANATHAN v. ITO [2012] 25 taxmann.com 174 (MAD.)

- eBay isn't liable to tax on income from India specific websites; Group concerns though dependent agents but not PE - eBAY INTERNATIONAL AG v. ASSTT. CIT [2012] 25 taxmann.com 500 (MUM. - ITAT)
- Acquisition of perpetual tenancy right isn't eligible for sec. 54 deduction, if rent payable isn't 'peppercorn rent' - Yogesh Sunderlal SHAH v. ASSTT. CIT [2012] 25 taxmann.com 300 (MUM. - ITAT)
- Explanation 4 inserted in the definition of royalty by FA, 2012 immaterial for disallowance under sec. 40(a)(ia) - SONATA INFORMATION TECHNOLOGY LTD. v. DY CIT [2012] 25 taxmann.com 125 (MUM. - ITAT)
- MAT doesn't include surcharge and education cess; accordingly credit for same isn't allowed - RICHA GLOBAL EXPORTS (P.) LTD. v. ASSTT. CIT [2012] 25 taxmann.com 1 (DELHI - ITAT)
- Location saving accrues to industry as a whole; TP adjustment for same is uncalled for - GAP INTERNATIONAL SOURCING (INDIA) (P.) LTD. v. ASSTT. CIT [2012] 25 taxmann.com 414 (DELHI - ITAT)
- No sec. 68 addition for deposits from untraceable customers if bank already complied with KYC norms - CITIZEN CO-OP. SOCIETY LTD. v. ADDL. CIT [2012] 24 taxmann.com 347 (HYD. - ITAT)
- SetCom shouldn't admit application of time-barred assessment as the same can't be construed as pending - CIT v. INCOME-TAX SETTLEMENT COMMISSION [2012] 25 taxmann.com 551 (GUJ.)
- Revenue can't take advantage of assessee's mistake; has to grant statutory benefit even if not claimed in return - SANCHIT SOFTWARE AND SOLUTIONS (P.) LTD. v. CIT [2012] 25 taxmann.com 123 (BOM.)
- Depreciation to be allowed on leasehold property when 'transaction of sale' is disguised as 'lease transaction' - MATHER & PLATT (I.) LTD. v. CIT [2012] 25 taxmann.com 505 (BOM.)
- Special audit isn't meant for delegation of AO's power to auditor; large No. of entries don't prove complexities - DELHI DEVELOPMENT AUTHORITY v. UNION OF INDIA [2012] 25 taxmann.com 234 (DELHI)
- Delhi HC comes to rescue hapless deductee denied credit of tax reflected in Form 26AS - COURT ON ITS OWN MOTION v. CIT [2012] 25 taxmann.com 131 (DELHI)
- NPA norms of RBI are not binding on tax authorities to allow deduction in respect of provision for bad debts - HAMIRPUR DISTRICT CO-OPERATIVE BANK LTD. v. DY CIT [2012] 25 taxmann.com 306 (LUCKNOW - ITAT)
- Refusal to issue tax deduction certificate is not valid merely because proceedings are going on for TDS default - SERCO BPO (P.) LTD. v. ASSTT. CIT [2012] 25 taxmann.com 4 (PUNJ. & HAR.)
- Contractors can't escape service tax liability by getting work done by sub-contractors - H.P. STATE ELECTRONICS DEVELOPMENT CORPORATION LTD. v. CCE [2012] 25 taxmann.com 185 (NEW DELHI - CESTAT)

CIRCULARS AND NOTIFICATIONS

CS Piyush Bindal, Practising Company Secretary, Bhopal

MINISTRY OF CORPORATE AFFAIRS

1. **CONDITION TO BE IMPOSED FOR CONVERSION OF ORDINARY SOCIETY INTO PRODUCER COMPANY, PART-IX A OF THE COMPANIES ACT, 1956.**

General Circular No. 29/2012

Source: www.mca.gov.in

The question of the acceptance of documents by the Registrar of Companies for Conversion of a Co-operative Society (not registered as the Multi State Society) under section 581 J(5) of the Companies Act has been examined by the Ministry. It is said that:

1. Consequent upon the receipt of such an application/form seeking conversion of Co-operative Society (society not registered as the Multi State Society) into a Producer Company, the ROCs will seek a written consent from the Local Co-operative Department of the concerned state certifying that the society desirous of being converted into Producer Company, under Part IX A of the of The Companies Act,1956 has no dues payable to the state at the time of such conversion and the Cooperative Department has 'no objection' to its being converted into a Producer Company under The Companies Act,1956 . Further the ROCs must satisfy themselves fully that the applicant society has indeed extended its activities outside the state where it is registered as a Cooperative Society under the local/state level law governing Cooperative Societies which are not inter-state Cooperative Societies.
2. In case of any doubt a reference may be made to the Ministry for further guidance before Incorporation under section 581 J(5)
3. This Circular shall be effective from the date of issue of circular.

2. **FILLING OF BALANCE SHEET AND PROFIT AND LOSS ACCOUNT BY COMPANIES IN NON-XBRL FOR ACCOUNTING YEAR COMMENCING ON OR AFTER 01.04.2011.**

General Circular No. 30/2012

Source: www.mca.gov.in

This Ministry had issued General Circular No. 21/2012 dated 02.08.2012 and No. 28.2012 dated 03.09.2012 extending time for filing E-forms 23AC(non XBRL) & 23ACA (non XBRL) upto 15.10.2012 or within 30 days from the date of AGM, whichever is later. The revise e-forms 23AC (non XBRL) & 23ACA (non XBRL) have now been notified vide notification dated 24/09/2012 and shall come into effect from 30/09/2012.

In order to ensure smooth filing and to avoid last minute rush, it is to inform you that with the approval of the competent authority, the due date of filing of e-forms 23AC (non XBRL) & 23ACA (non XBRL) as per new schedule VI is now further extended in following

manner without any additional fees:-

- a) Company holding AGM or whose due date for holding AGM is on or before 20.09.2012, the time limit will be 03.11.2012 or due date of filing, whichever is later.
 - b) Company holding AGM or whose due date for holding AGM is on or after 21.09.2012, the time limit will be 22.11.2012 or due date of filing, whichever is later
- ### 3. **FILING OF FORM 23B BY STATUTORY AUDITOR FOR THE ACCOUNTING YEAR 2012-13.**

General Circular No. 31/2012

Source: www.mca.gov.in

This Ministry had issued Circular No. 14 of 2012 and No. 28.2012 whereby the fee was imposed on filing of 23B as per schedule X of the Act. To ensure smooth filing of the forms e-forms 23AC (non XBRL) & 23ACA (non XBRL), with the approval of the competent authority, the filing of e-form 23B is extended without any additional fees till 23.12.2012 or due date of filing whichever is later.

CUSTOMS

1. **GRANT OF EXEMPTION FROM FURNISHING SECURITY/BANK GUARANTEE BY CENTRAL/ STATE GOVERNMENT UNDERTAKINGS FOR STORING SENSITIVE GOODS IN PRIVATE BONDED WAREHOUSES - REGARDING.**

Circular No. 26/2012-Customs

Source: www.cbec.gov.in

With reference to Circular No. 99/95-Customs dated September 20, 1995 (issued from file F. No. 473/61/94-LC) laying down the procedure for licensing of Private Bonded Warehouses under Section 58 of the Customs Act, 1962. Paragraph 3 (viii) of the Circular stipulates inter alia, that "In respect of individual consignments to be warehoused, the licensees are to give a double duty bond as required under the law. In respect of sensitive goods we may take cash deposit or bank guarantee equal to 25% of the duty liability (effective duty foregone) for each consignments". In this connection, a reference has been received from M/s. India Tourism Development Corporation Limited, a Government of India Undertaking, seeking exemption from furnishing Bank guarantee for storing sensitive goods in duty free shops operated by them.

1. The matter has been examined in the Board. As a measure of relaxation to the Central/State Government Undertakings, as has been done in case of relaxation of requirement of Bank guarantee/security for Custodians of Sea Ports and Air Cargo Complexes/ICDs/CFSs (Circular No. 34/02-Customs dated June 26, 2002 and Circular No. 13/02-Customs dated February 22, 2002 refers), it is clarified that all Central and State Public Sector Undertakings shall be exempt from furnishing Bank guarantee or other form of security for storing

sensitive goods in the duty free shops operated by them. The execution of a double duty bond and other requirements stipulated under Circular No. 99/95-Customs dated September 20, 1995 would, however, remain.

2. Publicity to this Circular may be given by way of issuance of public notice and standing order.
3. Difficulties, if any, faced in the implementation of this circular, may be immediately brought to the notice of the Board

2. ALL INDUSTRY RATES OF DUTY DRAWBACK 2012-13-REGARDING.

Circular No. 27/2012-Customs

Source: www.cbec.gov.in

The Ministry has notified the All Industry Rates (AIR) of Duty Drawback 2012-13 vide Notification No. 92 / 2012- Customs (N.T.), dated 4.10.2012. The notification shall come into force on 10th October, 2012.

1. As in previous years, the drawback rates have been determined on the basis of certain broad parameters including, inter alia, prevailing prices of inputs, Standard Input Output Norms, share of imports in the total consumption of inputs, FOB value of export goods, the applied rates of central excise and customs duties, the factoring of incidence of service tax paid on taxable services which are used as input services in the manufacturing or processing of export goods, factoring incidence of duty on HSD/ Furnace Oil.
2. Some of the broad aspects, from amongst the changes notified with respect to AIR of duty drawback and entries in the Schedule, are -
 - (a) Most, but not all, of the items that were already covered under the duty drawback schedule prior to 1.10.2011 [that is, before last year's (2011-12) duty drawback schedule was issued] will see an increase from the existing AIR. Some of the items that will see a reduction in AIR include leather trunks and handbags, wool yarn and fabric, gaskets (84.84), lawn tennis balls, cricket balls, felt tipped/porous tipped pens and markers, goods of heading 90.02 to 90.05.
 - (b) In continuation of a transitory arrangement, most of the items incorporated in last year's (2011-12) duty drawback schedule, from the erstwhile DEPB scheme, will see a reduction in the AIR rates.
 - (c) The existing residuary rate of 1% ad valorem (all customs) will now be either 1% composite rate with 0.3% customs component, or it will see an increase to 1.5% (customs component) or 2% (customs component).
 - (d) With certain exceptions, the drawback caps have not been assigned where the higher of the composite rate/customs component of the rate is 3.5% or lower. Where the AIR will be above 3.5%, not every entry has been assigned the drawback caps. Where drawback caps have been assigned, these will by and large see a relative increase.

(e) In certain cases separate tariff entries have been created, as for calcined bauxite, silicon dioxide, gauze swabs, dairies with leather covers, leather insoles, sarees with or without blouse piece under chapters 50, 52 and 54, women's/girl's blouses with tightening at the bottom, footwear with TPR/PU soles and canvas uppers, worked human hair, imitation jewellery made up of iron, motor cars with manual transmission, motor cars with automatic transmission, multi-speed bicycles etc. Under heading 3004 (medicaments), dosage and pack-size specifications for many items have been removed. Composite rates have been assigned in a few cases such as under heading 7321, 7415 and 8535. The unit for the drawback cap has been changed from litre to kilogram for printing inks of heading 3215.

(f) Drawback has been restored for export of Guar Gum (Tariff Item No. 130201) by providing a specific composite rate with a specific customs component.

(g) In order to continue with the existing classification of sports gloves under the drawback schedule, an appropriate exception, to the principle of alignment at four digit level with the First Schedule to the Customs Tariff Act, 1975, has been specified in the Notes and Conditions in the Notification.

3. It is requested to download the notification with the Schedule for 2012-13 from Board's website (www.cbec.gov.in) and carefully peruse it and thereby take note of all the specific changes notified. As before, it may be ensured that exporters do not avail of the refund of service tax paid on taxable services which are used as input services in the manufacturing or processing of export goods through any other mechanism while claiming AIR. Since the changes include specification of composite rates in many cases, it needs recalling that the composite rate (when Cenvat facility has not been availed) is not available, inter alia, when rebate of central excise duty on inputs is availed or inputs are procured without payment of central excise duty, under rule 18 or 19 (2) of Central Excise Rules 2002, respectively. The due diligence is also expected to be exercised to prevent any misuse, inter alia, in the light of not all items having drawback caps and the assigned drawback caps seeing a relative increase.
4. While every effort has been made to avoid errors / omissions, these are not ruled out. If an error is noticed, please immediately inform the Board for appropriate corrective action. Difficulties faced, if any, in implementation of the changes may also be brought to Board's notice. Suitable public notice and standing order may be issued for guidance of the trade and officers. Receipt of this Circular may be acknowledged. ■■■

"Experience - the wisdom that enables us to recognise in an undesirable old acquaintance the folly that we have already embraced." - Ambrose Bierce

COUNTING DAYS PRESCRIBED BY A STATUTE

Dr K R Chandratre, Practising Company Secretary, Pune

Case for Opinion

X Ltd is a listed company. The date of Annual General Meeting (AGM) of X Ltd was Thursday, September 27, 2012 at which a dividend on equity shares was declared. The Company deposited the total amount of dividend in a separate bank account on October 5, 2012 as the banks were not working on three days on account of Sunday, half-yearly closing and a national holiday, although pursuant to provisions of section 205(1A) of the Companies Act, 1956 ('the Companies Act') the Company was required to deposit the amount of dividend in a separate bank account within five days from the date of declaration of such dividend that is, October 2, 2012. Did the Company committed breach of the statutory mandate under the Companies Act.

Discussion and Answer

According to section 205(1A), the amount of any dividend shall be deposited in a separate bank account "within five days from the date of declaration of such dividend". This provision applies to both final dividend and interim dividend and the word 'declaration' although not appropriate in the interim dividend must be taken to mean the decision or approval by the Board for the payment of interim dividend. Therefore the period of five days is to be counted (in the case of final dividend) from the date of the annual general meeting at which the dividend is declared and (in the case of interim dividend) from the date of the aboard meeting at which the board approves interim dividend.

The expression "within five days from the date of declaration of such dividend" indicates that the money representing the amount of dividend must be deposited within five days from the date of the annual general meeting.

The first question is how to count five days, whether both the day of the AGM and the day of fifth day are to be counted or whether the first day is to be excluded or whether the last day is to be excluded or both the first and the last days are to be excluded.

It is a settled principle concerning counting of a period expressed in a statutory provision in terms of days, that when a statutory provision or a document states a certain thing to be done within a particular number of days from/of/after the happening of a stated event, one of the first

and the last days is to be ignored unless 'day' is specifically defined in the provision defined which requires both the days to be counted or ignored. The provision in section 205(1A) does not define 'day' and therefore the general rule regarding counting of days would apply. The Companies Act also does not contain any provision regarding counting of days or computation of time.

Section 9 of the General Clauses Act, 1897 reads as follows:

"Commencement and termination of time- (1)

In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to".

According to this section, the use of the word "from" in a statutory provision indicates that in computing the period stated in such a provision, the first day in a series of days or any other period of time is to be excluded. In computing five days under section 205(1A), the day of the annual general meeting at which the dividend will be declared, will be excluded. So, in the present case, if the annual general meeting of the Company resolved on September 27, 2012 to declare a dividend, the five days would be counted after excluding the first day and therefore the dividend amount should be deposited on or before 2 October 2012.

The next question is whether the three days on which the bank was closed can be excluded so that the five day period got extended by three days and ended on October 5, 2012. It may be recalled that out of days, the banks were not working on three days on account of Sunday, half yearly closing and a national holiday and hence whether the Company can deposit the dividend amount on 5 October 2012.

To answer this question, we need to refer to section 10 of the General Clauses Act, 1897, reads as follows:

"**Computation of time-** (1) Where, by any Central Act or Regulation made after the commencement of this Act, any act or proceeding directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done



"Some persons are very decisive when it comes to avoiding decisions." - Brendan Francis

or taken on the next day afterwards on which the Court or office is open;

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877 (15 of 1877) applies.

(2) This section applies also to all Central Acts and Regulations made on or after the fourteenth day of January, 1887."

In section 10, the expression "on the next day afterwards on which the Court or office is open" does not seem to mean on the next succeeding day even though that day is a holiday. The word 'afterwards' means at a later or subsequent time; subsequently. Accordingly, "the next day afterwards on which the Court or office is open" would mean any subsequent first day (after the holiday) on which the court or office is open.

This section applies to any act or proceeding directed or allowed to be done or taken in any Court or office. The words "Court or office" are two distinct things and the word "office" is not defined and it should therefore be taken in its ordinary meaning. Hence, even a bank is an "office". Accordingly the three days in the five-day period, on which the banks are going to remain closed will get added to the five-day period. Let us now take note some court decisions on this point.

In *Harinder Singh v S Karnail Singh* AIR 1957 SC 271, the Supreme Court has held that the object of section 10 is to enable a person to do what he could have done on a holiday, on the next working day. Where, therefore, a period is prescribed for the performance of and that period expires on a holiday, then, according to this section, the act should be considered to have been done within that period, if it is on the next day on which the court or the office is open. For that section to apply, therefore, all that is requisite is that there should be a period prescribed, and that period should expire on a holiday.

In one case, where the appellant had submitted his application along with educational qualification on the last date (14.04.2003) and medical certificate was submitted on



15.04.2003, the Supreme Court held that there was no delay in making the application in view of section 10 of the General Clauses Act as 11th April was a gazetted holiday on account of Ramnavami, 12th April was closed for second Saturday, 13th April was Sunday and 14th April was holiday on account of Ambedkar Jayanti and as such from 11th April to 14th April 2003, the appellant could not get the medical certificate. He got the medical certificate on 15.04.2003 and submitted the same on 15.04.2003 itself. [see *Mohd. Ayub v State of U. P.* (2009) 17 SCC 70; 2010 AIR SCW 103]

Section 34(3) of the Arbitration and Conciliation Act 1996 provides that an application for setting aside an arbitral award may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award. Where a copy of an arbitration award was received on 10.11.2007 which was a holiday (Saturday) and the following day was also a holiday (Sunday), the Supreme Court held that 12.11.2007 (Monday) which was the next working day should be taken as the date of receipt of the award. [*State of Himachal Pradesh v Himachal Techno Engineers* 2010 AIR SCW 5088]

In the light of the foregoing discussion, the answer to the question posed in the case is as under:

As the banks will not be working for three days out of the five days, the Company could deposit the dividend amount on October 5, 2012 and the Company's action was not in violation of section 205(1A). ■■■

CS Quiz

"A Limited Company had 4 directors. At one of its convened Board Meeting only two of them attended and they appointed 2 additional directors who were their relatives. Is the appointment of those additional directors valid?"

Amit Kumar Jain, Editor
ICSI-WIRC's FOCUS

WIRC Premises No.13, 56 & 57, Jolly Maker Chambers No.2, First Floor, Nariman Point, Mumbai - 400 021.

WINNER

CS, Gaurav Pingle, Company Secretary, Pune Winner of Quiz published in September issue of FOCUS

"When one bases his life on principle, 99 percent of his decisions are already made." - Author Unknown

OVERVIEW AND COMPARISON OF REVISED E-FORMS 23AC AND 23ACA

Introduced by Ministry of Corporate Affairs for Non XBRL Companies

CS Kaushik M. Jhaveri, Practising Company Secretary

The Companies Act, 1956 stipulates that every Company registered under the Act, shall prepare its Balance Sheet, Statement of Profit and Loss and notes thereto in accordance with the manner prescribed in Schedule VI to the Companies Act, 1956. To harmonize the disclosure requirements with the Accounting Standards and to converge with the new reforms, the Ministry of Corporate Affairs vide Notification No. S. O. 447 (E), dated 28th February, 2011 replaced the existing Schedule VI of the Companies Act, 1956 with revised one. Government vide Notification No. F.N. 2/6/208- C.L-V dated 30th March, 2011 made the revised Schedule VI applicable to all companies for the financial year commencing from 1st April, 2011.

Hence, the Ministry of Corporate Affairs vide notification dt. 21st September, 2012 introduced revised e-forms 23AC and 23ACA as per revised Schedule VI which are applicable for the financial year commencing on or after 1.4.2011. The revised e-forms 23AC and 23ACA were made available on the MCA Portal from 30th September, 2012.

The newly introduced e-forms are quite elaborative in nature and more disclosures are required. In the revised e-forms 23AC & 23ACA, the provision was made for filing the pending Annual Reports of such Company, whose financial year had commenced before 1.4.2011.

The selective changes in newly introduced e-forms 23AC and ACA are highlighted below:

A) Highlights of e-form 23AC: (Related to Balance sheet)

Sr. No.	Page No. of revised e-form 23AC	Revision in e-form 23AC	Previous e-form 23AC
1.	-	Number of pages extended to Eleven	Earlier Number of pages were only Six
2.	Pg. no. 4	Category of auditors whether individual or firm is required to be mentioned. In case of firm, name and membership number of member representing the firm is to be mentioned.	No such category was provided
3.	Pg. no. 5	Details of Money received against share warrants needs to be filled up	No such details was required
4.	Pg. no. 5	Details of Non Current Liabilities is to be provided under following heads: 1. Long term borrowings 2. Deferred tax liabilities. 3. Other long term liabilities 4. Long Term provisions	Break up of Secured Loan and Unsecured Loan was required
5.	Pg. no.5	Details of Current Liabilities : 1. Short term borrowings 2. Trade Payables 3. Other Current Liabilities 4. Short term provisions	The details of Current Liabilities and Provision were shown under the heading of Application of Funds.
6.	Pg. no. 5	Details of Assets divided as Non Current Assets and Current Assets	No such bifurcation was required
7.	Pg. no. 5	Details of Fixed Assets is to be provided under the following heads: i. Tangible asset ii. Intangible asset iii. Capital work in progress iv. Intangible asset under development	Separate details of Intangible assets and Intangible asset under development was not required
8.	Pg. no.5	Non - current Investment is to be shown separately, while current investment is to be mentioned in current asset.	No such bifurcation was required
9.	Pg. no. 6	Long term loans and advances and Other non-current assets to be mentioned	No such bifurcation was required

Sr. No.	Page No. of revised e-form 23AC	Revision in e-form 23AC	Previous e-form 23AC
10.	Pg. no. 7 & 8	Details of following schedules of balance sheet is to be provided separately: 1. Long Term Borrowing (unsecured) 2. Short Term Borrowing (unsecured) 3. Long Term Loans and advances (unsecured, considered good) 4. Long Term loans and advances (doubtful) 5. Trade receivables	Earlier it was not required to provide the details of schedules of Balance Sheet
11.	Pg. no. 8 & 9	Total number of Financial Parameters are extended to 45	Earlier financial parameters were only 15
12.	Pg. 9	Details of Share Capital Raised during the reporting period: 1. Private placement arising out of conversion of debentures/ preference shares & other private placement 2. Preferential allotment arising out of conversion of debentures / preference shares and Other preferential allotment 3. Employee Stock Option Plan (ESOP)	Earlier there was no such bifurcation was required for following: 1. Private Placement 2. Preferential allotment 3. ESOP details was not required
13.	Pg. no. 10	Details w.r.t Companies (Auditor's Report) Order, 2003 (CARO) is required to be provided	No such details were required to be provided.
14.	Pg. no. 11	Details related to cost audit of principal products or activity groups under cost audit is to be filled up	No such details were required to be provided.

B) Highlights of Form 23ACA: (Related to Profit & Loss)

Sr. No.	Page No. of revised e-form 23ACA	Revision in e-form 23ACA	Previous e-form 23ACA
1.	-	Now Number pages extended to Six	Earlier Number of pages were only Four
2.	Pg. no. 2 & 3	Details of consumption of stores & spare parts now shifted into Financial Parameters. Following other details to be provided: i. Profit before exceptional and extraordinary items and tax ii. Details of exceptional items iii. Extraordinary items iv. current and deferred tax profit/loss from continuing / discontinuing operations	No such details were required to be provided
3.	Pg. no. 5	Details of Schedule of earning in Foreign Exchange and expenditure is to be provided	Only amount of earning of foreign exchange and expenditure was to be provided
4.	Pg. no. 5	Details of Principal products or services of the company. The list of ITC/ NPCS code is provided on the MCA website	Earlier no such list was provided

Due date filing of revised e-forms 23AC & 23ACA for the financial year ended 31.3.2012:

Sr. No.	e-Forms	Section	Date of AGM	Due date of filing
1.	Form 23AC & 23ACA	u/s 220	For AGM held on or before 20 th September, 2012	3 rd November, 2012 or due date of filing, whichever is later
			For AGM held on or after 21 st September, 2012	22 nd November, 2012 or due date of filing whichever is later

As Professionals, while attesting the e-forms 23AC & 23ACA, we need to ensure the correctness and authenticity of content of the e-forms, as expected by Ministry of Corporate Affairs. ■■■

"Life is the sum of all your choices." - Albert Camus

CSBF

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Company Secretaries Benevolent Fund

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The members can also apply online by following the steps given below:

- a) The member has to visit the portal www.icsi.in
- b) The member has to login to self profile by selecting the option Member – Associate / Fellow
- c) The member has to enter his membership number.
- d) The member has to enter his password in the box provided (The member has to Click on Reset password if creating for the first time and follow the instructions)
- e) After Logging in the member has to click on the link 'Request for CSBF Membership'.
- f) The member has to click on Download link to download the Form 'A' i.e. Form for admission as a Member of CSBF.
- g) The member has to fill up the form complete in all respects.
- h) The member has to scan the duly filled in form and upload the same.
- i) After uploading the scanned form the member has to click on 'Proceed for Payment' button for payment through net banking.
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For further information/clarification please contact Mrs. Meenakshi Gupta, Joint Director or Mr. J S N Murthy, Administrative Officer on telephone No. 011-45341049, Mobile No. 9868128682 or through e-mail member@icsi.edu or csbf@icsi.edu

FOR FURTHER DETAILS PLEASE VISIT : www.icsi.edu/csbf

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Educate, Empower and Execute

Payments to Non-Executive Directors-Some perspectives

CS Ramaswami Kalidas

The introduction of provisions for deduction of tax at source from payments to directors, application of service tax thereon and the recent circular No. 24/2012 dated August,9,2012 of the MCA have thrown up a number of issues which provide considerable food for thought for the professional fraternity.

During the course of this discussion, we shall discuss some of the issues and endeavour to find a solution to some of the vexatious aspects.

• **Amendments to Section 194J of the Income Tax Act,1961**

Through the insert of clause (ba) to subsection (1) under Section 194J of the Income Tax Act,1961,(hereinafter "The Act") made effective from 1/7/2012 by the Finance Act,2012,the payment of any remuneration or fees or commission by whatever named called other than those payments on which tax is deductible u/s 192 of the Act made to the Directors of a company have been brought into the ambit of deduction of tax at source. The above amendment in the law has set at rest, once and for all, the



controversy that subsisted in the professional fraternity for years on the point whether payments of the above genre made to company directors who are not associated with companies in a whole time capacity such as Managing / Whole time directors ,should be subjected to deduction of tax at source. It was argued with considerable force that such payments should be out of the purview of Section 194J considering the fact that the tentacles of the above provision embrace only payments which are for providing ,inter alia, "professional services' within the meaning of the above expression as provided by the Explanation under Section 194J. It was argued that extending services to a Company while acting in the capacity of a Company director did not tantamount to "professional services", having regard to the fact that such service was neither expressly included in the statute within the definition of the above term nor through the extensions given to the definition through notifications issued by the CBDT from time to time through the aegis of Section 44AA of the Act.

Notwithstanding the above, the conservative view advocated was that, one should not be chivalrous in interpreting the law aggressively and hence it would be better to play safe and subject such payments to withholding

tax. This view was taken particularly by those who believe in the concept that "discretion is the better part of valour".

Our intention in this exposition is not to revisit the above controversy as the dye has already been cast on the subject through the recent amendments in the Legislation.

• **Amendment made to Section 194J is incomplete**

Before going into the finer points of the law, we would point out, at the outset, that a drafting anomaly has gone apparently unnoticed in Section 194J in the wake of the above amendment brought about by the Finance Act,2012. As stated above, through the insert of clause (ba) to

Section 194J payments to non executive directors are now liable to withholding tax. The proviso to Section 194J sets out the threshold monetary limit for the applicability of the provision. Sub clauses (i),(ii),(iii) and (iv) under the proviso stipulate a uniform threshold limit of Rs 30000/ per annum for all payments of such genre which fall within sub clauses(a),(b),(c) and (d) of Section 194J. Clause (ba), ibid, postulates the levy of withholding against

payments to Directors. Arising out of the insert of Clause (ba) in the statute, a consequential amendment ought to have been made under the Proviso referred to above in a manner to state that the threshold of Rs 30000/ shall also apply to payments covered by clause(ba) to Section 194J. In the absence of such an express assertion , a conclusion may be drawn perhaps justifiably that every payment to a director contemplated under clause (ba) above, regardless of the quantum would come within the sweep of the law. Drawing such a conclusion would be erroneous in our view, considering that the threshold stated above applies uniformly to all other types of payments embraced by section 194J.We would therefore assert that ,in keeping with the spirit of the legislation that only payments of Rs 30000/ or above in a financial year made to non executive directors should be subjected to withholding. Having said this, it would be appropriate if a suitable clarification is issued by the CBDT leaving no scope for any ambiguity in so far as the applicability of the threshold limit is concerned.

• **Applicability of Service tax on payments to Directors**

Through notification No. 45/2012 -Service Tax dated August 7,2012,which represents an amendment to the Notification

"There is no such thing as gratitude unexpressed. If it is unexpressed, it is plain, old-fashioned ingratitude." - Robert Brault, www.robertbrault.com

Payments to Non-Executive Directors-Some perspectives

No.30/2012-service Tax dated June,20,2012, it has been clarified that the onus of discharging the liability to service tax in respect of services provided by a Director shall lie with the Company under the "revised mechanism charge" a concept which has been introduced in the Finance Act,2012, ostensibly in an endeavour to extend the tentacles of the service tax to almost every conceivable form of service, save and except, certain types of services which are either expressly exempt from service tax or form a part of the "negative list of services" in consequence of which service tax is not payable on services belonging to such genre.

It is ironic that as Service Tax is a levy in the field of indirect taxation as per the accepted canons of taxation it is ordained that the "impact" and "incidence" of the levy should fall on different entities. In respect of certain species of services such as services provided by a person in the capacity of a non-executive Director, both the impact and incidence of the levy fall on the "recipient" of the service. This is a dichotomy in the law, which we have to accept, whether we like it or lump it, as it cuts across the very grain of an indirect tax legislation.

Be that as it may, it follows from the above that as the responsibility to pay the service tax rests with the Company, it has to pay the service tax on the fees/commission on profits regardless of whether the professional Income of the Director concerned exceeds the prescribed threshold of Rs 10 lacs or more in a financial year.. This proposition gives rise to a related question as to whether it is necessary for the Director to whom fees is paid to raise an invoice on the Company towards the sitting fees payable to him.

- **Is it necessary for a Director to raise an Invoice for his fees**

To answer this question, it would be necessary for us to examine the provisions of the Service Tax Rules,1994. Rule 4A of the said Rules, inter alia, provides that the person providing taxable services shall raise an Invoice on the recipient of the Service incorporating therein the details of his registration number, the description and value of the services rendered, apart from stating the particulars of the person/entity for whom the taxable services have been rendered.

It is now a settled position that under the reverse mechanism route, as in the case of Directors' fees, the liability of the recipient of the service to pay the service tax remains unchanged notwithstanding that the service provider has not obtained registration under the Rules since his Income from professional services is below the prescribed threshold.. Viewed against the above perspective, it is submitted that it is not necessary for the director extending services to the company to raise an invoice against the payments made to him..

- **Withholding tax on Service tax component of payment to Directors**

Section 194J of the Act having been amended, Companies are now subjecting to deduction of tax at source the amount

paid by way of sitting fees paid to directors @10% of the amount so paid.

The question that immediately springs to mind is whether tax is to be deducted only on the amount paid or on the fees inclusive of the amount of service tax paid thereon by the company. The need to raise this question gains relevance when one considers the contents of Letter F.No.275/73/2007-IT(B) dated 30.6.2008 issued by the Central Board of Direct Taxes(CBDT).In this letter it has been clarified that tax shall be deductible at source on the professional fees u/s 194J inclusive of the service tax component thereon. The above letter is in the nature of a rejoinder to circular no.4/2008 dated April,28.2008 wherein the Department had clarified that TDS shall not be applied on the service tax component of the rental income u/s 194I as the service tax paid cannot be considered as Income of the Landlord.

If the above letter is applied in letter and spirit, Companies may have to consider for withholding tax purposes, not only the fees paid to the director but also the service tax component there on as well.

In our view, holding such a view would not be correct as it would go against the spirit of the Statute. There would be an element of double taxation in the hands of the Company as apart from making payment of service tax, there would be an increase in the quantum of withholding tax as well due to the inclusion of the service tax.

It is submitted that Section 194J postulates that tax shall be deducted at source @ 10% of such sum as income tax on Income comprised therein. (Emphasis supplied). It therefore follows from the above that the service tax paid by the Company on the sitting fees cannot, by any stretch of imagination be considered as the Income of the director. There cannot therefore be a mandate for subjecting to tax the service tax component of the fees paid and the above letter of the CBDT in our view,should be revisited in the light of the application of the "reverse charge mechanism" on sitting fees.

- **Does Service Tax on Directors' payments form part of "remuneration"**

The MCA has by its recent circular No. 24/2012 dated August 9,2012 has, in a manner of speaking, added grist to the Grind mills by its assertion, inter alia, that service tax paid by a Company on commission paid to Directors shall form a part of their remuneration, for the purposes of Section 198 of the 56 Act. The circular goes on further to clarify that if, by the application of service tax on the Directors' commission, the amount payable to the Director exceeds the limits sanctioned by the Members, it would not be necessary for the Company to seek Central Govt. approval for such increase under Sections 309 and 310 of the 56 Act.

This gives rise again to the pivotal question whether Service tax paid by the Company becomes part of a Directors' remuneration.

The term "Remuneration" has been defined inclusively in

"Experience enables you to recognize a mistake when you make it again." - Franklin P. Jones

the Explanation u/s 198 of the 56 Act. The above definition is restricted in application only for the purposes of Section 198,309,310 and 311. Section 309(2) expressly contemplates that a director may receive remuneration by way of a fee for each meeting of the Board or a committee thereof, attended by him.

It is pertinent to reproduce, as under, clause(c) to the Explanation u/s198 for the purposes of our discussion.

“Remuneration shall include:

(c) any expenditure incurred by the Company in respect of any obligation or service, which, but for such expenditure by the company, would have been incurred by any of the persons aforesaid”.

From the above, would it be fair to draw an inference that the service tax paid by the Company along with the fees/ commission that the amount so paid becomes the Directors’ remuneration.

To answer this question, we have to look also at certain postulates under the income tax law. It is a settled principle of law that all receipts of an assessee does not always constitute his income. The objective of the Tax law is to tax real income and not income which is sham or illusionary. The concept of “real Income” has been applied by the courts in a number of cases to ensure that what is taxed is as nearly real as possible, given the constraints of Statutory limitations. Income is one which gives the owner disposable capacity. (Emphasis Supplied). Justice Sabyasachi Mukherjee while delivering his leading judgement in *State Bank of Travancore vs.CIT(158 ITR 102)(SC)* laid down some propositions as to what constitutes “real income” of which the following passage is worth reproducing:

“It is the income which has actually accrued or arisen to the Assessee which is taxable. Whether the Income has really accrued or arisen to the Assessee must be judged in the reality of the situation”

We would hasten to add that the above remarks were made in the Judgement in a different context but just the same are relevant for the purpose of deciding the question whether the service tax paid by the company on the fees can really be a part of a Director’s remuneration. Our answer to the question is an emphatic no. Firstly, such payment does not lead to any disposable capacity in the hands of the director. Secondly there is no accrual since the amount of service tax has to eventually go to the Govt.Treasury. Even if the service tax were to be paid by the Director subject to reimbursement by the Company (assuming for a moment that the “reverse mechanism charge” were not applicable to Directorial payments), the amount reimbursed by the Company cannot form a part of a director’s Income. Therefore all receipts are not taxable as income, more so any payment which is in the nature of a reimbursement. It would be pertinent to refer to the decision of the Madras HC in *CIT vs S.Kamalahasan (249 ITR 726)* where it was held that an amount received by a film actor on a tour abroad along with his troupe for meeting the tour expenses does not have the character of income and

non declaration of the same does not amount to concealment of income.

Fortified by the above judicial pronouncements we reiterate our earlier submission and stick our neck out while opining that the service tax paid by a company to a director cannot be construed as his remuneration. It is extremely essential therefore that the MCA should soon clarify its stand on this issue thus removing the cobwebs of doubt that engulfs the professional fraternity.

Ceiling on Directors’ fees under the Companies Act, 1956 (the 56 Act)-Implications of MCA’s Circular dated August 9, 2012.

The conclusion drawn by the MCA in its circular referred to above that the service tax paid by the Company shall be deemed to be part of directors’ remuneration u/s 198 of the 56 Act has stoked up another controversy. Readers are aware that in terms of Rule 10B of the Companies(Central Govt’s) General Rules and Forms, in relation to Section 310 of the 56 Act, a ceiling has been introduced with effect from 24/7/2003 on the quantum of sitting fees payable to the Directors. In case of Companies with a paid up share capital and free reserves of Rs 10 crore and above or a turnover of Rs 50 Crore and above the sitting fees payable cannot exceed Rs 20000/ per Meeting. For companies not satisfying the above criteria, the ceiling is Rs10000/.

As the above criteria was prescribed some years ago, practically every company of reasonable repute now pays fees of Rs 20000/ per meeting.

Assuming but not admitting respectfully that the service tax does form a part of the Directors’ remuneration, it is submitted that no longer is there a legal mandate available for a Company to pay sitting fees of Rs 20000/ or Rs 10000/ as the case may be. It will be, willy-nilly, necessary for the Company to prune the amount of sitting fees in a manner that the fees along with the service tax paid is restricted to Rs 20000/ or Rs 10000/ unless the Rule cited above is amended to accommodate the increase arising due to application of service tax. It is understood that some Companies have already reduced the quantum of fees or are alternatively seeking shareholders approval to retain the fees at the existing levels plus the service tax thereon as a conservative measure. The validity of the latter course of action is in considerable doubt as such action would *prima facie*, be beyond the scope of the statute.

We would reiterate our earlier submission and respectfully submit that the MCA should post haste clarify its stand and confirm to the logical proposition that service tax shall not constitute part of Directors’ remuneration.

Conclusion

In the course of our above discussion, we may have stirred a hornet’s nest as it were. As the conclusion drawn by us above is open to dissent, we would humbly submit that the Powers that be should come out with appropriate clarifications to set right the controversy that is simmering on the subject.



EXTERNAL COMMERCIAL BORROWINGS (ECB) – A SOURCE OF FOREIGN CURRENCY BORROWINGS

CS Vidya Shembekar, Company Secretary, Mumbai

PART - I



Reserve Bank of India, Foreign Exchange Department has issued a Master Circular No. 12 /2012-13 dated July 02, 2012 on External Commercial Borrowings and Trade Credits availed of by residents which are governed by the Foreign Exchange Management Act, 1999 read with Notification No. FEMA 3/ 2000-RB viz. Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, dated May 3, 2000, as amended from time to time.

At present, Indian companies are allowed to access funds from abroad in the following methods:

- (i) **External Commercial Borrowings (ECB)** refer to commercial loans in the form of bank loans, buyers' credit, suppliers' credit, securitized instruments (e.g. floating rate notes and fixed rate bonds, non-convertible, optionally convertible or partially convertible preference shares) availed of from non-resident lenders with a minimum average maturity of 3 years.
- (ii) **Foreign Currency Convertible Bonds (FCCBs)** mean a bond issued by an Indian company expressed in foreign currency, and the principal and interest in respect of which is payable in foreign currency. Further, the bonds are required to be issued in accordance with the scheme viz., "Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993", and subscribed by a non-resident in foreign currency and convertible into ordinary shares of the issuing company in any manner, either in whole, or in part, on the basis of any equity related warrants attached to debt instruments. The ECB policy is applicable to FCCBs.



- (iii) **Preference shares** (i.e. non-convertible, optionally convertible or partially convertible) for issue of which, funds have been received on or after May 1, 2007 would be considered as debt and should conform to the ECB policy.

Since these instruments would be denominated in Rupees, the rupee interest rate will be based on the swap equivalent of LIBOR plus the spread as permissible for ECBs of corresponding maturity.

- (iv) **Foreign Currency Exchangeable Bond (FCEB)** means a bond expressed in foreign currency, the principal and interest in respect of which is payable in foreign currency, issued by an Issuing Company and subscribed to by a person who is a resident outside India, in foreign currency and exchangeable into equity share of another company, to be called the Offered Company, in any manner, either wholly, or partly or on the basis of any equity related warrants attached to debt instruments.

ECB can be accessed under two routes;

- (i) Automatic Route
- (ii) Approval Route

(A) AUTOMATIC ROUTE

ECB for investment in real sector-industrial sector, infrastructure sector-in India, and specified service sectors are covered under Automatic Route which do not require Reserve Bank / Government of India approval.

Borrowers may enter into loan agreement complying with the ECB guidelines with recognised lender for raising ECB under Automatic Route without the prior

"peacefulness follows any decision, even the wrong one." - Rita Mae Brown

approval of the Reserve Bank. The borrower must obtain a Loan Registration Number (LRN) from the Reserve Bank of India before drawing down the ECB.

The following types of proposals for ECBs are covered under the Automatic Route.

Eligible Borrowers

- (a) **Corporates**, including those in the hotel, hospital, software sectors (registered under the Companies Act, 1956) and Infrastructure Finance Companies (IFCs) except financial intermediaries, such as banks, financial institutions (FIs), Housing Finance Companies (HFCs) and Non-Banking Financial Companies (NBFCs) are eligible to raise ECB. Individuals, Trusts and Non-Profit making organizations are not eligible to raise ECB.
- (b) **Units in Special Economic Zones (SEZ)** are allowed to raise ECB for their own requirement. However, they cannot transfer or on-lend ECB funds to sister concerns or any unit in the Domestic Tariff Area.
- (c) **Non-Government Organizations (NGOs)** engaged in micro finance activities are eligible to avail of ECB.
- (d) **Micro Finance Institutions (MFIs)** engaged in micro finance activities are eligible to avail of ECBs. MFIs registered under the Societies Registration Act, 1860, MFIs registered under Indian Trust Act, 1882, NGOs engaged in Micro finance and Companies registered under Section 25 of the Companies Act, 1956 and are involved in micro finance activities.

Recognised Lenders

Borrowers can raise ECB from internationally recognized sources, such as

- (a) international banks
- (b) international capital markets
- (c) multilateral financial institutions (such as IFC,

ADB, CDC, etc.) / regional financial institutions and Government owned development financial institutions

- (d) export credit agencies,
- (e) suppliers of equipments
- (f) foreign collaborators and
- (g) foreign equity holders [other than erstwhile Overseas Corporate Bodies (OCBs)].

A “foreign equity holder” to be eligible as “recognized lender” under the **automatic route** would require minimum holding of paid-up equity in the borrower company as set out below:

- For ECB up to USD 5 million - minimum paid-up equity of 25 per cent held directly by the lender,
- For ECB more than USD 5 million - minimum paid-up equity of 25 per cent held directly by the lender and ECB liability-equity ratio not exceeding 4:1 Besides

A “foreign equity holder” to be eligible as “recognized lender” under the **approval route** would require minimum holding of paid-up equity in the borrower company as set out below:

- For ECB up to USD 5 million - minimum paid-up equity of 25 per cent held directly by the lender,
- For ECB more than USD 5 million - minimum paid-up equity of 25 per cent held directly by the lender and ECB liability-equity ratio not exceeding 7:1
- ECB from indirect equity holders provided the indirect equity holding by the lender in the Indian company is at least 51 per cent;
- ECB from a group company provided both the borrower and the foreign lender are subsidiaries of the same parent.

Overseas organizations and individuals providing ECB need to comply with the following safeguards:

- (i) Overseas Organizations proposing to lend ECB are required to furnish to the AD bank of the borrower a certificate of due diligence from an overseas bank, which, in turn, is subject to regulation of host-country regulator and adheres to the Financial Action Task Force (FATF) guidelines. The certificate of due diligence should state that the lender maintains an account with the bank for at least a period of two years, the lending entity is organised as per the local laws and held in good esteem by the business/local community and there is no criminal action pending against it.



“When you have to make a choice and don’t make it, that is in itself a choice.” - William James

EXTERNAL COMMERCIAL BORROWINGS (ECB) – A SOURCE OF FOREIGN CURRENCY BORROWINGS

(ii) Individual Lender has to obtain a certificate of due diligence from an overseas bank indicating that the lender maintains an account with the bank for at least a period of two years. Individual lenders from countries wherein banks are not required to adhere to Know Your Customer (KYC) guidelines are not eligible to extend ECB.

Amount and Maturity

- a) The maximum amount of ECB which can be raised by a corporate other than those in the hotel, hospital and software sectors is USD 750 million or its equivalent during a financial year.
- b) Corporates in the services sector viz. hotels, hospitals and software sector are allowed to avail of ECB up to USD 200 million or its equivalent in a financial year for meeting foreign currency and/ or Rupee capital expenditure for permissible end-uses. The proceeds of the ECBs should not be used for acquisition of land.
- c) ECB up to USD 20 million or its equivalent in a financial year with minimum average maturity of three years. An illustration of average maturity period calculation is provided at Annex VI.
- d) ECB above USD 20 million or equivalent and up to USD 750 million or its equivalent with a minimum average maturity of five years.
- e) NGOs engaged in micro finance activities and Micro Finance Institutions (MFIs) can raise ECB up to USD 10 million or its equivalent during a financial year. Designated AD bank has to ensure that at the time of drawdown the forex exposure of the borrower is fully hedged.
- f) ECB up to USD 20 million or equivalent can have call/ put option provided the minimum average maturity of three years is complied with before exercising call/ put option.
- g) All eligible borrowers can avail of ECBs designated in INR from 'foreign equity holders' as per the extant ECB guidelines.
- h) NGOs engaged in micro finance activities can avail of ECBs designated in INR, from overseas organizations and individuals as per the extant guidelines.

End-use

- (a) ECB can be raised for investment such as import of capital goods (as classified by DGFT in the Foreign Trade Policy), new projects, modernization/ expansion of existing production units] in real sector - industrial sector including small and medium enterprises (SME), infrastructure sector and specified service sectors, namely, hotel, hospital, software in India. Infrastructure sector is defined as (i) power, (ii) telecommunication, (iii) railways, (iv) roads including bridges, (v)

sea port and airport, (vi) industrial parks, (vii) urban infrastructure (water supply, sanitation and sewage projects), (viii) mining, exploration and refining and (ix) cold storage or cold room facility, including for farm level pre-cooling, for preservation or storage of agricultural and allied produce, marine products and meat.

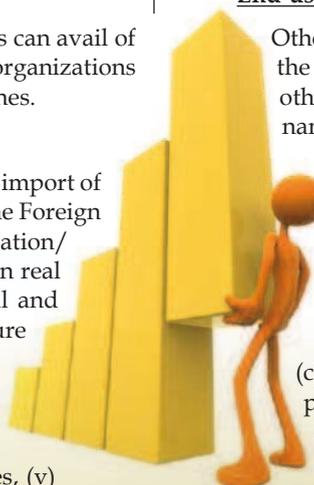
- (b) Overseas Direct Investment in Joint Ventures (JV)/ Wholly Owned Subsidiaries (WOS) subject to the existing guidelines on Indian Direct Investment in JV/ WOS abroad.
- (c) Utilization of ECB proceeds is permitted for first stage acquisition of shares in the disinvestment process and also in the mandatory second stage offer to the public under the Government's disinvestment programme of PSU shares.
- (d) Interest During Construction (IDC) for Indian companies which are in the infrastructure sector, where "infrastructure" is defined as per the extant ECB guidelines, subject to IDC being capitalized and forming part of the project cost.
- (e) For lending to self-help groups or for micro-credit or for bonafide micro finance activity including capacity building by NGOs engaged in micro finance activities.
- (f) Payment for Spectrum Allocation.
- (g) Infrastructure Finance Companies (IFCs) i.e. Non Banking Financial Companies (NBFCs) categorized as IFCs by the Reserve Bank, are permitted to avail of ECBs, including the outstanding ECBs, up to 50 per cent of their owned funds, for on-lending to the infrastructure sector as defined under the ECB policy, subject to fulfillment of certain conditions. Designated Authorised Dealer should ensure compliance with the extant norms while certifying the ECB application.
- (h) Maintenance and operations of toll systems for roads and highways for capital expenditure provided they form part of the original project

End-uses not permitted

Other than the purposes specified hereinabove, the borrowings shall not be utilized for any other purpose including the following purposes, namely:

- (a) For on-lending or investment in capital market or acquiring a company (or a part thereof) in India by a corporate, Money Market Mutual Funds etc., are also considered as investment in capital markets.
- (b) for real estate sector,
- (c) for working capital, general corporate purpose and repayment of existing Rupee loans.

(To be continued next issue)



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Software Company and Factory: Are they Related?

CS Vivek Sadhale Company Secretary, Pune
CS Vikas Agarwal Company Secretary, Pune

The Bombay High Court in the recent Judgment while hearing two appeals viz. The Assistant Director ESIC vs. M/S Western Outdoor Interactive Pvt. Ltd; and M/s Reliable Software Systems Pvt. Ltd. vs. ESIC, has held that Employees' State Insurance Act, 1948 (ESI Act) applies to software development companies. The judgment came in aforesaid two cases where Employees State Insurance Corporation ("ESIC") had raised a demand for contribution under ESI Act from software development companies in Mumbai towards its employees.

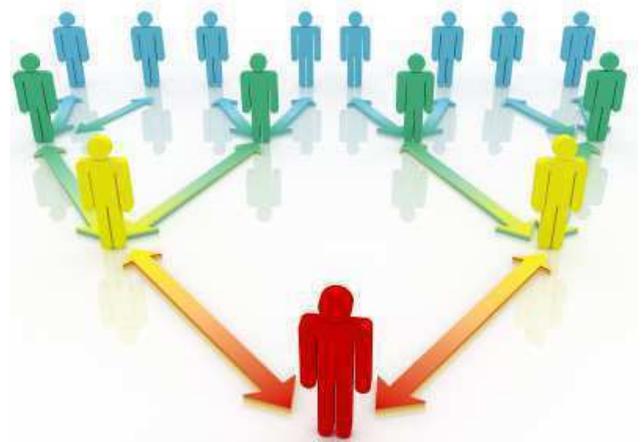
Both the companies had denied that they were 'factories' as they were involved in 'commercial activities' and hence not liable to contribute under the ESI Act. In both these cases, lower courts held differing views leading to appeals, one by ESIC and another by company before the Bombay High Court.

While deciding the appeals, the Bombay High Court held importantly the following:

- a. Creation of software or development of software is a manufacturing process and
- b. Premises where computers are involved in manufacturing process is a factory under the ESI Act.

A detailed analysis of the Bombay High Court judgement while pronouncing the aforesaid two decisions is as under:

- a. Creation of software or development of software itself is a manufacturing process
 - i. "Software development" falls within the meaning of "manufacturing process" under section 2(k) of the Factories Act, 1948, hence under section 2(14AA) of the ESI Act.



- ii. "Manufacturing process" as defined under Section 2(k) of the Factories Act allows a wide interpretation and each activity and verb has its own connotation.
- iii. When Factories Act was enacted in 1948, use of computer and software was alien to the Legislature. Hence words which are more appropriate and precisely describing the activities carried out with the help of the computers i.e. development of software, programming of data, application etc. were neither known nor in practice at that time. Albeit, the absence of these words, the manufacturing of the substance with the help of computers can be covered generally under the activities which are mentioned in the definition of manufacturing process as making, altering, treating, adapting etc. Therefore, though computer related activities like development, programming, application are not mentioned in the definition and to that effect there is no amendment in the section, the definition takes care of activities like development and application.
- iv. Joint Director, ESIC, New Delhi vide its letter dated December 9, 2003 to the Regional Director had communicated that the Directorate General, Government of India, Ministry of Labour and Factories, Advisory Services and Labour Institutes by letters dated March 9, 2003, and September 22, 2003 has clarified that the term "software development" falls within the meaning of "manufacturing process" under section 2(k) of the Factories Act, 1948.
- b. Premises where computers are involved in manufacturing process is a factory under the ESI Act

"Choices are the hinges of destiny." - Attributed to both Edwin Markham and Pythagoras

Software Company and Factory: Are they Related?

- i. Meaning of the term "factory" for the purpose of the ESI Act is broader than the definition under the Factories Act.
- ii. Definition of "factory" in Factories Act and ESI Act are not the same. Explanation II of Section 2(m) of the Factories Act was inserted in the Factories Act and not in the ESI Act. This marks difference in its interpretation and application.
- iii. In the definition of "factory" under Factories Act the words "worker working" are used. While in the ESI Act, the words "person employed for wages" is used.

A difference in these two definitions of one word "factory" can be explained by example. A clerk or staff in the premises is not covered under the definition of "worker" under the Factories Act, however, under the ESI Act, the word "worker" is not used but the legislature chose the word "person" and for "working", the word "employed" is used. Thus, the premises where person is employed for a clerical work is covered under the definition "factory" under the ESI Act. Therefore, definition of "factory" has wider meaning under the ESI Act than the Factories Act."



- iv. In *Quzi Noorul, H.H.H. Petrol Pump and Anr. Vs. Deputy Director, Employees' State Insurance Corporation*, reported in (2009) 15 SCC 30 it was held by Supreme Court held that the words "manufacturing process" in different statutes have different meanings. For instance, in the Central Excise Act, 1944, the word "manufacture" means bringing into existence a different commodity, though this is not the definition of "manufacturing process" in the Factories Act, 1948. We cannot apply the definition of "manufacturing process" in one statute to another statute".
- v. If manufacturing process is carried out as contemplated under Section 2(12) of the ESI Act, then that particular unit cannot be made an exception to the application of the ESI Act. To borrow the meaning from the provision of Explanation II of Section 2(m) of the Factories Act, will be a myopic view defeating the object and spirit of the ESI Act. The meaning of the term "factory" for the purpose of ESI Act is not to be understood in the context of Explanation II of Section 2(m) of the Factories Act. This is not a harmonious construction of the

Statute. Application of ESI Act is not a regressive but a progressive step.

Date of Applicability of Judgment

As per the Blackstonian view of law, judgments by the courts have retrospective effect and the judgments would be applicable from the date law had come into existence or the date on which it was enacted. Accordingly, the aforesaid judgement will be applicable from the date of the enactment of ESI Act.

Whether Software Company is a Factory under the Factories Act?

The aforesaid judgement by the Bombay High Court specifically stated that the interpretation of "manufacturing process" and the term "factory" are to be understood for the purpose of ESI Act and not under the Factories Act. Thus the interpretation and judgment is applicable only for ESI Act and not for Factories Act or any other Acts.

On the point of interpretation of "manufacturing process" in Explanation II of Section 2(m) of the Factories Act,

the Division Bench of the Madras High Court in the case of *Seelan Raj & 14 Others v. P.O., I Addl. Labour Court & Ors.* had held that any use of a computer or any work carried out with the help of the computer is taken out of the purview of Labour Laws. The Court had held that software development is not covered under the definition of "factory" under the Factories Act and hence the Labour Laws are not applicable to these establishments.

A Civil Appeal has been filed against the Madras High Court judgement with the Honorable Supreme Court. Supreme Court had referred the case to a larger bench to consider the interpretation of Explanation II to Section 2(m) of the Factories Act.

Implication

The judgment delivered by the Hon'ble Bombay High Court brought clarity on the applicability of the ESI Act for the software industry. While the judgement will be binding on judicial /quasi-judicial authorities in the state of Maharashtra, it will have a persuasive value in the courts of any other jurisdictions.

We need to see the decision by the Supreme Court in *Seelan Raj (supra)* on whether establishment developing software is a "factory" under the Factories Act. If decision of Supreme Court is contrary to the view taken by the Madras High Court, it would have far reaching implications on the working of the software industry.

"Consider what you think justice requires, and decide accordingly. But never give your reasons; for your judgment will probably be right, but your reasons will certainly be wrong." - Lord Mansfield

COMPLIANCES FOR THE MONTH OF NOVEMBER

CS Hemant V. Pandya, Practising Company Secretary, Mumbai

Sr. No	Things you need to do	Sections / Rules / Clauses prescribing the activities to be done	Acts / Regulations / Circulars under which the Sections / Rules / Clauses is covered	Due Date before which you need to comply the activity	You need to submit this to
TAX RELATED COMPLIANCES					
CENTRAL EXCISE ACT RELATED COMPLIANCE					
1	Pay excise duty on the goods removed from the factory or warehouse for the previous month	Rule 8(1)	Central Excise Rules, 2002	November 5	Excise Authorities
2	Pay excise duty on the goods removed from the factory or warehouse for the previous month(E- payment)	Rule 8(1)	Central Excise Rules, 2002	November 6	Excise Authorities
3	Submit monthly Central Excise E.R.1 Return (E.R. 2 return for 100% EOU / units in FTZ / SEZ)	Rule 12 (1) / 17 (3)	Central Excise Rules, 2002	November 10	Excise Authorities
4	Submit monthly return return by manufacturer of Final Product (N.A. for SSI)	Rule 9(7)	CENVAT Credit Rules, 2004	November 10	Supritendent of Central Excise
5	Submit return containing information of principal input for the preceding month E.R.6	Rule 9A	CENVAT Credit Rules, 2004	November 10	Supritendent of Central Excise
6	Submit monthly Return for availment of CENVAT Credit for preceding month in Form No. ER 11	Rule 9(7) & Rule 12	CENVAT Credit Rules, 2004 & Central Excise Rules, 2002	November 10	Supritendent of Central Excise
7	Submit monthly return for receipt of inputs & capital goods for the preceding month in Form No. E.R.2	Rule 9(7) & Rule 12	CENVAT Credit Rules, 2004 & Central Excise Rules, 2002	November 10	Supritendent of Central Excise
8	Deposit duty on goods cleared during a calendar month, where an assessee is availing of the exemption under a notification based on the value of clearances of goods from factory or warehouse, in a Financial Year	Second Proviso to Rule 8(1)	Central Excise Rules, 2002	November 15	Excise Authorities
9	Monthly payment of excise duty for the preceding month SSI Units	Rule 8	CENVAT Credit Rules, 2004 & Central Excise Rules, 2002	November 15	Excise Authorities
10	Monthly payment of excise duty for the preceding month SSI Units (E-payment)	Rule 8	CENVAT Credit Rules, 2004 & Central Excise Rules, 2002	November 16	Excise Authorities
11	Deposit duty on goods cleared during a calendar month, where an assessee is availing of the exemption under a notification based on the value of clearances of goods from factory or warehouse, in a Financial Year [E-payment]	Second Proviso to Rule 8(1)	Central Excise Rules, 2002	November 16	Excise Authorities
12	Submit an Annual Financial Information Statement for the preceding financial year	Rule 12(2)	Central Excise Rules, 2002	November 30	Supritendent of Central Excise
13	Submit Annual Financial information statement in relation to material and components used for manufacture in Form ER 4	Rule 12(2) (a)	Central Excise Rules, 2002	November 30	Supritendent of Central Excise

“The hardest thing to learn in life is which bridge to cross and which to burn.” - David Russell

DATES TO REMEMBER

Compliance Calendar

INCOME TAX RELATED COMPLIANCE					
1	Deposit TDS from salaries for the previous month in Challan No. 281	Section 192	Income Tax Act, 1961	November 7	Designated Bank / Income Tax Authorities
2	Deposit TDS on interest on Securities, Dividends other than dividends referred to in Section 115O, Interest other than interest on Securities, Winnings from Lotteries & crossword puzzles, Winning from Horse Races	Section 193, Section 194 to Section 194BB	Income Tax Act, 1961	November 7	Designated Bank / Income Tax Authorities
3	Deposit TDS on Contractor's Bill / Rent Advertising / Professional Service Bill deducted in the previous month	Section 194C to Section 194H	Income Tax Act, 1961	November 7	Designated Bank / Income Tax Authorities
4	Deposit TDS on payment to non-resident, Foreign company being holder of mutual fund units, Units held by an offshore fund, Income from foreign currency bond, Income of FIIs from securities	Section 195, Section 196 A to 196 D	Income Tax Act, 1961	November 7	Designated Bank / Income Tax Authorities
5	Payment of Tax Collected at Source	Section 206	Income Tax Act, 1961	November 7	Designated Bank / Income Tax Authorities
6	Payment of Securities Transaction Tax for the previous month (Challan No. ITNS 283)	Section 100	Income Tax Act, 1961	November 7	Designated Bank / Income Tax Authorities
7	Issue Annual TDS Certificates to vendors (where monthly certificates not given)	Section 203	Income Tax Act, 1961	November 30	Income Tax Authorities
8	Furnish accountants report, in case of an assessee entering into an international transaction if due date for filing return under section 139(1)	Section 92E	Income Tax Act, 1961	November 30	Income Tax Authorities
FINANCE ACT & SERVICE TAX RELATED COMPLIANCE					
1	Pay Service tax collected during the previous month by persons other than individuals, proprietors and partnership firms in G.A.R-7	Section 68 read with Rule 6	The Finance Act, 1994 read with The Service Tax Rules, 1994	November 5	Service Tax Authorities
2	Pay Service tax collected during the previous month by persons other than individuals, proprietors and partnership firms in G.A.R-7 (E-payment)	Section 68 read with Rule 6	The Finance Act, 1994 read with The Service Tax Rules, 1994	November 6	Service Tax Authorities
THE MAHARASHTRA STATE TAX RELATED COMPLIANCE					
1	Submit monthly return and payment of tax for the previous month in Form 209 by Dealer to whom a certificate of Entitlement has been granted for availing incentives by way of exemption	Rule 18	The Maharashtra Value Added Tax Act, 2005 read with the Rules thereunder	November 1	Sales Tax Authorities
2	Submit monthly return and pay tax for the previous month (if tax liability during the previous year exceeds Rs. 1 Lakh)	Rules 17 / 18 and 41	The Maharashtra Value Added Tax Act, 2005 read with the Rules thereunder	November 25	Sales Tax Authorities
3	Submit monthly return of Professional Tax if tax liability is Rs. 20 thousand or more in Form No. III (Return-cum-challan)	Rule 11 (3) (c)	The Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975 read with The Maharashtra State Tax on Professions, Trades, Callings and Employments Rules, 1975	November 30	Profession tax Authorities

"Although every man believes that his decisions and resolutions involve the most multifarious factors, in reality they are mere oscillation between flight and longing." - Herman Broch

4	Conduct Yearly MVAT audit in Form 704 for dealer liable to pay VAT and turnover either of sales or purchases exceeding Rs. 40 lakhs AND for dealer holding liquor licence	Section 61 & Rule 65	The Maharashtra Value Added Tax Act, 2005 and Rules thereunder	November 30	Sales Tax Authorities
5	Credit Professional Tax deducted in the previous month in Form III	Rule 17	The Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975 read with The Maharashtra State Tax on Professions, Trades, Callings and Employments Rules, 1975	Within 15 days of such deduction	Profession Tax Authorities
COMPANY LAW RELATED COMPLIANCES					
1	Payment of monthly Provident Fund dues (Corporate) for previous month in prescribed challan	Section 418	Companies Act, 1956	November 15	(i) Post Office Saving Bank Account or (ii) Special Account with SBI or any Scheduled Bank
2	Filing Annual Return [in Form 20B - A Company having Share Capital, Form 21A - A Company not having Share Capital	Section 159	The Companies Act, 1956 & The Companies General Rules and Forms, 1956	Within 60 days from AGM. (30th November, if AGM is held on 30th September 2012).	Ministry of Corporate Affairs /ROC
ECONOMIC, INDUSTRIAL & LABOUR LAW RELATED COMPLIANCES					
1	Pay monthly Provident Fund dues (non-corporate)	Paragraph 38	Employees' Provident Funds Scheme, 1952	November 15	Provident Fund Authorities
2	File monthly return for employees leaving in form No. 10/ joining in form No. 5 during the previous month	Paragraph 20(2) read with Paragraph 36(1) & (2)	The Employees Pension Scheme, 1995 (For exempted establishments under Employees Provident Fund and Misc. Provisions Act, 1952)	November 15	Provident Fund Commissioner
3	File monthly return in Form no. 2(IF) of employees entitled for membership of Insurance Fund	Paragraph 10	The Employees Deposit Linked Insurance Scheme, 1976 (For exempted establishments under Employees Provident Fund and Misc. Provisions Act, 1952)	November 15	Provident Fund Commissioner
4	File monthly return in Form no. 3(IF) for members of Insurance Fund leaving service during the previous month i.e. April	Paragraph 10	The Employees Deposit Linked Insurance Scheme, 1976 (For exempted establishments under Employees Provident Fund and Misc. Provisions Act, 1952)	November 15	Provident Fund Commissioner
5	File monthly return in Form no. F4(PS) of members joining service during the month	Paragraph 10	The Employees Deposit Linked Insurance Scheme, 1976 (For exempted establishments under Employees Provident Fund and Misc. Provisions Act, 1952)	November 15	Provident Fund Commissioner
6	Pay ESI contribution for previous month i.e. October	Regulation 31	Employee State Insurance Act, 1948 Employees State Insurance (Gen) Regulations,	November 21	ESIC Authority
7	Submit monthly return of Provident Fund for the previous month in Form No. 12A	Paragraph 38	Employees' Provident Funds Scheme, 1952	November 25	Provident Fund Commissioner

"Indecision becomes decision with time." - Author Unknown

DATES TO REMEMBER

Compliance Calendar

8	Submit return of declaration in Form 3 & 1-A	Regulation 14	Employees State Insurance (General) Regulations, 1950	Within 10 days from the date of receiving the relevant papers	ESIC Authority
9	Issue Notice for payment of Gratuity and Notice for Inadmissible claim in Form L&M	Section 8	Payment of Gratuity Act, 1972	Within 15 days of receipt of application	Applicant employee or legal heir
RBI (NBFC) RELATED COMPLIANCES					
1	File return of exposure of capital markets in Form NBS-6	Para 22	NBFC-D Prudential Norms Directions, 2007	November 7	RBI
2	File a monthly return in prescribed format (NBC-ND)	Circular No. DNBS (RID) CC No. 57/02.02.15/2005-06	Department of Non-Banking Supervision, RBI	November 7	RBI
SEBI RELATED COMPLIANCES					
1	Certificate on demat/remat of shares	Regulation 54(5)	SEBI(Depositories & Participants) Regulations, 1996	November 7	Stock Exchanges
LISTING AGREEMENT RELATED COMPLIANCES					
1	Submit Consolidated half yearly Financial Results	Clause 41	Listing Agreement	November 15	Stock Exchanges
2	Submit limited review report for the quarter ended September 30	Clause 41	Listing Agreement	November 15	Stock Exchanges
Though all precautions have been taken in compiling this calendar, WIRC of ICSI should not be held responsible in case of any discrepancy. In case of doubt, please refer to relevant law/rules.					

Tentative PDC Calendar - November, 2012

Sr. No	Date	Day	Venue	Programme	Topic
1	3-Nov-12	Saturday	Essar House, 11, Keshav Rao Khadye Marg, Mahalaxmi, Mumbai - 400034	Dadar Study Circle Meeting	To be decided
2	3-Nov-12	Saturday	To be decided	Full Day Seminar	To be decided
3	4-Nov-12	Sunday	Kandivali	Kandivali Study Circle Meeting	To be decided
4	10-Nov-12	Saturday	AC Auditorium, 1st Floor, ICSI- WIRC Premises, Jolly Makers Chamber No. 2, Nariman Point, Mumbai 400021	Full Day Seminar	IPRs - Copyrights, Trademarks & Patents
5	11-Nov-12	Sunday	A V Hall, Don Bosco High School, L.T. Road, Vazira Naka, Borivali (West), Mumbai - 400091	Borivali Study Circle Meeting	To be decided
6	16-Nov-12	Friday	AV Hall, 1st Floor, New SNTD, Cama Lane, Ghatkopar (W), Mumbai- 400 077	Ghatkopar Study Circle Meeting	To be decided
7	18-Nov-12	Sunday	Reena Mehta College of Commerce & Management Studies, Near Flyover, 150 Feet Road, Opp. Maxus Mall, Bhayandar(W), Dist. Thane - 401101	Bhayander Study Circle Meeting	To be decided
8	23-Nov-12	Friday	AC Auditorium, 1st Floor, ICSI- WIRC Premises, Jolly Makers Chamber No. 2, Nariman Point, Mumbai 400021	Study Circle Meeting	To be decided
9	24-Nov-12	Saturday	To be decided	Full Day Seminar	To be decided
10	25-Nov-12	Sunday	Sardar Vallabhbhai Engineering College, Bhavan's College Campus, Near Navrang Cinema & Vrindavan Restaurant, Andheri (West), Mumbai	Andheri Study Circle Meeting	Listing Update

"Do not plant your dreams in the field of indecision, where nothing ever grows but the weeds of "what-if." - Dodinsky, www.dodinsky.com


WIRC NEWS
SEMINAR ON "BUY-BACK OF SHARES AND DE-LISTING OF SHARES"

Date	8th September 2012
Chief Guest / Speakers	Shri E. Balasubramanian (Assistant General Manager, SEBI) Mis. Shailashree Bhaskar (Ex. DGM, SEBI) Shri Yogesh Chande (Advocate)
Delegates	89

SEMINAR ON "PROJECT FINANCE, LOAN SYNDICATION & PRIVATE EQUITY"

Date	15th September 2012
Chief Guest / Speakers	Shri Suresh Thakur Desai (Practicing Company Secretary) Shri M.V. Phadke (Chief General Manager, Legal IDBi Bank) Shri Sudha G. Bhushan (Associate Director) Shri Manish Jain (Chartered Accountant)
Delegates	67

ICSI :- SEMINAR ON "XBRL & REVISED SCHEDULE VI" REDEFINING FINANCIAL REPORTING FOR CORPORATES (INCLUDING LIVE DEMO ON XBRL)

Date	18th September 2012
Venue	Hotel Trident, Nariman Point, Mumbai.
Chief Guest / Speakers	Shri N.P. Sarda (Past President, ICAI) Shri Ashok Haldia (Member, NACAS & Director, PTC Financial Services) Shri Anand Banka (Partner, Talati & Talati Co.) Shri Pankaj Srivastava (Director, Ministry of Corporate Affairs, Government of India) Shri Uttam Agarwal (Past-President, ICAI) Shri Manoj Daga (Chief Executive Officer, BDO) Ms. Sudha Ravi (Co-Chairperson, ASSOCHAM Banking Council & CEO, PHIL Finance Ltd.) Shri Shailesh Haribhakti (Chirman, BDO India) Dr. M. Veerappa Moily (Hon'ble Cabinet Minister, Ministry of Corporate Affairs & Power) Shri D.S. Rawat (Secretary General, ASSOCHAM) Shri Adil Mukadam & Shri Tanuj Agarwal (BDO India) Shri S. K. Puri (Adviser, Banking, Corporate Affairs & Finance Division, ASSOCHAM)

Delegates	25
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ANDHERI STUDY CIRCLE MEETING

Date	30th September 2012
Venue	ICSI Andheri Chapter
Topics	"Recent Update on XBRL (By MCA)".
Delegates	45

BORIVALI STUDY CIRCLE MEETING

Date	9th September 2012
Venue	A V Hall, Don Bosco High School, Borivali
Topics	"Appearance before Securities Appellate Tribunal (SAT)".
Chief Guest / Speakers	Dr. S K Jain, Practising Company Secretary
Delegates	79

BHAYANDER STUDY CIRCLE MEETING

Date	16th September 2012
Venue	ICSI Bhayander Chapter
Topics	"Appearance before Securities Appellate Tribunal (SAT)".
Chief Guest / Speakers	Shri J. J. Bhatt, [Advocate & Ex- Director of listing (investor services) at BSE]
Delegates	36

DADAR STUDY CIRCLE MEETING

Date	1st September 2012
Venue	ICSI Dadar Chapter
Topics	Essar House. Dadar
Chief Guest / Speakers	Shri Rajender Kapoor (Director, WEBTEL Electrosoft Pvt. Ltd.)
Delegates	95

GHATKOPAR STUDY CIRCLE MEETING

Date	17th August 2012
Venue	ICSI Ghatkopar Chapter
Topics	"Incorporation and Conversion of Limited Liability Partnership".

"Using the power of decision gives you the capacity to get past any excuse to change any and every part of your life in an instant." - Anthony Robbins

Chief Guest / Speakers	Shri Makrand Joshi, Practicing Company Secretary
Delegates	14

GHATKOPAR STUDY CIRCLE MEETING

Date	21th August 2012
Venue	ICSI Ghatkopar Chapter
Topics	"IPractical Aspect of Section 17 And Section 141".
Chief Guest / Speakers	Shri Vidyadhar V. Chakradeo(Practicing Company Secretary)
Delegates	22

AHMEDABAD CHAPTER

AHMEDABAD STUDY CIRCLE MEETING

Date	15th September 2012
Venue	ICSI Ahmedabad Chapter
Topics	"Workshop on Communication".
Chief Guest / Speakers	Ms. Kruti Jadawala
Delegates	69
Other features	PCS Committee Chairman CS Rutul Shukla welcomed the Participants and introduced the Speakers. The session concluded with Vote of Thanks.

AHMEDABAD STUDY CIRCLE MEETING

Date	27th September, 2012
Venue	ICSI Ahmedabad Chapter
Topics	"RTI (RIGHT TO INFORMATION)"
Chief Guest / Speakers	Mr. Kalpeshkumar L Gupta
Delegates	69
Other features	PCS Committee Chairman CS Rutul Shukla welcomed the Participants and introduced the Speakers. The session concluded with Vote of Thanks.

BHOPAL CHAPTER

RENOVATION OF BHOPAL CHAPTER PREMISES

Date	15th September'2012
Venue	Bhopal Chapter Premises
Topics	Inauguration of Renovated Bhopal Chapter Premises
Chief Guest / Speakers	Mr. Nesar Ahmed- President-ICSI Mr. Mahavir Lunawat – Chairman-WIRC Mr. Hitesh Buch –ViceChairman-WIRC Mrs. Ragini Chouksi - Secretary –WIRC Mr. Ashish Garg –Treasurer -WIRC
Other features	Renovated Premises of Bhopal Chapter of WIRC of ICSI is being Inaugurated by President and Chairman-WIRC and gave special thanks to Renovation Committee comprise of CS Piyush Bindal, CS Avadhesh parashar and CS Vivek Nayak.

BHOPAL CHAPTER

CONFERENCE ON "BUSINESS, GOVERNANCE AND MADHYA PRADESH

Date	15th-16th September'2012
Venue	Hotel Amer Greens, Bhopal
Topics	MP Cooperative Act Stamp Act, Industrial Policy In Madhya Pradesh, Provident Fund and other State Laws
Chief Guest / Speakers	Mr.Sartaj Singh, Hon'ble Minister- Govt of MP Mr. Nesar Ahmed- President-ICSI Mr. Mahavir Lunawat – Chairman-WIRC Mr. Vishwas Sarang – MLA and Chairman – MP Laghu VanUpaj Sangh Mr. A.K.Jain – Chief Commissioner –Income Tax, MP & CG Mr. Hitesh Buch –ViceChairman-WIRC Mrs. Ragini Chouksi - Secretary –WIRC Mr. Ashish Garg –Treasurer -WIRC
Delegates	250
Other features	Release of Souvenir, Cultural Evening . Mr.Amit Kumar Jain, Member-WIRC was the Programe Director. All seniors member, Officials from PSUs alongwith Students were specially present in the Conference.

"The doors we open and close each day decide the lives we live." - Flora Whittemore

GOA CHAPTER	
2 DAY CS CONCLAVE – CORPORATE REENGINEERING	
Date	September 1 & 2, 2012
Venue	Galactica Hall, Hotel Orion, Porvorim, Goa
Topics	Day 1 Icsi Vision Corporate Compliances, Communication In Building Successful And Fulfilling Relationships, An Overview of Ifrs, Open House, Icsi & Wirc, Day 2 M & A – High Court Perspective, Economic Rationale Of M & A And Results In Practice, Valuation In M & A, Xbrl Concepts, Terminology in the Context of Revised Schedule VI, Open House – Goa Chapter
Chief Guest / Speakers	Day 1 Cs S N Ananthasubramanian, Vice President, ICSI Cs Mahavir Lunawat, Chairman, Wirc ICSI, Mr Amey Hegde, Corporate Trainer, Ca Abhijit Damle, Partner, Deloitte Haskin & Sells, Day 2 Adv Sudin Usgaonkar, Advocate, High Court of Bombay, Prof Hemant Kumar Padhiari, Goa Institute of Management, Prof Kaushik Desarker, Goa Institute of Management, Ca Atul U Anavekar, Uk Corporate Solutions Pvt Ltd.
Delegates	DAY 1 Members - 31, Students -22 DAY 2 Members - 27, Students – 19 , Others – 1
Other features	Joint Programme With Wirc Vice President Felicitated Cs I M D'souza A Senior Member And Released Goa Chapter Directory 2012, New Entrants To The Profession Were Welcomed Successful Students At The June Examination Were Felicitated Open House Sessions At Icsi, Wirc And Chapter Levels Members And Students From Mumbai, Pune, Sangli, Kholapur And Chennai Attended

PUNE CHAPTER	
STUDY CIRCLE MEETING	
Date	27th September 2012
Venue	Hotel Deccan Rendezvous, Pune
Topics	2 Sessions : (1) Supreme Court Judgement in Sahara Real Estate Corp Ltd. (2) Latest Amendments to Schedule XIII
Chief Guest / Speakers	Dr K R Chandratre, Past President, ICSI
Delegates	91
Other features	Program was conducted with a view to understand interpretation of Law and Statute in the lights of various provisions of the Companies Ac and Four Credit Hours were allotted to members attending the same

SURAT CHAPTER	
ICSI-WIRC Jointly With Surat Chapter Organizes Two Day Residentila Seminar on "New Horizon For The Profession"	
Date	Saturday & Sunday 25th & 26th August 2012
Venue	Lords Resort Silvassa, Kakad Faliya Road, Naroli, Silvassa
Topics	"New Horizon For The Profession"
Chief Guest / Speakers	Shri Mahavir Lunawat(Chairman, ICSI-WIRC) Shri K. G. Alai(Country Manager, Equity & Risk Capital Vertical, SIDBI) Shri Pradeep Parakh (Group President & Company Secretary, Bajaj Hindustan Ltd.) Shri Jagdish Patel (Practicing company Secretary) Shri Tanuj Agarwal(Director, Uttam Agarwal, Corporate Advisory Pvt. Ltd)

GIFT OF LIFE – ORGAN DONATION

Dr Mita Shah

SOME FAQ about organ transplantation:

What is organ transplantation?

Organ transplantation is a procedure that places a healthy organ from another person (donor) into the body of the recipient. The new organ takes over the work of the failed organ.

Where do organs for transplantation come from?

- Living Donor (only for kidney and liver)
- Deceased or Cadaver donor

What is a Cadaveric donor?

In case of brain dead patients, their heart can be kept beating through artificial support system. It is possible to retrieve some of their organs (like kidney, liver, heart) after the consent of their relatives. This is known as Cadaveric Transplantation. The cadaver donation comes into effect at the time of death.

What is brain-death?

There are 2 types of death. The type of death we all understand is one where the heart has stopped beating. The organs of these people cannot be used for transplantation. In such cases only eyes can be donated.

The other type of death, now recognized by The Transplantation of Human Organs Act of 1994, is one in which the brain is dead. Persons whose brain is dead are dead; however, if these patients are supported on a breathing machine (ventilator), their heart can continue to beat for 24 to 48 hours. During this period all the organs of the body would continue to get blood and remain alive. It is during this period that one should be able to remove the organs for transplantation. Once the heart stops beating, all organs of the body fail to get blood supply and die. The organs then cannot be used.

The chief cause of brain-stem death are head injury and intracranial hemorrhage. The diagnosis is mainly based on clinical neurological examination. Four physicians including primary physician, an independent physician who is not a part of the treating team, a neurologist from the panel of neurologists recognized by authorization committee and the medical superintendent of the concerned hospital have to certify brain death.

The tissues and organs that can be transplanted include corneas(eyes), middle ear, lungs, heart, heart valves, liver, kidneys, pancreas, small intestine, skin, tendons, bone and bone marrow. **Thus one cadaver donor can be the only hope of survival for many.**

While in western countries cadaver organ transplant is practiced from 1970s, there was no such option in our country until the Transplantation of Human Organs Act was

passed in 1994. The Act has legalized brain death and made it possible to perform not only cadaveric kidney transplants but even heart, lung, liver and other organ and tissue transplants using brain-dead cadaver donors.

Some queries about Cadaver organ donation are addressed below :

Is there a need for organ donors?

Yes. Many a times patients do not find a suitable or willing donor (for kidney and liver) and many patients will die while waiting for a donated organ. A donated organ, successfully transplanted, is literally the **gift of life – your gift of life.**

Who can become a donor and what is to be done to become a donor?

All individuals can indicate their intent to donate after death. Medical suitability for donation is determined at the time of death.

Indicate your intent to be an organ donor in a donor card and carry it with you. Most important, discuss with your family members and loved ones. If you sign a donor card, it is essential that your family knows your wishes. Your family may be asked to sign a consent form in order for your donation to occur.

Is there any age requirement for donors?

Yes. Anyone above the age of 18 and of sound mind can become a donor by signing the donor card. Any individual below the age of 18 years can become a donor if either parent or legal guardian gives consent.

Can I change my mind later ?

Yes. Simply tear up the card. Nothing else is necessary.

When will my gift be used?

For purposes of transplantation, organs are removed only after brain death has been declared. There are no chances of error in the declaration of brain death as 4 independent physicians evaluate the patient.

Do I have to mention the organ donation in my will?

No. Your donor card is a kind of “pocket will” and is all you need. But obviously it is important to carry the card and also inform your family and physician to ensure their co-operation.

Does the donor have to die in a hospital?

Yes, since by definition, a brain dead individual is on ‘life’ support in an intensive care unit. The eyes, however, can be removed for up to 6 hours after the heart stops beating and hence this can be done even if the individual dies at home.

Do I have to register with some agency?

No. Your signed and witnessed donor card is all that is needed.

“Decisions become easier when your will to please God outweighs your will to please the world.” - Anso Coetzer

Will the decision cost anything to the donor's family?

No. The cost required for maintaining the donor will be borne by the recipient's family or by the hospital from the time the consent for organ donation is given.

Is it possible that the brain dead patient survives after being declared dead?

No. The tests done by the experts leave no possible doubts about the diagnosis of brain death and hence there is no question of survival of the individual.

Will the relatives of the donor know to whom the organs are given?

The name and address of the recipient is not given to the donor's family and vice versa.

Will organ donation affect funeral and burial arrangements?

No. Removal of organs does not interfere with the customary cremation or burial. The funeral or the burial arrangements and transferring the body home remain the responsibility of the donor family. If a person wills his body to a medical center for anatomical study, arrangements must be made in advance with the particular medical center.

What medical conditions exclude a person from donating organ?

HIV and cancer (except localised cancer of the brain) normally exclude people from donating organs. Otherwise, the organs are evaluated at the time of death.

What does the future hold?

As the problem of organ rejection comes under better control and as techniques for tissue-typing and organ preservation are improved, kidney and other transplants will become increasingly feasible.

What are the ethics of organ donation and transplantation?

Moral leaders, the world over favor such donations as expressions of the highest humanitarian ideals. The gift of an organ essential to the life of another human being is consistent with principles of religious and ethical systems overwhelmingly held.

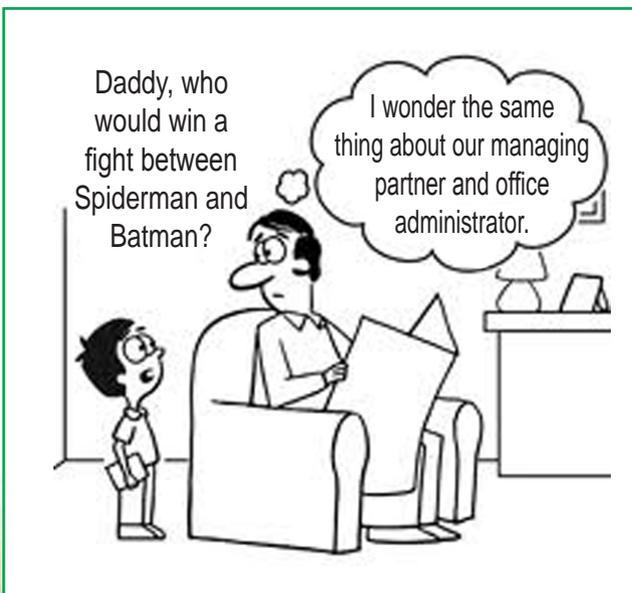
In India every year 3 to 4 lakh people develop kidney failure out of which only 4000 to 5000 are fortunate to go for transplant. Many develop heart failure, liver failure and other organ failure. For kidney failure patients there is an alternative in the form of dialysis but for other organ failure patients transplantation of the organ is the only hope of survival. There have been very few deceased (cadaver) donor transplants in India whereas in a country like Spain nearly 95% of the transplants being done are cadaver.

One of the reason for poor transplant activity is that awareness about brain death and organ donation amongst the lay population is abysmal. With the result, most families are exposed to this idea for the first time when a loved one is declared brain dead and find it difficult to give consent.

There is tremendous potential in our country for getting cadaver organs for transplantation. If this potential is fully realized then most patients suffering from organ failure will receive a second lease of life. As a member of human society, it is our duty to donate organs and save lives rather than burn or bury these organs after death. The caption of Narmada Kidney Foundation says it very well - **'Don't take your organs to heaven for God knows they are needed here'**. The need of the hour is to fulfill this duty rather than hide behind myths and misunderstandings about organ donation.



SAY CHEESE !!!



Smile Please



An accountant visited the Natural History museum. While standing near the dinosaur he said to his neighbor: "This dinosaur is two billion years and ten months old".

"Where did you get this exact information?"

"I was here ten months ago, and the guide told me that the dinosaur is two billion years old."

"In a minute there is time for decisions and revisions which a minute will reverse." - T.S. Eliot

12 SUGGESTIONS TO IMPROVE ON YOUR EXTEMPORE SPEECH

CS S K Batra, Practising Company Secretary, Raipur



Full day, we are making extempore speech. We instantly reply on mobiles, talk to friends. We have been making extempore speeches since childhood. Remember, when you as a nursery school child use to take time to reply your teacher. Since then we have acquired much knowledge. Then why are we failing now in extempore speed tests? One reason is that we are asked to speak on a subject and not converse. Secondly, the subject to us is new and time allotted is short. Thirdly, we are expected to speak in full public view.

Think of the time when you will go for a job interview or the time when as a professional in practice, the client puts you unexpected questions. You have to face the situation with confidence. The art has to be acquired. Your career depends on it. Your success rate depends on it. Requirements for making effective extempore speech are as under:

1. A good communication power. You must have fluency while speaking. You should not run short of words. This comes from practice. Do avail of every chance to practice public speaking. In train or plain, speak on public topics with co-passengers or otherwise with friends and colleagues. Try to use new words. Write letters to press on current problems. Language command is a must.
2. Knowledge not only of academics but of general knowledge also.
3. You must have faith in yourself. Do not suffer from inferiority complex. Do not be afraid of your first few silly mistakes. Mistakes are our stepping stones.
4. You must develop a style of your own. Do not try to copy some one. Please take care of the listener. Listener expects certain articulation, certain tone, and body language.
5. You must decide on the effect you want to create. Suppose you are to talk on 'corruption'. You must decide whether you are speaking on introducing the subject, or on the proposed Lok Pal Bill or on the pros and cons of Anna Ji's movement. In a short period, you can not speak on all these areas. You have to pick up a paragraph of an essay.
6. Do not start immediately. You may pause for 5-8 seconds per minute of the allotted time. Use this time to pull your thoughts and relax yourself.
7. Avoid wasting time in long salutation, like "The Chief Guest, Guest of Honour... the delegates, students and friends. Start straight with I am _____ and my topic is _____.
8. In case you are blank, speak pausing, "let me put myself on this new topic" and unconsciously keep preparing a sketch. For example, you are asked to talk on consumer behaviour, put your thought on your purchases. You will get thought on why you selected Colgate tooth paste or you prefer purchasing from near market and jump to branding and speak on branding of products or on geographical importance of market.
9. You can start with conclusion first and then justify. For example, you are in favour of co-education, you can say, "Friends, I am in favour of co-education and I will explain why."
10. A surprise opening arouses more attentive response. You can start with "I hate going to restaurants and meeting friends too often." You are speaking on why there should be intervals in life styles. Then you can say, meeting friends too often loses charm of wait and going to restaurants too often brings staleness in restricting to the menu.
11. If the topic is personal, "Your dream Job" You can speak much more than a minute. Speak on the main parameters - like your preferring for challenging jobs, touring jobs, marketing jobs, manufacturing or R&D, medicine, education etc.
12. Panel judges will hear you and you must be clear in your pronunciation and choice of words. Suppose you are asked to speak on Surdas - you can say "He was a saint. He was blind and devotee of Lord Krishna and putting these clues is the art of speech.

"Good decisions come from experience, and experience comes from bad decisions." - Author Unknown

MCX Stock Exchange Limited



“Application for National Membership of MCX-SX”

ABOUT MCX-SX:

MCX STOCK EXCHANGE (MCX-SX), India's New Stock Exchange, commenced operations in the Currency Futures Segment on October 2008 and currently provides trading facility in Currency Futures and Options. Trades on MCX SX are cleared by MCX-SX Clearing Corporation Limited (MCX-SX CCL). The Exchange currently has 751 members participating from 734 towns and cities across India.

The Exchange has received permission from SEBI to trade in Equity, Futures and Options on Equity, Interest Rate Derivatives and Debt Segment and would commence operations after enrolment of members and completion of other compliances. The membership offer is for these segments. MCX-SX believes new opportunities will unfold for members and securities industry professionals as the capital market develops further. The exchange proposes to undertake capacity building for members to enable them to manage new opportunities.

1. MEMBERSHIP CATEGORIES:

A person can apply for any of the following membership categories subject to the terms and conditions and relevant eligibility criteria provided in the membership dossier. Potential members can apply for any membership category and be a Trading Member (TM)/ Self Clearing Member (SCM)/Trading-cum-Clearing Member (TCM)/Professional Clearing Member (PCM).

I. Composite Members: Includes segments referred above and is available to all eligible persons. MCX-SX has conceptualised an ‘India Model’ to harness the latent potential of domestic savings and reinforce it with institutional, FII and domestic investment. Accordingly two important types of membership are being introduced to create a deep, wide and liquid market and also achieve financial inclusion.

ii. Professionally Qualified Members: Includes segments as referred above and is meant only for professionals such as MBA/CA/CFA/ICWA/LLB/CS/BE/MBBS who are taking membership of a Stock Exchange for the first time.

Practicing career professionals with a background of capital market ecosystem such as investment banking, private equity, venture funds, market intermediation, banking, etc could benefit from this membership.

iii. Rural Entrepreneur Members: Includes segments as referred above and is meant for such persons who are located in sub-districts and talukas beyond the existing 2000 cities and towns where the capital market access is currently not available.

2. ELIGIBILITY CRITERIA:

Entities: The following entities are eligible to apply for membership, subject to the regulatory norms and related provisions-

- i. Individual (sole proprietary firms)
- ii. Registered Partnership Firms
- iii. Corporate Bodies
- iv. Banks and Financial Institutions, including their subsidiaries

MEMBERSHIP DETAILS:

Details of Net-worth, Fees and Deposits, and Admission Procedure information is provided in the Membership Dossier which can be collected from the Exchange or downloaded from: <http://www.mcx-sx.com/membership>.

Interested persons may obtain Application Form and other details either from Exchange website or Corporate office/ Regional offices. The duly filled in Application Form along with a demand draft for admission fees should reach the Exchange. Payments are to be made through demand draft, drawn in favour of ‘MCX Stock Exchange Limited’ payable at ‘Mumbai’.

Head - Membership

MCX STOCK EXCHANGE LIMITED

Exchange Square, Suren Road, Andheri (East), Mumbai – 400 093

Tel: 022-6731 8899 • Fax: 022-6731 9004 • E-mail: newmem@mcx-sx.com • Visit: www.mcx-sx.com

SHAREHOLDERS



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Fraudsters beware: CS to turn whistleblowers

Fraudsters beware: CS to turn whistleblowers

Company secretaries should work in tandem with entrepreneurs... The independence of company secretaries...

एक्टिविटी में कंपनी सचिवों का दुभा समागम

40 वीं वार्षिक परिषद का आयोजन



आयसीएसआयच्या वतीने राष्ट्रीय परिषद आरंभ

आयसीएसआयच्या वतीने राष्ट्रीय परिषद आरंभ... आयसीएसआयच्या वतीने राष्ट्रीय परिषद आरंभ...

वात्ता, कार्यकुशलता हेच यशाचे निकष

व्हॅलेलीतील राष्ट्रीय 'सेक्रेटरीज' परिषदेत निसार अहमद यांचे प्रतिपादन

निसार अहमद यांचे प्रतिपादन... वात्ता, कार्यकुशलता हेच यशाचे निकष...

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Operational risk is the biggest risk for Company Secretaries

Operational risk is the biggest risk for Company Secretaries... WRC logo.

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आपने कार्य का दायरा बढ़ाएंगे कंपनी सेक्रेटरी

आपने कार्य का दायरा बढ़ाएंगे कंपनी सेक्रेटरी... आपने कार्य का दायरा बढ़ाएंगे कंपनी सेक्रेटरी...

जागतिक नेतृत्व यद्यवण्यासाठी आयसीएसआयच्या वतीने राष्ट्रीय परिषद

उह शंकरद्वार तक सोनावता में घनचनवाते 'x'o वे नेगारत क्रमद्वार आंफ केरन

जागतिक नेतृत्व यद्यवण्यासाठी आयसीएसआयच्या वतीने राष्ट्रीय परिषद... व्हिडमल्लोअर तददीवावत आमाची कामगिरी मोठे...

जागतिक नेतृत्व यद्यवण्यासाठी आयसीएसआयच्या वतीने राष्ट्रीय परिषद

जागतिक नेतृत्व यद्यवण्यासाठी आयसीएसआयच्या वतीने राष्ट्रीय परिषद... जागतिक नेतृत्व यद्यवण्यासाठी आयसीएसआयच्या वतीने राष्ट्रीय परिषद...

Company secretaries should work in tandem with entrepreneurs

Company secretaries should work in tandem with entrepreneurs... The independence of company secretaries...

जागतिक नेतृत्व यद्यवण्यासाठी आयसीएसआयच्या वतीने राष्ट्रीय परिषद

जागतिक नेतृत्व यद्यवण्यासाठी आयसीएसआयच्या वतीने राष्ट्रीय परिषद... जागतिक नेतृत्व यद्यवण्यासाठी आयसीएसआयच्या वतीने राष्ट्रीय परिषद...

आता कंपनी सेक्रेटरी बजावणार जागल्याची भूमिका

आता कंपनी सेक्रेटरी बजावणार जागल्याची भूमिका... आता कंपनी सेक्रेटरी बजावणार जागल्याची भूमिका...

Company Secretaries to be whistle blowers

Company Secretaries to be whistle blowers... The Institute of Company Secretaries of India (ICSI) on Tuesday said company secretaries would now have to be whistleblowers...

CS Prez says independence of company secretary must

CS Prez says independence of company secretary must... The ICSI Prez said that the independence of company secretaries is a must...

रसीएसआयच्या वतीने जागतिक नेतृत्व यद्यवण्यासाठी राष्ट्रीय परिषद

रसीएसआयच्या वतीने जागतिक नेतृत्व यद्यवण्यासाठी राष्ट्रीय परिषद... रसीएसआयच्या वतीने जागतिक नेतृत्व यद्यवण्यासाठी राष्ट्रीय परिषद...

"Reconsider, v. To seek a justification for a decision already made." - Ambrose Bierce

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“The Pilgrims made seven times more graves than huts. No Americans have been more impoverished than these who, nevertheless, set aside a day of thanksgiving.” - H.U. Westermayer



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ICSI - WIRC Photo Gallery

SEMINAR on Buy-Back of Shares and De-Listing of Shares” held on 8.9.2012 at WIRC



E. Balasubramanian



Shailashree Bhaskar



Yogesh Chande

Seminar on SEBI Regulations, Listing Agreement and E-Voting held on 25.8.2012 at WIRC



J. N. Gupta



Yogesh Chande

Seminar on Project Finance, Loan Syndication & Private Equity held on 15th September 2012 at WIRC



Suresh Thakur Desai



M.V. Phadke



Sudha G. Bhushan



Manish Jain



J. J. Bhat



Shailashri Bhaskar



Nitin Ambore

ICSI-WIRC 1st M. P. State Annual Conference on “Business, Governance and Madhya Pradesh held on 15th & 16th September 2012 at Hotel Amer Greens, Bhopal



Ashish Karodia, Ritesh Gupta, Ashish Garg, Hitesh Buch, A.K. Jain, Nesar Ahmad, Sartaj Singh, Mahavir Lunawat, Amit Kumar Jain, Ragini Chokshi, Dhanraj Singh Thakur, P.K. Rai

ICSI WIRC jointly with Goa Chapter Organised Two Days CS Conclave on Corporate Re-engineering on 1st & 2nd September 2012 At Galactica Hall, Hotel Orion, Goa.



K O Fernandes, S N Ananthasubramanian, Mahavir Lunawat, S Bhat

Inauguration of Renovated Bhopal Chapter Premises



Inaugurated by Nesar Ahmad, Mahavir Lunawat, Amit Kumar Jain, Hitesh Buch, Ragini Chokshi, Ashish Garg



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