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Inside...

Articles:

*Absurdities in RPT disclosures in Board's Report... 5 | Manual to invest in Stock Market... 8
Key points for HR-Legal & The Equal Remuneration Act... 10*

Columns:

*From Chairman's Desk... 2 | Activities at Mysore Chapter... 3 | Decode the Code: drop by drop... 4 | Living Room... 7
Words Worth Millions... 7 | Web Yatra... 11 | e-Tools for the Professionals... 7 | News Room... 11 | Spectrum Space... 12
Regulatory Updates ... 14 | Recommended Article ... 16*

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Greetings from Mysore Chapter of ICSI!!

Happy to meet you all after the Independence Day Celebrations. Your Chapter has celebrated the 69th Independence Day in a grand manner. Mr. Balasubramanya (Popularly known as Snake Shyam) has been the Chief Guest for this year's Independence Day Flag Hoisting & subsequent celebrations.

Also on the same day the Chapter has organized a felicitation program for the Foundation exam passed students. The event saw around 60 participants for both Independence Day & Felicitation program. During the month Chapter has conducted nine Career Awareness Programs covering around 1500 students in and around Mysore colleges. I am happy to say that the Career Awareness Programs got overwhelming response from the student community.

As in the past, oral coaching classes for Foundation & Executive level have started in the Chapter Premises. We expect more students to join the classes conducted in Chapter Premises and avail the infrastructure created for the benefit of the students.

The results of the examinations held in June 2015 for Executive & Professional course were announced on 25th August 2015. It was heartening to note that number of students who cleared the exams were on the rise. I convey my best wishes for all those students who were successful in the exams.

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Career Awareness Programs

S.NO	DATE	Name of the school/college with address	ADDRESSED BY	NO. of participants
1	08.08.2015	Maharani Commerce & Management College, JLB Road, Mysore I Year B.Com E & F Section	CS Manjunath S	140
2	17.08.2015	Maharani Commerce & Management College, JLB Road, Mysore I Year BBM	CS Manjunath S	150
3	18.08.2015	Vidya Vikas First Grade College Mysore-Bannur Road, Mysore – 10	N.Dhanabal	120
4	19.08.2015	Mathru Mandali PU College Jayalakshmipuram, Mysore	CS Pracheta M	140
5	20.08.2015	Maharani Commerce & Management College, JLB Road, Mysore Final Year B.Com A & B Section	CS Manjunath S	140
6	21.08.2015	Maharani Commerce & Management College, JLB Road, Mysore Final Year B.Com C & D Section	CS Manjunath S	135
7	21.08.2015	Sadvidya Composite PU College Narayan Shastry Road, Mysore	N. Dhanabal	80
8	22.08.2015	Maharani Commerce & Management College, JLB Road, Mysore Final Year B.Com E & F Section	CS Manjunath S	135
9	22.08.2015	Government Women's First Grade College Vijayanagara 4th Stage, Hootagalli, Mysore	CS Phani Datta	100



The Speakers in all the above sessions highlighted the importance of making the right career choice so as to be successful in life. They then spoke about the role of a Company Secretary and importance of the profession of Company Secretary in the changing economic scenario.

Brochures containing brief details of the

Company Secretaryship Course was distributed to the participants. Various doubts and issues raised by the participants were clarified.

Felicitation for Foundation Passed Students



In order to motivate the students, a felicitation program was arranged by Mysore Chapter on 15.08.2015, at the Chapter premises for the Foundation Examination (June 2015) passed students. Environmentalist Mr. M S Subramanya was the Chief Guest for the program. Mysore Chapter Chairman CS Badrinarayanan S, welcomed the students, parents & members. CS Pracheta M, Secretary, Mysore Chapter of ICSI delivered the thanking notes to the participants. Members, Students & Parents of Mysore Chapter were participated in the event.

An Engineer is a Person who applies the skills and knowledge of basic science for the good of society

Happy Engineer's Day!



Engineers Day is celebrated on 15 September every year as a remarkable tribute to the greatest Indian Engineer Bharat Ratna Visvesvaraya

Decode the Code: drop by drop



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As per Section 7 of the Company Secretaries Act, 1980 every member of the Institute in practice or the firm in which all the partners in practice are members of the Institute shall use the designation of Company Secretary/Company Secretaries only and not other designation like Corporate Consultant, Legal Advisor, Corporate Advisor, Corporate Lawyer, etc.

However members of the other institutes such as ICAI (Cost), ICAI or any other institute in India or abroad may use additional designations as may be recognized in this behalf by its Council to indicate its membership.





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Absurdities in RPT disclosures in Board's Report

The article analyses of the disclosure requirements relating to the related party transactions ('RPTs') in Directors Report.

Section 188(2) of the Companies Act, 2013 ('the Act') states that every contract or arrangement entered into under sub-section (1) of Section 188 of the Act shall be referred to in the Board's Report to the shareholders along with the justification for entering into such contract or arrangement. Section 134 of the Act relates to 'Financial Statement, Board's Report, etc.' Pursuant to clause (h) of sub-section (3) of Section 134 of the Act, the company shall attach a report by its Board of Directors to the financial statements to be laid down in general meeting, which shall include particulars of contracts or arrangements with related parties referred to in sub-section (1) of Section 188 in the prescribed form.

However, if the transaction is entered in the ordinary course of business and at arms' length, then the company is not required to obtain the consent of the board of directors and the shareholders i.e. the company is exempt from the compliance of the provisions of Section 188(1). Therefore, by reading and interpreting sub-section (1) and (2) of Section 188 of Companies Act, 2013, the company not required to report such transactions in the Board's Report with any justification. However, if the company has entered into any contract / arrangement with the related parties and such contract / arrangement is not in the ordinary course of business or not at arms' length basis or both, then the company is required to comply with the provisions of Section 188(1) of the Companies Act, 2013. In such case, the company is required to refer the contract / arrangement in the Board's Report along with the justification.

Disclosure pursuant to Companies (Accounts) Rules, 2014:

Rule 8(2) of the Companies (Accounts) Rules, 2014 states that the Report of the Board shall contain particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the **Form AOC-2**.

The disclosures prescribed in the Form AOC – 2 pursuant to Rule 8(2) of the Companies (Accounts) Rules, 2014 are different than the disclosures prescribed in Section 188(2), 134(3)(h) of the Companies Act, 2013. Form AOC – 2 relates to the disclosure of particulars of contracts/arrangements entered into by the company with related parties referred to in sub-section (1) of section 188 of the Companies Act, 2013 including certain transactions at arms' length pursuant to under third proviso of sub-section (1) of section 188. Form AOC – 2 as prescribed in Companies (Accounts) Rules, 2014 is divided in two parts, namely:

- (1) Details of contracts or arrangements or transactions not at arm's length basis,
- (2) Details of material contracts or arrangement or transactions at arm's length basis.

Following are the disclosures that the company is required to make, under the head "details of contracts or arrangements or transactions not at arm's length basis" in Form AOC – 2:

- (a) Name(s) of the related party and nature of relationship,
- (b) Nature of contracts/arrangements/transactions,
- (c) Duration of the contracts / arrangements/transactions,
- (d) Salient terms of the contracts or arrangements or transactions including the value, if any,
- (e) Justification for entering into such contracts or arrangements or transactions,
- (f) Date(s) of approval by the Board,
- (g) Amount paid as advances, if any.

Following are the disclosures that the company is required to make, under the head “details of material contracts or arrangement or transactions at arm’s length basis” in Form AOC – 2:

- (a) Name(s) of the related party and nature of relationship
- (b) Nature of contracts/arrangements/transactions
- (c) Duration of the contracts / arrangements/transactions
- (d) Salient terms of the contracts or arrangements or transactions including the value, if any:
- (e) Date(s) of approval by the Board, if any:
- (f) Amount paid as advances, if any.

Absurdities in the provisions relating to disclosures in Directors’ Report:

- (1) The provisions in Companies Act, 2013 and Rules made there under, contemplate that the transactions which not in the ordinary course of business and / or not at arms’ length, ought to be disclosed in the Directors Report. However, the Form AOC – 2 contemplate that disclosure of contracts / arrangements / transactions not at arm’s length basis and material contracts / arrangements / transactions at arm’s length basis;
- (2) The disclosure made by the company in Form AOC – 2 overrides the provisions in the Companies Act and the Rules made there under. Therefore, the significance of the provisions – Section 188(2), 134(3)(h) of the Companies Act, 2013 and Rule 8(2) of the Companies (Accounts) Rules, 2014 – is completely lost due to the different disclosure requirements in Form AOC – 2.
- (3) In Form AOC – 2, the company is required to disclose the details of ‘material’ contracts or arrangement or transactions. In the Companies Act, 2013 there is no reference or meaning of the term ‘material’ transaction. Such reference is there in the ‘Related Party Transactions’ under Clause 49 of the Listing Agreement (discussed in the later Chapters). Such reference of the term ‘material’ in Companies Act, 2013 – which is applicable to all companies – is completely misplaced.
- (4) Where a contract or arrangement or transaction is not at arm’s length basis, the Directors’ Report is required to provide justification for entering into such contracts / arrangements / transactions. There is no guideline for making such justification, the Board of directors are required to disclosure in the same in the Boards’ Report. Such justification will depend on company to company and transaction to transaction.
- (5) In Form AOC – 2, there is no reference of disclosure of a contract / arrangement / transaction in the ordinary course of business, which ought to have been made, in accordance with provisions of Section 188(2), 134(3)(h) of the Companies Act, 2013.

Conclusion:

There is a pressing need to ensure that the disclosures in the Board’s Report are streamlined. It is necessary that the provisions of the Act, Rules and contents of the prescribed Form are in alignment, which will ensure uniform reporting by companies throughout India. These disclosure requirements relating to related party transactions are applicable to all companies, with no exemption and modification, wherein every company ought to make the above-mentioned disclosures.

Living Room...



Perspective

A teacher teaching Maths to six-year-old Brian asked him, “If I give you one apple and one apple and one apple, how many apples will you have?”

With a few seconds Brian replied confidently, “Four!” The dismayed teacher was expecting an effortless correct answer (three). She was disappointed. “May be the child did not listen properly,” she thought. She repeated, “Brian, listen carefully. It is very simple. You will be able to do it right if you listen carefully. If I give you one apple and one apple and one apple, how many apples will you have?”

Brian had seen the disappointment on his teacher’s face. He calculated again on his fingers. But within him he was also searching for the answer that will make his teacher happy. This time hesitatingly he replied, “Four...” The disappointment stayed on teacher’s face. She remembered Brian loves strawberries. She thought maybe he doesn’t like apples and that is making him lose focus.

This time with exaggerated excitement and twinkling eyes she asked, “If I give you one strawberry and one strawberry and one strawberry, then how many will Brian have?” Seeing the teacher happy, young Brian calculated on his fingers again. There was no pressure on him, but a little on the teacher. She wanted her new approach to succeed. With a hesitating smile young Brian enquired, “Three?”

The teacher now had a victorious smile. Her approach had succeeded. She wanted to congratulate herself. But one last thing remained. Once again she asked him, “Now if I give you one apple and one apple and one more apple how many will you have?” Promptly Brian answered, “Four!”

The teacher was aghast. “How Brian, How?” she demanded in a little stern and irritated voice. In a voice that was low and hesitating young Brian replied, “Because I already have one apple in my bag.”

When someone gives us an answer that is different from what we are expecting, it is not necessarily they are wrong. There may be an angle that we may not have understood at all. We need to learn to appreciate and understand different perspectives. Quite often we try and impose our perspectives on others and then wonder what went wrong.

The next time someone gives us a different perspective than ours, let us sit down and gently ask "can you please help me understand"?

Words Worth Millions

"I have three precious things which I hold fast and prize. The first is gentleness; the second is frugality; the third is humility, which keeps me from putting myself before others. Be gentle and you can be bold; be frugal and you can be liberal; avoid putting yourself before others and you can become a leader among men."

- Lao Tzu



Manual to invest in Stock Market

Many investors enter into stock market after hearing tempted story of other investors making big money in short time. Stories such as Rakesh Jhunjhunwala investing Rs. 18 crores in 2002-03 in Titan whose present value is staggering Rs. 2100 crores.

However, investors fail to understand the thought process involved in making such enormous returns in the stock market. One shouldn't forget the fact that there is only one Rakesh Jhunjhunwala and there are many avid investors who have burned their money by making uninformed investment decisions.

Thus, it is very important to have a disciplined approach in investing in equities. However, there is no single formula that can be applied in investing in equities but tips mentioned below can always be followed to avoid any disastrous decision in investing.

- **Don't speculate:** Many Investors enters in stock market with the aim of making fast money. Such approach often lands up investors indulging in speculation than invest. Avoid using derivatives vehicle for investing in stocks.
 - **Avoid using derivatives:** they are originally meant to hedge risk and not speculate. Buying derivative product lands up investors having no real stock ownership.
 - **Invest only for long term:** Real money in equities is made by staying invested for a long term. Rakesh Jhunjhunwala, or any other marquee investors, made multi-crores by staying invested for a long term. This is because of compounding factor. Stocks value appreciates on a compounding basis thereby giving multi-fold return out of initial investment value.
- **Don't buy on anyone's recommendation:** You might often come across various buying recommendations made by your family, friends or so-called technical expert on business channels. This will help you to make more informed decisions on your investment and avoid blaming anyone for losing your money. You can always hear recommendations but one should go back and check the fundamentals of the stock. Refer to analyst report but don't rely on one. Warren buffet once quoted that all you read is not true and that is the case most of the time. One may consider average of all analyst report opinions as well for a particular stock.
- **Use surplus funds only:** Remember equity markets are subject to huge volatility. Although it is very liquid investment, if stock price suddenly diminishes then one may suffer huge loss either by selling at loss or on books. One should also avoid investing all funds at one go. SIP strategy can help to avoid short term volatility. Investing in equities out of surplus money will avoid hardship faced during emergency situations.
- **Track your investment:** We live in a global village. Our world is more globalized than ever before and going forward it'll become more globalized. Thus, our stock market is subject to any favorable/adverse news affecting not only local but global economies. Following news that affects one's portfolio will help to safeguard investors

from any adverse buzz and monetize any upcoming favorable opportunity. One cannot buy stock and forget it. Outperforming market is possible only by continuously picking stocks valued below intrinsic value.

- **Diversified portfolio:** Avoid investing all your money in a single stock or even sector. Stocks of similar sectors often perform similarly. Well diversified portfolio safeguard investors from bad run in a particular stock or sector.
- **Buying rationale:** A set of skill is needed to develop to learn the art of picking right stock. It is developed over a period of time and improves further after making wrong selection of stocks. Thus, one shouldn't be afraid of making mistakes in stock selection. However, following stock picking ideas can help to reduce the chance of making mistakes:

- **Debt equity ratio:** Ideal debt/equity ratio is 2:1. Highly leveraged balance sheet must be avoided. Low debt or no debt companies **must** be picked. Lower debt companies succeed more in surviving during economic slowdown.

- **Price/Earning ratio:** Investors give a lot of weightage to PE ratio while investing in a particular stock. However, relying only on **PE** ratio, while investing, is not enough to make sound investment. A highly valued PE stock might be a still buy because of huge earning growth prospects. A low valued PE stock might a bad stock due to poor future earning prospects.



- **Price/Book ratio:** Price/Book ratio compares stock market price with book value. A high PB ratio suggests stock is **expensive** and vice versa. Nevertheless, this ratio should not be looked in isolation while judging a stock.
- **Return on capital employed (ROCE):** ROCE suggests return achieved by the company out the capital invested. This suggests how efficiently company is able to make money out of capital employed. Higher the ROCE the more efficiently the **business** is making money and vice versa.
- **Dividend payout:** Regular dividend payment made by the company to its shareholders shows the ability of the company to generate **cash**. It also shows the commitment by the management to increase shareholders wealth.
- **Free Cash flow:** More important than net profit is the free cash flow generated by the business. Free cash flow allows business to **maintain** liquidity position that can help for business expansion.
- **Management:** Last but not the least, its management that runs the show. A high quality management is the most **important** factor to run the business successfully. Management with clear track record, transparent policy and aiming at maximizing shareholders wealth are few signs of a quality management.



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Key points for HR-Legal: What we should know!

Continued from previous edition...

51. An establishment has to be either a Shop/Commercial Establishment or a Factory.
52. The deciding factor for understanding whether the given establishment is falling under Shop / Commercial Establishment is whether there is any “Manufacturing” present as defined under Section 2(k) of the Factories Act, 1948.
53. If the establishment processes gets qualified as “Manufacturing” it would be considered as “Factory”, if not it has to fall under the head “Shop or Commercial Establishment”.
54. If the given establishment is considered as “Factory” & found carrying on the activity with 10 or more person using power or 20 or more person without using power, on any day of the preceding 12 months, it has to be registered as “Factory” under the Factories Act, 1948 prior to commencement of production or construction of factory.
55. If the given establishment is considered as “Shop/Commercial Establishment”, it has to be registered as “Shop or Commercial Establishment” under the respective State’s Shops & Commercial Establishment Act within 30 days of setting up whether it employ’s any person or not.
56. A given establishment can be both “Shop/Commercial Establishment” & a “Factory” in the same premises, provided it is being clearly demarked & has separate entrances and exits with defined bounds.

The Equal Remuneration Act, 1976

- The legislation which governs the equal payment of remuneration & prevention of discrimination on the ground of sex is the Equal Remuneration Act, 1976.
- It provides for the payment of equal remuneration to men and women workers and for the prevention of discrimination, on the ground of sex, against women, in the matter of employment and for matters connected with or incidental thereto.
- No employer shall pay to any worker employed by him in an establishment or employment, remuneration, cash or in kind, at rates less favorable than those at which remuneration is paid by him to the workers of opposite sex for performing the same work or work of similar nature.
- It is also provided that no employer shall reduce the rate of wages for the purpose of complying with the aforesaid provisions.
- There shall be no discrimination on the grounds of sex for recruitment or promotion, training or transfer except where employment of women is restricted.
- Above provision is not applicable when priority is to be given to scheduled castes or scheduled tribes, ex-servicemen or retrenched employees in recruitment.
- A register containing the details of gender and pay shall be maintained in FORM – D under the said Act.
- Violation of various provisions of this Act, attracts penal provision which will range from fine of Rs.10,000/- to Rs.20,000/- to 01 month imprisonment to 02 years.



e-Tools for the Professionals



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Word to PDF Converter

An Android application for mobiles

Word to PDF Converter is an Android application which allows its users to convert all kinds of Word format documents (including all previous word versions of MS Office package) to PDF format. Application requires working internet connection to convert the word files to PDF format files. Application claims that it is the fastest converter of the document in the market of Android. Application is simple and user friendly also you can share the converted files easily as well with other users. It would be better to use the Wi-Fi connection to do the process to get better conversion speed and better result.

Specification: Price- Free | Required Android- 2.3 or above

Download Word to PDF Converter app here: <https://play.google.com/store/apps/details?id=fts.word2pdf.demo&hl=en>

News Room



- Column by CS Chakri Hegde and CS Vijayalakshmi Karur

NEWSROOM EXPRESS

- ✓ The Supreme Court has called for 'zero tolerance' approach towards corruption and advised the courts not to get swayed by mercy and forgiveness while awarding punishment to the corrupt.
- ✓ India may be grilled at WHO meet on failure to implement larger pictorial warnings on tobacco packs
- ✓ Rupee must fall more to save exports, prevent China dumping: SBI Chief
- ✓ SEBI taking feedbacks on slowing down high-frequency trading; curbs may hit volumes
- ✓ Indian economy full of potential: Chinese expert
- ✓ The Indian economy is full of potential, but how to ensure real growth will test "the wisdom of leaders", said a Chinese expert in a state-run daily.
- ✓ FIIs/FPIs exempted from MAT purview for the period prior to 1 April 2015
- ✓ India appeals panel report on agricultural import measures at WTO
- ✓ The Central Information Commission (CIC) has warned the SEBI for giving false and misleading information to a query under the Right to Information law.
The government has cleared spectrum trading guidelines which will allow telecom players to buy or sell unutilised spectrum to other operators.
- ✓ The Government is working on strengthening consumer courts in the country by providing different consumer-friendly measures like allowing complaints from anywhere and simplifying the procedures.
- ✓ EPFO likely to raise maximum insurance cover to Rs 5.5 lakh from the existing Rs 3.6 lakh.

Capping of airfares violates competition norms: CCI

Capping of airfares will violate competition norms as it stifles the movement of market forces, CCI's chief Ashok Chawla has said amid rising calls to curb exorbitant pricing of air tickets. Terming that such a move would be "antithetical" to the philosophy of competition as well as deregulation, Chawla stressed that market forces should be allowed to operate. His assertion comes against the backdrop of increasing demand from various quarters, including Parliamentarians, to put in a mechanism to contain steep fluctuations in airfares.

CCI accuses Google of abusing search dominance

The CCI has accused Google Inc of abusing its dominant position in online search, people with knowledge of the matter said, which if proven could force the US company to alter its practices in a key market or even pay a big fine. A preliminary report from the quasi-judicial regulatory body found fault with Google's handling of its online advertising services and search results, said the people. Google, which just last month appointed India-born Sundar Pichai as its new CEO, is already facing a billion-euro fine from the European Union after accusations the company cheated competitors by distorting Internet search results in favour of its shopping service. Google has rejected those charges.

India rejects patent on Pfizer's arthritis drug

India has again denied Pfizer Inc a patent on its rheumatoid arthritis drug Tofacitinib, the latest setback for a multinational drug maker seeking to enforce its intellectual property rights in the country. Pfizer sought a patent that covers an important chemical formulation of the active compound in the medicine, but the Indian Patent Office said the company would have to establish that the compound for which it is seeking a patent is therapeutically more effective than the active compound.

SEBI notified SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

SEBI on 2.9,2015 notified SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations) after following the consultation process. The Listing Regulations have been sub-divided into two parts (a) substantive provisions incorporated in the main body of Regulations; (b) procedural requirements in the form of Schedules to the Regulations.

Union Government launched National Mission for Skill Development

Union Ministry of Skill Development and Entrepreneurship has launched the National Mission for Skill Development. The NMSD was launched to provide the overall institutional framework to rapidly implement and scale up skill development efforts across India. The Mission seeks to provide the institutional capacity to train a minimum of 300 million skilled people by the year 2022.

Union Cabinet clears gold bond, monetisation schemes

The Government has approved Gold Bond and Gold Monetisation schemes to reduce the metal's demand in physical form and fish out idle gold lying with households and other entities. The Gold Bond scheme will have an annual cap of 500 grams per person and such bonds would be issued for a period of 5-7 years. The Budget 2015-16 had proposed to launch a Sovereign Gold Bond (SGB) scheme to develop a financial asset as an alternative to gold.

RBI to issue small finance bank licenses in a few days,

The RBI has given in-principle approval to 11 entities to set up payments banks. The small finance banks can provide basic banking services like accepting deposits and lending to the unbanked sections such as small farmers, micro business enterprises, micro and small industries and unorganised sector entities.

Special entity to take over bad loans may take shape soon

A special purpose entity may be formed, for managing and recovering banks' piled up sticky loans may be in the offing with the government showing willingness to de-stress the banking sector, which acts as a barometer to economic development, a reliable source said. It will take over a bulk of non-performing assets of banks and help companies ridden with bad debts revive. The plan would help the banks to clean their balance sheet and de-risk the economy as a whole. A cleaner balance sheet would help state-run banks earn a better credit rating as well as improve book value and market capitalisation, which would, in turn, lift their ability to raise capital from the equity market.

Top Consumer Court Accepts Government's Rs 640-Crore Suit against Nestle (Maggi)

The apex consumer court has accepted the government's Rs. 640-crore suit against Nestle for its alleged unfair trade practices pertaining to Maggi instant noodles and posted the next date of hearing for September 30.

REDUCING EMISSIONS

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Reducing emissions from deforestation and forest degradation (REDD) is a mechanism to mitigating climate change through reducing net emissions of greenhouse gases through enhanced forest management in developing countries. It is developed as an initiative by United Nations since 2005 under United Nations Framework Convention on Climate Change. The Program was launched in 2008 and builds on the convening role and technical expertise of the Food and Agriculture Organization of the United Nations (FAO), the United Nations Development Programme (UNDP) and the United Nations Environment Program (UNEP). Various studies estimate that land use change including deforestation and forest degradation, accounts for 17-29% of global greenhouse gas emissions during the last two decades and hence reduction of emission through change of land use was considered essential and REDD was developed. The Coalition for Rainforest Nations (CfRN) was established and in 2005 which was a mechanism for considering the reduction of emissions of greenhouse gases stemming from tropical deforestation and forest degradation as a climate change mitigation measure. The decisions on REDD enumerate five "eligible activities" that developing countries may implement to reduce emissions and enhance removals of greenhouse gases: (a) Reducing emissions from deforestation (b) Reducing emissions from forest degradation (c) Conservation of forest carbon stocks (d) Sustainable management of forests (e) Enhancement of forest carbon stocks"

Did
You
Know?

BEHAVIOURAL TARGETING

Have you ever wondered after you make any purchase on a website or after you make a search for a hotel at certain place, you start seeing advertisements on websites relating to the purchase or search made? How does this happen? This happens through a social media advertising technique called Behavioural Targeting. Behavioural targeting is a technique used by online publishers and advertisers to increase the effectiveness of their campaigns through information collected on an individual's Web-browsing behaviour, such as the pages they have visited or the searches they have made, to select which advertisements to display to that individual. By using a highly sophisticated set of software tools and analytics, marketers can tailor Web ads based on consumers' online behaviours — the websites they view, the products they research, and how close they come to making a purchase. Since the ad is generated by a consumer's demonstrated interest, behavioural targeting provides stronger, more promising sales leads, allowing marketers to serve relevant ads anywhere within a network of websites.

Difference between the Consequence of Misrepresentation and Breach of Warranty in a Contract

A warranty is a contractual term, which is secondary to the main purpose of a contract, whereas a representation is a statement of fact or opinion, which is made prior to a contract being entered into. If a warranty is breached, the aggrieved party is not normally entitled to terminate the contract, but may be entitled to claim damages for breach of contract. If the representation is false, and it was relied on by the buyer when entering into the contract, then this may entitle them to rescind the contract and claim damages. This has been explained by Madras High Court in the case of **All India General Insurance Co – AIR Mad 484** "In case of warranty, materiality or immateriality of the fact warranted signifies nothing. Its incorrectness constitutes a defense to an action on the policy, even though it may not be made in perfect good faith. But, in the case of a representation, the insurer can avoid the policy only by proving that the statement is false and material to the risk."

Pick of
the
month

Regulatory Updates

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CUSTOMS & FTP

Notifications/Circulars/News

Notification Issued Imposing a Provisional Safeguard Duty Effective from Today on Hot-Rolled Flat Products of Non-Alloy and Other Alloy Steel in Coils of a Width of 600 MM or More [Falling Under Heading 7208 or Tariff Item 7225 30 90] at the Rate of 20% (Twenty Percent) Ad-Valorem for a Period of 200 Days.

No. 2/2015-Customs (SG)

Seeks to levy definitive anti-dumping duty on imports of Float Glass of thickness 2 mm to 12 mm (both inclusive) of clear as well as tinted variety (other than green glass) but not including reflective glass, processed glass meant for decorative, industrial or automotive purposes falling under chapter heading 7005 of the First Schedule to the Customs Tariff Act, originating in or exported from the Peoples' Republic of China for a period of five years.

No. 47/2015-Customs (ADD)- Dated- 8th of September, 2015

Central Government had extended the anti-dumping duty imposed on NBR originating in, or exported from, Korea RP vide notification No. 06/2014-Customs (ADD), dated the 23rd January, 2014, published in the Gazette of India, Part II, Section 3, Sub-section (i) vide number G.S.R. 48(E), dated the 23rd January, 2014 upto and inclusive of 1st January, 2015.

No. 46/2015-Customs (ADD)

Seeks to impose anti-dumping duty on the imports of Phosphoric Acid of all grades and all concentration (excluding Agriculture or Fertilizer grade), originating in or exported from Korea RP for a period of five years.

NO. 45/2015-Customs (ADD), Dated: August 24, 2015

Case Law

The Hon'ble Supreme Court held that the endorsement on the bill of entry to pay additional customs duty is a demand and not mere a provisional assessment. Thus, the duty payable due to such endorsement can be settled as settlement of demand under indirect taxes demand settlement scheme.

M/s Swastika Enterprise

Hon'ble Supreme Court held that when two methods are permissible under the statutory scheme itself to discharge duty liability then merely because with the adoption of one particular method the duty that becomes payable is lesser would not mean that two such persons belong to different categories so as to provide distinction that one enjoy full exemption under a notification and no exemption to other.

M/s N.S. Rathnam & Sons

Ministry of Corporate Affairs

Notifications/Circulars/News

The following class of companies shall file their financial statement and other documents under section 137 of the Act, with the Registrar in e-form AOC-4 XBRL given in Annexure-I for the financial years

commencing on or after 1st April, 2014 using the XBRL taxonomy given in Annexure II, namely:-

(i) all companies listed with any Stock Exchange(s) in India and their Indian subsidiaries; or

(ii) all companies having paid up capital of rupees five crore or above;

(iii) all companies having turnover of rupees hundred crore or above; or

(iv) all companies which were hitherto covered under the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2011:

Provided that the companies in Banking, Insurance, Power Sector and Non-Banking Financial companies are exempted from XBRL filing.

Notification dated 09th September, 2015

The Ministry of Corporate Affairs vide its notification dated September 04, 2015 has amended some of the provisions of the Companies (Accounts) Rules, 2014, and issued notifications regarding section 129 and section 467 of the Companies Act, 2013.

In rule 2, in sub-rule (1) after clause (d) the following is inserted:

“(da) “Indian Accounting Standards” means the Indian Accounting Standards referred to in rule 3 and Annexure to the Companies (Indian Accounting Standards) Rules, 2015.”

It may be noted that MCA vide notification no. G.S.R 111(E) dated 16 Feb 2015 has notified the Companies (Indian Accounting Standards) Rules, 2015

Rule 3 of the Companies (Indian Accounting Standards) Rules, 2015 refers to the term ‘Indian Accounting Standards’.

“Rule 3: Applicability of Accounting Standards. - (1) The accounting standards as specified in the Annexure to these rules to be called the Indian Accounting Standards (Ind AS) shall be the accounting standards applicable to classes of companies specified in rule 4”.

ii. After rule 4, the following rule is inserted, namely-

“4A. Forms and items contained in financial statements- The financial statements shall be in the form specified in Schedule III to the Act and comply with Accounting Standards or Indian Accounting Standards as applicable:

Provided that the items contained in the financial statements shall be prepared in accordance with the definitions and other requirements specified in the Accounting Standards or the Indian Accounting Standards as the case may be.”

This is a new insertion in the Companies (Accounts) Rules, 2014 requiring the companies to comply with the Accounting standards or Indian Accounting Standards as may be applicable while preparing the financial statements in Schedule III.

iii. in rule 8, in sub-rule (3), the following proviso is inserted at the end:

“Provided that the requirement of furnishing information and details under this sub-rule shall not apply to a Government company engaged in producing defense equipment”

Rule 8 (3) of the Companies (Accounts) Rules, 2014 provides for the matters to be included in Board's report. This newly inserted proviso exempts Government company which is engaged in producing defence equipment from this requirement.

iv. in Rule 12, for sub-rule (1), the following sub-rule is substituted:

“(1) Every company shall file the financial statements with the Registrar together with Form AOC-4 and the consolidated financial statement, if any, with Form AOC 4 CFS.”

Before amendment, Rule 12 of the Companies (Accounts) Rules, 2014 provided as under:

“ 12. Filing of financial statements and fees to be paid thereon.-

(1) Every company shall file the financial statements with Registrar together with Form AOC-4.”

The revised AOC-4 and AOC -4 CFS requires pre-certification by the practicing professionals including Company Secretary in whole-time practice.

v. In Annexure, for Form AOC-4, the Forms AOC-4 and AOC-4 CFS are substituted.

Notification regarding sub-section (6) of section 129 of the Companies Act, 2013 (18 of 2013)

MCA exercising the power conferred by section 129 (6) of the Companies Act, 2013, in public interest exempted the government companies producing Defence Equipment including Space Research from providing additional information required through para 5(ii)(a)(1), 5 (ii) (a) (2), s (ii) (e),5(iii) ,5 (viii)(a),5 (viii) (b), 5 (viii) (c) and 5 (viii) of the General instructions for preparation of Statement of Profit and Loss in Schedule III of the Companies Act, 2013

Notification regarding sub-section (1) of section 467 of the Companies Act, 2013 (18 of 2013)

MCA in exercise of the powers conferred by sub-section (1) of section 467 of the Companies Act, 2013 makes the certain further alterations in Schedule III of the Act.

In the Companies (Management and Administration) Rules, 2014,- (i) in rule 23, in sub-rule (1) for the words “not more than five lakh rupees”, the words ‘not less than five lakh rupees’ shall be substituted. (ii) For Form No. MGT-7, new form shall be substituted.

*Companies (Management and Administration) Amendment Rules, 2015.
Dated- 28th August, 2015*

CENVAT

Case Law

It was held BY Madras High Court that second proviso to Section 35F of the Act makes it abundantly clear that the proviso to this Section shall not apply to stay applications and appeals pending before the appellate authority prior to the commencement of the Finance Act (2 of 2014).

Fifth Avenue Sourcing (P) Ltd. V/s Commissioner of Service Tax

It was held by Supreme Court that mere addition in the value after the original product has undergone certain process, would not bring it within the definition of ‘manufacture’ unless its original identity also under goes transformation and it becomes a distinctive and new product.

M/s. Satnam Overseas Ltd. V/s. Commnr. of Central Excise

It was held by Supreme Court that Cost of Returnable Packing Material need not to be included in assessable value.

M/s. Tata Chemicals Ltd. V/s Collector of Central Excise

Supreme Court held that the amount paid for the renewal of licence under Foreign Liquor Rules under the Amnesty scheme will be treated as an adjustment toward interest.

Modern Hotels v CCE

Supreme Court has held that the surrendering of advance licence in order to receive the products at lower rate will be considered as “additional consideration” under section 4 of Central Excise Act, 1944.

CCE v M/s Indorama Synthetics (I) Ltd

Supreme Court held that Vaseline intensive Care Heel Guard is a medicament as it is produced under the Drug Licence and also before classifying any particular product the dominant function have to be considered.

CCE v. Hindustan Unilever

The Hon'ble Court is of the opinion that there is no substance in the argument that between 1st March, 2002 to 9th September, 2004 the credit of AED(T&TA) can be used for payment of any of the specified duty referred to in SubRule (1) of Rule 3.

Raymond Limited V/s. CCEC (Bombay High Court)

If the liability to pay interest between the time or the period of provisional assessment and payment of differential duty until the final assessment has to be read in the Rule, that is not possible.

CEAT Limited V/s CCE&C (Bombay High Court)

It was held by Goa High Court held that the any expenditure incurred in the manufacturing activity would be entitled for credit facility and hence the expenses of mobile phones incurred in connection with manufacturing process shall be allowed.

CCE V/s Hindustan Coca Cola Beverages Pvt. Ltd.

It has been held by Goa High Court held that where non-payment of duty is not with an intent to evade of payment then there can be no occasion to impose penalty under Section 11AC of the Central Excise Act.

Commissioner of Central Excise V/s M/s. Sunrise Zinc Ltd.

It was held that Rule 9 is a procedural aspect which cannot deny the claim of the respondents to avail of such CENVAT Credit which they are, otherwise, admittedly, entitled to and hence CENVAT credit is allowed on the basis of TR-6 challan.

CCE V/s M/s. Essel Propack Ltd.

It has been held by Goa High Court that it is not permissible in law to consider the issue afresh in a proceeding which has already been settled by the same authority by its earlier order and had attained finality for want of any appeal against the original/earlier order, as no party to the litigation has challenged in any appellate forum.

CCE V/s M/s. Seagull Threads (India) Ltd.

Hon'ble Supreme Court while interpreting the Notification No. 22/94-CE, held that whenever the notification is interpreted the intention of the Legislature should be considered. Here, in this case the said notification was brought for the manufacture of paper through non-conventional methods for the basic purpose of Environment Protection.

M/s Coastal Papers v CCE

The Hon'ble Supreme Court in the case of M/s Escorts Ltd. held that the test of marketability fairly satisfies when it is shown that the product is commercially known and being capable of bought and sold. The same not being actually sold is totally irrelevant. Thus, the Transmission Assembly an intermediate product being capable of sold, though not sold by the assessee is chargeable to excise duty as the same is commercially known.

Hon'ble Supreme court held that the benefit of exemption notification is available only when the conditions of notification are strictly met by the assessee and no benefit can be allowed by taking liberal view of any condition. Thus, the benefit of notifications no.8/96 and 4/97 cannot be claimed as the apparatus is not ordinarily usable internally and so usable only with the optional accessories. But the scope of notification cover only apparatus and not accessories, hence exemption not available.

B.P.L. Limited Vs. CCE

Supreme Court has held that in case of related party transactions, proviso (iii) of Section 4(1)(a) will not be applicable when there is no arrangement between Shaw the related parties to depress a price which is otherwise at arm's length.

Commissioner of Central Excise Vs. M/S. Detergents India Ltd.

GST (VAT, Sales Tax and Entry Tax)

Notifications/Circulars/News

Department of Trade and Taxes, Government of National Capital Territory of Delhi has vide notification dated 10.09.2015 notified an online Form Deih Sugam- 2 (in short DS2) for providing 'information to the Department in respect of goods purchased or received as stock transfer or received on consignment agreement basis from outside Delhi by all the registered dealers of Delhi.

Service Tax

The penal provisions under the Service Tax and the Central Excise has been liberalised vide the Finance Act, 2015, effective from May 14, 2015, whereby, in terms of the amended provisions, if an assessee is willing to pay the duty/tax along with interest either before the issuance of Show Cause Notice (SCN) or within 30 days from the date of issue of SCN.

Instruction F. No. 137/46/2015-ST dated August 18, 2015

Case Laws

The Hon'ble Karnataka HC held that reinsurance service is an input service for rendering insurance service because the reinsurance is an integral part of insurance service rendered by the insurance co. and cannot be termed as an activity post completion of insurance services.

CCE Vs. PNB Metlife India Insurance Co. Ltd

It was held that prior to year 2006, the Explanation to Rule 2(p) of the CENVAT credit Rules would be applicable. On plain reading of the said explanation, as it is not disputed that the respondents are paying

service tax, the services rendered by the respondents on that count are deemed to be "output service" as the other conditions therein are satisfied.

The Commissioner of Central Excise Vs. M/s. Essel Propack Ltd.,

SEBI

Notifications/Circulars/News

With a view to consolidate and streamline the existing listing agreements for different segments of the capital market, SEBI has notified the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 dated 2nd September, 2015.

The recognitions to Company Secretary/ Company Secretary in Practice under the Regulations are as under:

- Regulation 6 provides that a listed entity shall appoint a qualified Company Secretary as the compliance officer.
- Regulation 7 (3) requires that the listed entity shall submit a compliance certificate to the exchange, duly signed by both the compliance officer of the listed entity and the authorised representative of the share transfer agent, wherever applicable, within one month of end of each half of the financial year, certifying that all activities in relation to both physical and electronic share transfer facility are maintained either in house or by Registrar to an issue and share transfer agent registered with SEBI.
- Regulation 40 (9) requires that the share transfer agent and/ or the in-house share transfer facility, as the case may be, produces a certificate from a practicing company secretary within one month of the end of each half of the financial year, certifying that all certificates have been issued within thirty days of the date of lodgement for transfer, sub-division, consolidation, renewal, exchange or endorsement of calls/allotment monies.
- Regulation 56 (1) (d) provides that a half-yearly certificate regarding maintenance of hundred percent asset cover in respect of listed non convertible debt securities, by either a practicing company secretary or a practicing chartered accountant, along with the half yearly financial results.
- Schedule V, Clause E requires compliance certificate from either the auditors or practicing company secretaries regarding compliance of conditions of corporate governance to be annexed with the directors' report.

SEBI Press Release PR No. 226/2015 and Notification No. SEBI/LAD-NRO/GN/2015-16/013 dated September 2, 2015

Recommended Article for your reading:

Revision of the OECD Corporate Governance Principles

<http://www.oecd.org/corporate/new-g20oecd-principles-of-corporate-governance-will-promote-trust-and-improve-functioning-of-financial-markets.htm> | <http://www.oecd.org/daf/ca/Corporate-Governance-Principles-ENG.pdf>

http://articles.economicstimes.indiatimes.com/2015-09-05/news/66241335_1_new-code-shareholders-corporate-governance

To safeguard minority shareholders' interests and promote capital market as a key platform to raise funds, G20 and OECD today announced new Corporate Governance Principles for listed companies and regulators in all member countries including India. Consequently, the regulators and policymakers across the world, which include SEBI in India, will update their regulations for the listed firms in line with the new code.