

CONNECTION

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Lalit Bajaj & Associates

Companies Act, 2012

Special points of interest:

- April 15 - Filing of Annual Forms without additional fees
- April 21 - Payment of VAT under MVAT for March
- April 30 - Filing of Service Tax Return in ST3 (July - Sept'12)
- April 30 - TDS Due Date for Payment of March'13

Inside this issue:

Remedies for Cheque Bounce	2
Stamp Paper with 1 year validity	3
India - Malta inks new DTAA	4
Package Scheme of Incentives	4
Service Tax Update	5
Amendment for Senior Citizen	6

The Lok Sabha passed the Companies Act 2012 on 18th December, 2012, which tightens disclosure norms for companies, makes it mandatory to rotate auditors every five years and seeks to regulate related-party transactions to check corporate frauds.

The new legislation also attempts to provide better protection to minority shareholders and makes it mandatory for companies to spend every year at least 2 per cent of their average net profits made during the three immediately preceding financial years on corporate social responsibility (CSR) projects.

The CSR proviso will apply to companies that have a net worth in excess of Rs 500 crore, or a turnover of Rs 1,000 crore or more, or a net profit of Rs 5 crore or more. If a company fails to spend the amount, its board of directors will have to spell out why it couldn't do so.

The provision is hugely controversial since it is the first time that any government anywhere in the world has tried to make CSR spending mandatory, sparking a debate over ethics, social obligations and the basic principle of voluntarism in the act of giving. Many governments do, however, insist on mandatory CSR reporting.

The legislation does not precisely define what constitutes CSR though it does give companies the freedom to make the desired spending in the local areas where they operate.

Among other things, the act also proposes to tighten the laws for raising money from the public 'a move that could especially hit chit funds. Only banking companies, NBFCs and other companies allowed by regulators will be permitted to accept deposits from the public.

Deposits may be accepted only after (a) obtaining credit rating; (b) providing deposit insurance; and (c) depositing at least 15 per cent of the amount of deposits maturing during the current and next financial year in a scheduled bank

The legislation also grants statutory powers to the Serious Fraud Investigation Office (SFIO) which will look into acts of malfeasance, big corporate frauds and other corporate shenanigans. The SFIO, which has already started investigations into illegal chit funds operating in Bengal, will get a big fillip once the legislation comes into force.



Replying to the debate on the bill, minister of state for company affairs Sachin Pilot said though "chit funds are regulated by state governments, wherever we find that they have been using fraudulent means, we will take strict action".

Surprisingly, the act was supported by Trinamul Congress's MP Saugata Roy who made a case against chit funds and raised questions about the Sahara group's spending. "I want the bill to be stronger ... I support giving the SFIO even more powers," Roy added.

The act also comes several years after the first version was introduced in Parliament. Hectic lobbying by top corporate honchos saw the bill get

delayed and watered down over the years. However, with the Rs7,000-crore Satyam fraud bursting upon the Indian corporate scene, the bill was reworked to build proper defenses against large-scale frauds.

The act provides that: "Shareholders associations or group of shareholders are to be enabled to take legal action in case of any fraudulent action on the part of company and to take part in investor protection activities and class action suits."

It also seeks to treat insider trading by company directors as a criminal case. In the Satyam case, it was alleged that the promoters had rigged profits to

"THE NEW LAW WOULD MANDATE THAT A DIRECTOR'S REMUNERATION WOULD BE CAPPED AT 5% OF PROFITS"

ramp up share prices and make windfall gains on stock sales.

The new law also aims to strengthen corporate governance in firms and makes it mandatory for independent directors to constitute at least one-third of the board.

In case a company has one or more subsidiaries, it shall in addition to stand-alone financials, prepare a consolidated financial statement of all subsidiaries.

Pilot also made it clear that the new law would mandate that a director's remuneration would be capped at 5 per cent of profits

It also bans buy back of shares within one year of the last buyback of shares. The number of layers of subsidiaries a firm can have will normally be restricted. Section 186 of the legislation says a company ought not to make investments through more than "two layers of investment companies" but some exceptions have been built in.

It also facilitates joint ventures and relaxes restriction on the number of partners in entities such as partnership firms and banks.

Audit firms cannot take up more than 20 assignments at any time.

Independent directors will no longer be eligible for stock options but will get fees and profit linked commission, subject to rules.

The new Act also provides for a new corporate entity in the form of one-

person company (OPC). It also gives powers to the government to bring a simpler compliance regime for small companies.

Officials said the new Act has drafted a single comprehensive legal framework that would govern everything corporate - from incorporation to liquidation and winding up - to be administered by the Centre. The bill also harmonises the company law framework with the imperative of specialized sectoral regulation, an official release said.

The new law has also modified provisions for audit of government companies by Comptroller and Auditor General of India (C&AG). The modification has been made to enable C&AG performs such audits more effectively.



Remedies for Cheque Bounce

According to statistics of Supreme Court; there are over 40 lakh pending cases of cheque bounce in the country. Lack of adequate knowledge has brought most of people in the situation of losing money. Here are some of the remedies a person can opt for while dealing with issues pertaining to return of cheque:

Penalties for dishonor of cheques due to insufficiency of funds:

Section 138 of the Negotiable Instruments Act has provided for penalties in case a cheque gets dishonored for insufficiency of funds. When a cheque is drawn by any person from his account for payment to another person, it can get bounced due to the following

reasons -

1. Insufficiency of funds.
2. The cheque amount is exceeding the agreed amount arranged to be paid from that account.

In the above mentioned cases, the person drawing the cheque is deemed to be the committer of offence and is liable to be punished under the act for a period of imprisonment that can extend up to two years. The person whose cheque gets dishonored is also liable to pay a fine which can be up to twice the amount of cheque.

However, in order to drag the drawer of the cheque for penalty it must be un-



derstood that following conditions need to be fulfilled -

1. Cheque should be presented to the bank within a period of three months

(earlier it was 6 months) from the date mentioned.

2. In case the cheque gets bounced, the holder of the cheque should ask for the payment by giving a legal notice to the drawer in writing within 30 days of the receipt of information of nonpayment by the bank.

3. Even after receipt of notice if the drawer of the cheque fails to make the payment within the stipulated time, which is 15 days from the receipt of notice.

How to Recover the Money?

The notice sent to the drawer should be legal as explained earlier the same should mention that the cheque was dishonored and payment needs to be made.

This notice should be sent by registered post. Even after 15 days of receipt of the

notice, if the person fails to clear his dues, the payee has a right to file a criminal complaint under Section 138 of the Negotiable Instrument Act.

The complaint should be registered within one month of the expiry of the notice period.

Exemptions:

A cheque that was drawn in the name of the charitable trust as a donation or as an application amount of shares does not come under the purview of dishonor. There might also be other reasons for dishonor of cheque such as alterations or corrections in the cheque or difference in signature. In such cases, it is not termed as an offence. Banks might impose a penalty, though.

It should always be remembered that cheque should be a liability and legal enforceability on the person who has issued it. One should always follow procedures like legal notification and

demand of funds from the drawer. Most of the pending cases in courts are because of lack of legal procedure followed.



A simple understanding of these rules can save you from cheque dishonor cases that happen in day to day life.

Stamp Paper with 1 year validity

Stamp papers may soon come with only one-year validity, as the finance ministry is planning amendments to the over a century-old Indian Stamps Act. The validity period is being proposed to address the issue of forgery. Besides, electronic payment of stamp duty may be allowed under the new Bill. Officials said the purpose behind prescribing an expiry date for the use of the stamp paper was to stop its misuse, as many

people bought backdated papers to stake their claim on properties in the future when no such deal would have actually happened on that date.



Educational Institute with Profit Motive may claim Exemption u/s 11

Income of any educational institute cannot be exempted unconditionally if such institution also exists for deriving of profit. According to this provision, if any educational institution is running on commercial basis then income of such educational institution cannot be exempted from taxation. However, such institution can claim exemption u/s. 11 and 12 as element of profit is not ex-

cluded by the Legislature. The reason is obvious because of financial affairs of such institution are well controlled by the provisions of sections 11 and 13 of the Act. Section 11 clearly provides that in order to claim exemption such institution must apply 75% of its income for charitable purposes. The surplus if any has to be invested in specified bonds. Further, exemption can be

denied if the provisions of section 13 are violated. Therefore, if there is any violation of either section 11 or section 13, then, the profits of such institution would be taxable. Further the fact that, only 75% of the income is to be applied for charitable purposes itself shows that element of profit is not excluded from the definition of charitable purpose for the purpose of sections 11

and 12. Because some profit has been earned by an educational institution registration u/s. 12AA cannot be denied so long as provisions of sections 11, 12 and 12AA are complied with. So long as it is established that income of the assessee society has been applied for the purpose of education in terms of section 11(2) and there is no violation of section 13, the assessee would be entitled to enjoy the benefit of registration u/s. 12AA of the Act.

Under both the categories mentioned above, the societies/trusts are created with the sole object to advance the cause of education but if such objects coupled with the motive to earn profits, then such institution will

not be entitled to exemption under section 10(22), since in such cases cannot be said to exist solely for the purpose of education. Therefore, registration under section 12A/12AA would not be relevant by itself for claiming



exemption under section 10(22) though the same would be relevant for claiming exemption under sections 11 and 12. Therefore, where education is imparted by an institution with the purpose of profit i.e., by running the schools/colleges purely on commercial basis, the assessee would not be entitled to exemption under section 10(22) but such case may be considered for exemption under section 11 if the conditions imposed by the Legislature are satisfied since the profit element has been omitted from the definition of the words 'charitable purpose' with effect from 1-4-1984.

India - Malta inks new DTAA

"INDIA & MALTA ON 8TH APRIL, 2013, SIGNED THE NEW DTAA AT VALETTA, MALTA"

An Agreement (DTAA) and Protocol Signed Between India and Malta for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion With Respect to Taxes on Income

The Double Taxation Avoidance Agreement (DTAA) and the Protocol between the Republic of India and Malta for the avoidance of

double taxation and for the prevention of fiscal evasion with respect to taxes on income is in force since 8th February, 1995. Both India and Malta have renegotiated the Agreement to bring in line with international standards, change in domestic laws and changed economic scenario.

On 08th April, 2013, India and Malta had signed the new DTAA at Valetta, Malta. The Double Taxation Avoidance Agreement (DTAA) was signed by Smt. Preet Kaur, Minister of State for External Affairs of India and Dr. George Vella, Foreign Minister of Malta. Once the DTAA enters into force, it will stimu-

late the flow of capital, technology and personnel between both the countries and will further strengthen the economic relationship. It also provides tax stability and reduces any obstacles in providing mutual cooperation between India and Malta.

Double Taxation Avoidance Agreements

Package Scheme of Incentives

In order to encourage the dispersal of industries to lesser developed areas of the State, the Government has been giving package of incentives to New Industrial Units / Expansion Units set up in the developing regions of the State since 1964 under a Scheme popularly known as the "Package Scheme of Incentives."

The Package Scheme of Incentives, introduced in 1964, has been amended from time to time. The Scheme as amended last, is commonly

known as the "Package Scheme of Incentives-2007" (PSI-2007) and is operative since the 1st April, 2007.

The State has recently declared the new Industrial Policy -2013 to ensure sustained industrial growth through various innovative initiatives so as to further improve the conducive industrial climate in the State and to provide global competitive edge to the industries in the State. The policy envisages grant of fiscal and non-fiscal incentives to the Industrial units with a view to



helping the units achieve higher and sustainable economic growth with em-

phasis on balanced regional development and employment generation through greater Private and Public Investment in industrial sector. It is therefore necessary to amend the Package Scheme of Incentives-2007, in the light of the Industrial Policy-2013 and introduce a new "Package Scheme of Incentives 2013" containing details of eligibility criteria, quantum of incentives and monitoring mechanism for administering the incentives during the period up to the 31st March, 2018.

Resolution

In supersession of the Package Scheme of Incentive - 2007, which shall expire on the 31st March, 2013, the Government is pleased to accord approval to the new "Package Scheme of Incentives -2013" (PSI-2013) which will come into effect on the 1st April 2013 for a period of five years. The detailed provisions of the PSI-2013 are as follows: -

1. APPLICABILITY OF PSI-2013

1.1 Period of Operation of PSI-2013 :-

The PSI -2013, as may be amended by the Government from time to time, shall remain in operation from the 1st April 2013 up to 31st March,2018 .

1.2 Coverage under the PSI - 2013 :-

The following categories of Eligible Industrial Units in the Private Sector, Co-operative Sector, Central Public Sector, State Public Sector/ Joint Sector shall be eligible to be considered for incentives under the PSI- 2013 :-

i) Industries listed in the First Schedule of the Industries (Development and Regulation) Act, 1951, as amended from time to time

ii) Manufacturing Enterprises as defined in the Micro, Small and Medium

Enterprises Development Act, 2006. (MSMED Act, 2006)

iii) Information Technology Manufacturing Units registered with the Directorate of Industries or the Maharashtra Industrial Development Corporation (MIDC) or the Development Commissioner, Santacruz Electronic Export Processing Zone (SEEPZ) or Software Technology Parks of India (STPI) in the State.

iv) Bio-technology Manufacturing Units as specified by the Government from time to time, which are outside the purview of any registering authority mentioned above.

v) Cold Storages

vi) Mechanized Food/Agro Processing Industries in the following sectors:

- Dairy, Fruit and Vegetable Processing.
- Grain Processing.
- Fish Processing.
- Consumer foods including Packed foods.

Non alcoholic beverages from fruits and vegetables.

vii) Central Public Sector Units which satisfy the qualifying criteria as defined in Para No.2.2.(iii) given below.

1.3 Classification of Areas for PSI-2013 :-

For the purposes of the PSI- 2013, detailed talukawise classification of different areas of the State as Group, A /B/ C/ D/ D + etc., on the basis of their level of industrial development shall be as given in Annexure-I to this

G.R. where -

(i) Group A: Denotes Industrially developed areas

(ii) Group B: Denotes Areas where some industrial developments have taken place, but are less developed



than the areas under Group A.

(iii) Group C: Denotes Areas, which are less developed than those covered under Group B.

(iv) Group D: Denotes the lesser-developed areas of the State, not covered under Group A/ Group B/ Group C.

(v) Group D+: Denotes the least developed areas, not covered under Group A/Group B/Group C/Group D.

(vi) No Industry District: Denotes District having no industries and not covered under Group A / B/ C/ D & D+.

(vii) Naxalism Affected Area : Denotes Area affected by naxalism, as described in GR No NAVIKA-2008/C.R. 209/Ka. 1416 Dated 31 .5.2009 (Annexure II)

Service Tax Update

CBEC extends the last date of e-filing of Service Tax Return (ST 3) for the period July-September, 2012 from 15th to 30th April, 2013

The Central Board of Excise & Customs vide Order No. 02/2013-ST dated

12.04.2013 has extended the date of submission of the Form ST-3 for the period from 1st July 2012 to 30th September 2012, from 15th April 2013 to **30th April 2013.**





Office No.: 32, Nityanand Nagar III,
25/27 S. N. Road, Near Rly. Stn.,
Andheri (E), Mumbai - 400069
Phone : +91 - 22 - 26845133

Office No.: 5, Barsana,
Salasar Brij Bhoomi, Temba Road,
Near Maxus Mall, Bhayandar (W),
Thane - 401101

Phone : +91 - 22- 28180400
+91 - 22 - 28040048
Email: admin@bajajit.com

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ICAI reduces the age for treating a member as Senior Citizen

No. 1-CA (7)1146/2013.—In partial modification of Notifications No. 1-CA (7)/140/2011 and I -CA(7)/141/2011 both dated 25th February, 2011 published in Part III, Section 4 of the Gazette of India, Extraordinary dated 25th February, 2011, the Council of the Institute has decided to reduce the age from 65 years to 60 years for treating a member as Senior Citizen for the pur-

pose of payment of annual membership fee and certificate of practice fee. Accordingly, for the words and figure “age of 65 years” appearing in the proviso of both the aforesaid Notifications, the words and figure “age of 60 years” have been substituted.



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