

Info Capsule

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THE INSTITUTE OF
Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

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1. Amendment of Form No 10B of the Income-Tax Rules, 1962- Draft notification for inputs from stakeholders and the general public are invited (*Notification F No 370142/6/2019-TPL dated May 21, 2019*)

Section 12A of the Income-tax Act, 1961 (the Act) provides for conditions for applicability of Sections 11 and 12 of the Act. One such condition under clause (b) of sub-section (1) thereof is that where the total income of the trust or institution computed without giving effect to Section 11 and 12 exceeds the maximum amount not chargeable to Income-Tax in any previous year, its accounts for that year have been audited by an accountant as defined in the Explanation below sub-section (2) of Section 288.

It further provides that the person in receipt of the said income, furnishes along with the Return of Income for the relevant Assessment Year, the Report of such Audit in the Prescribed Form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

Accordingly, vide Income-tax (2nd Amendment) Rules, 1973 w.e.f. April 1, 1973 Rule 17B and Form 10B were inserted in the Income-tax Rules, 1962 (the Rules) for this purpose. Rule 17B of the Rules provide that said Report of Audit of the accounts of a trust or institution shall be in Form No. 10B. The Form No 10B besides providing the Audit Report, also provides for filing of "Statement of particulars" as Annexure.

As the Rule and Form were notified long ago, there is a need to rationalise them to align with the requirements of the present times.

In view of the above, the Rule and Form are proposed to be amended by way of substituting-

- (a) Rule 17B with a new Rule 17B; and
- (b) Form No 10B with a new Form No 10B.

The Draft Notification proposing the above amendments has been formulated and uploaded on www.incometaxindia.gov.in for inputs from stakeholders and general public. The inputs on the Draft Rules may be sent electronically at the email address, niraj.kumar82@nic.in, latest by June 5, 2019.

The details of draft amendments are placed for public comments at: https://www.incometaxindia.gov.in/Lists/Latest%20News/Attachments/314/Amendment_10B_draft_notification_on_MiscComm_21_5_19.pdf

2. Participation of Portfolio Managers in Commodity Derivatives Market in India(Circular No. SEBI/HO/IMD/DF1/CIR/P/2019/066 dated May 22nd 2019)

In order to promote institutional participation in the Exchange Traded Commodity Derivatives(ETCD), SEBI has permitted Category III Alternative Investment Funds to participate in ETCD vide Circular dated June 21, 2017. In furtherance to this objective, and in supersession to Circular SEBI/HO/CDMRD/DMP/P/CIR/2016/100 dated September 27, 2016, Portfolio Managers are now permitted to participate in ETCDs on behalf of their clients. It would be mandatory for Portfolio Managers to appoint SEBI registered Custodian before dealing in Exchange traded Commodity Derivatives. The participation of Portfolio Managers in the ETCDs would be subject certain conditions.

The details are available at: https://www.sebi.gov.in/legal/circulars/may-2019/participation-of-portfolio-managers-in-commodity-derivatives-market-in-india_43058.html

3. Discussion paper on review of buy-back of securities

SEBI has come out with a discussion paper on review of conditions for buy-back of securities.

In the recent times, several issues have been raised with regard to considering financial statements for the purpose of meeting the conditions of buybacks, including the following:

- i. Section 68(2)(d) of The Companies Act, 2013 as well as rules made thereunder do not specifically provide for consideration of standalone or consolidated financials for determining the requirement of debt to capital & free reserves ratio.
- ii. The subsidiaries of a company could be Non- Banking Financial Companies(NBFCs), Housing Finance Companies (HFCs) and Infrastructure Companies. Such subsidiaries that would be having higher debts because of the nature of their businesses in which they operate. For example, Reserve Bank of India (RBI) allows leverage of 7:1 for non-deposit-taking NBFCs (NBFCs-ND)with assets less than Rs. 500 crores

The major point of discussion relates to adopting a different approach for the subsidiaries of a listed company proposing buybacks which are NBFCs, HFCs and Infrastructure companies.

The comments may be sent by email to buyback@sebi.gov.in or sent by post latest by June 12, 2019

The details are available at: https://www.sebi.gov.in/reports/reports/may-2019/discussion-paper-on-review-of-buy-back-of-securities_43054.html