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The 7 Punishments in Companies Act 2013

This write-up invites the attention of readers to the seven sections / provisions (Sections 447 to 453) in the Companies Act 2013 (which replaces the 1956 Act). It's very essential to understand these seven sections; and reading of this write-up will be useful for every professional, student and all stakeholders too.

The new parent corporate law "The Companies Act 2013" is mostly implemented by the Ministry of Corporate Affairs (MCA), Govt. of India. Apart from knowing and learning the direct and indirect provisions affecting your interest of topic, like: accounts, audit, directors, KMP, loans etc., it's very essential to know and learn the sword sections (heavy consequences) in the Act.

Section 447 – Punishment for fraud:

One of the most frequently quoted sections in the 2013 Act is the Section 447 dealing with "Punishment for fraud". The term fraud is a commonly used one, but the new law for company has a clear explanation for the term "fraud", which is explained below:

"fraud" in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by

any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss."



Interestingly the law also explains the terms "any wrongful gain or wrongful loss", which runs as under:

"wrongful gain" means the gain by unlawful means of property to which the person gaining is not legally entitled;

"wrongful loss" means the loss by unlawful means of property to which the person losing is legally entitled.

Thus, as per Section 447, any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved

in the fraud, but which may extend to three times the amount involved in the fraud. Where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

Section 448 – Punishment for false statement:

This section corresponds Section 628 of the 1956 Act, and one of the very important provisions for the practicing professionals like CA, CS and CMAs who do pre-certification work and attestation / audit assignments.

Section 448 says that, if in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for, the purposes of any of the provisions of this 2013 Act or the rules made there under, any person makes a statement,—

- which is false in any material particulars, knowing it to be false; or
- which omits any material fact, knowing it to be material, then such person be liable under section 447.

Thus every professional who gives / signs / attests / certifies a return, report, certificate, financial statement etc. under the 2013 Act will be punishable u/s.447 if the criteria stated in



Section 448 are attracted.

Section 449 – Punishment for false evidence:

This section corresponds Section 629 of the 1956 Act, and one of the very important sections for individuals giving evidence under the 2013 Act.

Section 449 states that, if any person intentionally gives false evidence—

- upon any examination on oath or solemn affirmation, authorized under this Act; or
- in any affidavit, deposition or solemn affirmation, in or about the winding up of any company under this Act, or otherwise in or about any matter arising under this Act,

He shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and with fine which may extend to ten lakh rupees.

Section 450 – Punishment where no specific penalty or punishment is provided:

We may find many Sections in the 2013 Act, where there is no specific penalty or punishment stated. As far as we come to know about Section 450, which specifies penalty or punishment in such cases. This section corresponds Section 629A of the 1956 Act.

According to Section 450, if a company or any officer of a company or any other person contravenes any of the provi-

sions of 2013 Act or the rules made there under, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees, and where the contravention is continuing one, with a further fine which may extend to one thousand rupees for every day (*penalty doubled from 1956 Act) after the first during which the contravention continues.

Section 451 – Punishment in the case of repeated defaults:

“Excellence should be a Habit”, but not in the case of offences / defaults in the 2013 Act. “Default should not be a habit” says the new law!

As per Section 451 of the 2013 Act, if a company or an officer of a company commits an offence punishable either with fine or with imprisonment and where the same offence is committed for the second or subsequent occasions within a period of three years, then, that company and every officer thereof who is in default shall be punishable with twice the amount of fine for such offence in addition to any imprisonment provided for that

offence.

Section 452 – Punishment for wrongful withholding of property:

Section 452 corresponds Section 630 of the 1956 Act. According to Section 452 of the 2013 Act, if any officer or employee of a company—

- wrongfully obtains possession of any property, including cash of the company; or
- having any such property including cash (*introduced in the 2013 Act) in his possession, wrongfully withholds it or knowingly applies it for the purposes other than those expressed or directed in the articles and authorized by this Act,

He shall, on the complaint of the company or of any member or creditor or contributory thereof, be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

The Court trying an offence may also order such officer or employee to deliver up or refund, within a time to be fixed by it, any such property or cash wrongfully obtained or wrongfully withheld or knowingly misapplied, the benefits that have been derived from such property or cash or in default, to undergo imprisonment for a term which may extend to two years.

Thus, this Section intends to safeguard the assets / properties of the company, including cash, from wrongful with-



holding or misapplication.

Section 453 – Punishment for improper use of “Limited” or “Private Limited”:

Section 453 is similar to that of Section 631 of 1956 Act, which states that if any person or persons trade or carry on business under any name or title, of which the word “Limited” or the words “Private Limited” or any contraction or imitation thereof is or are the last word or words, that person or each of those persons shall, unless duly incorporated with limited liability, or unless duly incorporated as a private company with limited liability, as the case may be, punishable with fine

which shall not be less than five hundred rupees but may extend to two thousand rupees (*introduced in the 2013 Act) for every day for which that name or title has been used. Thus, only companies incorporated under the Act shall use the words “Limited” or “Private Limited” in the trade name. To conclude, the most interesting part of the above seven punishments in the new law is that, it casts huge responsibility on the professionals and stakeholders dealing with the company, and as you can see the penalty is also kept as high, when compared to the 1956 law. Introducing the concept of “fraud” and giving an explanation in the Act is a welcoming step. The job of pre-

certification, attestation, audit and reporting will be a more hectic task in the light of few of the above cited punishments in the Companies Act 2013. The knowledge of such punishments in the 2013 Act is also significant for company directors / officers and all stakeholders in general.



MVAT - Computerised Desk Audit

Computerized Desk Audit (CDA) is an utility developed by department to analyse the electronic information uploaded by dealers through various e-services. The analysis is resulting in identification of various issues in which additional taxes are found to be payable by dealers. A list of such dealers covered under CDA is made available on Mahavat web-site.

If you are covered under CDA, you can access findings of CDA in Form 604(A) by using your log-in credentials on Mahavat web-site. If you are not covered under CDA Category then the message “No Audit Report is available for this TIN Number” will be populated.

- First click on the link “Download Computerized Desk audit Report”. The link will open to show you the Form 604A, issued to you by the Maharashtra Sales Tax Department, along with an-

nexures showing parameter-wise details and your additional tax liability.

- Now click on second link i.e. “CDA Compliance Web Form”.
- *(Please note that this page will show you the CDA Compliance Web Form ONLY if you have already clicked the link “Download Computerized Desk audit Report”. So, it is mandatory to click “Download Computerized Desk audit Report” link to access the CDA Compliance Web Form.)*
- ‘CDA TAX LIABILITY SUMMARY’ table of the CDA Compliance form displays the parameters and the tax liability under each parameter. (Short description/meaning of these parameter is provided separately in this Instruction sheet).

- After going through party-wise aggregated transactions in Annexure to Form 604A, you can decide whether to accept or not the additional tax liability. If you agree with the additional tax liability pertaining to any of the parameter, select ‘YES’ from the drop-down in front of that parameter in ‘CDA TAX LIABILITY SUMMARY’ table. Please note that at present you have only two options i.e. to either accept the parameter fully or reject it.
- You have to accept or reject (i.e. to select either YES or NO) all the parameters, where additional Tax liability is shown in the CDA Compliance Web Form. The CDA Compliance Web Form will neither be saved nor be submitted if any of the parameter remains unselected.
- As you go on accepting the

“The cases selected for assessment pertaining to FY 2011-12 are displayed on Mahavat website”





“The compliance can be submitted anytime within a stipulated period of 30 days i.e. on or before 3rd September 2014”



parameters (i.e. as you select YES), the form will automatically calculate the Tax liability acceptable to you in the box “TOTAL TAX LIABILITY”.

- You can see the ACT wise break-up of your accepted Tax liability in the table with name “Additional tax liability eligible for interest u/s 30 (4)”. This table is provided to facilitate you for the calculation of interest under section 30(4) of MVAT ACT. If the acceptable Tax liability under CST ACT contains any quantum of tax liability due to not received CST Declarations, you should enter that tax amount in box “Tax on which Interest is not applicable on account of CST Declarations not received. (in Rs.)”.
- Now calculate the interest as per provisions of section 30(2) and 30(4) of MVAT ACT separately for accepted Tax Liability under MVAT ACT and CST ACT.
- Needless to say that the interest u/s. 30(2) is payable for the return period in which such tax liability arises and the interest will accordingly be required to be calculated from the due date of return till the date of payment.
- Make e-payment of the accepted Tax liability along with interest u/s 30(2) and 30(4) by separate challans for MVAT ACT and CST ACT and file revise the return u/s 20 (4)(C). If payment corresponding to a parameter is already made before intimation of CDA findings then the said challan details are also required to be entered in the separate challan.
- Provide the above payment details in the table with name “PAYMENT CHALLANS”. Please take due care while entering **Date of payment** and **CIN**.
- In case you are required to make payment for CDA in multiple challans or to take credit of already paid challan, use the “ADD NEW PAYMENT CHALLAN” button available at the bottom of CDA Compliance Web Form.
- The details of revised return should be provided in the “REVISED RETURN u/s 20 (4)(C)” table of CDA Compliance Web Form.
- “SAVE THE DETAILS ENTERED” Button: - This button is available at the bottom of CDA Compliance Web Form. This button can be used to save the completely or partially filled CDA Compliance Web Form multiple times before submitting. Because once the CDA Compliance Web Form is submitted by using “SUBMIT COMPLIANCE” button, then it is

not possible to correct any mistake. So, it is recommended to first save the CDA Compliance Web Form, make sure that all the details entered by you are correct and complete. You can edit the saved details on web-form any time within the period of 30 days before submission of final compliance.

- “SUBMIT COMPLIANCE” Button:- This button is available at the bottom of CDA Compliance Web Form and it is provided to submit your final compliance.

The compliance can be submitted any time within a stipulated period of 30 days i.e. on or before 3rd September 2014. Once the submission is made no further changes are possible in the web-form compliance details.

The audit issues complied on web-site will result in closure of these issues and you or your representative is not required to attend any proceeding in relation to these issues.

You are at liberty to disagree with the CDA findings. However, all the cases where parameters have not been accepted will be taken up for scrutiny, by way of assessment, for the confirmation of facts through the personal hearing in which case the penalty under section 29(3), in addition to interests, shall also be payable. The partial acceptance against a particular parameter will not be accepted.

Deduction u/s 10A/10AA of Income Tax Act

section 10

Clarification regarding allowability of deduction under section 10A/10AA on transfer of Technical Man-power in the case of software industry.

Section 10AA of the Income-tax Act, 1961, inter-alia, provides for deduction in respect of the profits derived by a unit set up in SEZ from export of computer software or from providing any ITES services. The said deduction available to a new SEZ unit is subject to certain conditions including:

- it is not formed by the splitting up, or the reconstruction of a business already in existence;
- it is not formed by the transfer to a new business, of machinery or plant previously used for any purpose.

In this regard, attention of the Board has been drawn to the issue of transfer/redeployment of technical manpower from the existing units of an assessee engaged in computer software devel-

opment to its new SEZ unit. This, at times, is considered as splitting up or reconstruction of the existing business by some of the assessing officers resulting in denial of benefit u/s 10AA of the Income-tax Act, 1961 to the assessee.

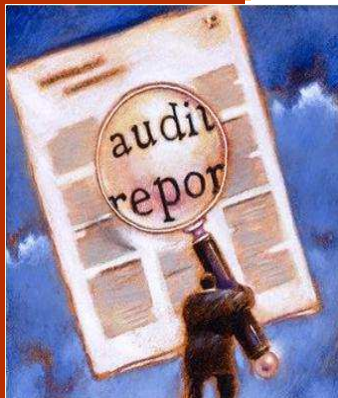
It has been represented by the software industry that there is only a limited pool available with a software developer of skilled, talented and experienced manpower with domain knowledge. Given the highly technical and competitive nature of software development, some technical persons having prior experience are required to manage the critical functions of software development in a new unit. It has thus been submitted that movement of technical manpower from an existing unit to a new SEZ unit should not be a constraint in availing deduction u/s 10AA of the Income-tax Act. Attention has also been drawn to Instruction No.70 dated 09.11.2010 issued by the Ministry of Commerce which states that there is no bar on transfer of manpower to SEZ units. It has also been submitted that while there is a specific prohibition on transfer of plant or machinery from an existing unit to a new SEZ unit [Sec.10AA(4)(iii)], subject to a ceiling of 20 per cent, no such bar on transfer or redeployment of manpower has been explicitly laid down in the Section.

The matter has been examined in the Board. It is clarified that mere transfer or re-deployment of existing technical manpower from an existing-unit to a new SEZ unit in the first year of commencement of business will not be construed as splitting up or reconstruction of an existing business, provided the number of technical manpower so transferred does not exceed 20 per cent of the total technical manpower actually engaged in developing software at any point of time in the given year in the new unit.

This Circular shall be applicable only in the case of assessee engaged in the development of software or in providing IT Enabled Services in SEZ units eligible for deduction u/s 10A or u/s 10AA of the Act.



Recent Changes in Tax Audit Report



Vide notification no. 33/2014 dated 25.07.2014, CBDT has made amendments in Form 3CD and the same have been made effective for Tax Audit for assessment year 2014-15.

Broadly, the changes have been made making Tax Audit Report (TAR) more comprehensive, informative and analytical. These changes also signal linking of Direct taxes with Indirect taxes, which may lead to re-organisation of both direct and indirect taxes relating to business towards Common Audit Report for both direct taxes and indirect taxes.

Major changes:

Some of the major changes are as under:

- Information about applicability of Indirect taxes viz. excise duty, service tax, sales tax, customs duty, etc. is required and if applicable registration number for same is required.
- New clauses have been

incorporated and existing clauses renumbered.

- Clause of section 44AB under which tax audit is being done to be specified.
- Previous year from.....to..... is to be mentioned.
- Address where books of accounts are kept has to be stated. If books of accounts are kept at more than one location, all such addresses have to be mentioned along with details of books of accounts maintained at each such location.
- Nature of the documents examined apart from books of accounts during audit has to be stated.
- More information and analysis in various tables will have to be furnished.
- Particulars about sale/transfer of Land and Building, consideration received and the stamp duty value thereof has to be furnished.
- Comparison of amount debited in Profit and Loss Account v. Amounts inadmissible under IT Act/rules has to be tabulated.
- Information as to amounts of personal expenses, capital expenses, advertisement expenditure debited to P &L A/c has to be tabulated.
- Details of speculation loss, deemed speculation loss has to be given in assertive manner.
- More detailed information u/s 40, 40A, 40A(3) and 40A(3A) has to be given.
- Deemed Income u/s 56(2)(viiia)/(viiib) has to be reported with details.
- Detailed information regarding TDS /TCS, return thereof and interest if any in that aspect and violation in that and disallowance due to non-deduction has to be given.

Independent Director Repository



Section 150 of the Companies Act, 2013 provides for creation and maintenance of database of Independent Directors. In this regard, the three Professional Institutes, namely, The Institute of Chartered Accountants of India, The Institute of Company Secretaries of India and The

Institute of Cost Accountants of India, under the active encouragement of the Ministry of Corporate Affairs, Government of India have taken a joint initiative and developed a portal namely "Independent Directors Repository". The portal would help to facilitate the individu-

als who are eligible and willing to act as Independent Directors. This will also facilitate Companies to select the persons who are eligible and willing to act as Independent Directors. The portal is now operational and the URL of the portal is <http://independentdirector.in>

CA. K. Raghu, President, The Institute of Chartered Accountants of India, said "ICAI is very happy that this Independent Directors Repository would be really beneficial and it is a big opportunity to the members of the three Professional Institutes and other persons who are eligible and willing to act as Independent Directors. Further, the companies may also be benefited in selecting individuals as independent directors as per their requirement on their board. This endeavour of the three Professional Institutes under the active encouragement of the Ministry of Corporate Affairs, Government of India, is towards implementing the provisions of the Companies Act, 2013. The Independent Directors and the companies would be sharing a common platform which would enable them to meet each other's requirements."

CS. R Sridharan, President, The Institute of Company Secretaries

of India, said "The Companies Act, 2013 provides for creation and maintenance of Independent Directors database. To fulfil this requirement the three Professional Institutes have come together and developed an Independent Directors Repository. This



Repository would be mutually helpful to both, the individuals who are willing to act as independent directors as well the companies to select independent directors for their Board."

CMA Dr A. S. Durgaprasad, President, The Institute of Cost Accountants of India, said "the joint

initiative of the three Professional Institutes in developing the Independent Directors Repository Portal would not only provide a platform to Individuals willing to act as Independent Directors to register themselves but also give access to the large database of professionals to the companies enabling them to select Independent Directors as per their requirement."

For Registering oneself for being appointed as Independent Director one needs to register at <http://independentdirector.in/>. The Companies who want individuals to be appointed as Independent Director in their company can also register here. The Fees for Companies is Rs 99 & for Individuals is Rs 22. The fees paid will be valid for one year only. There is no compulsory that only Members of professional bodies have to apply for the Independent Director position, any Individual can apply.

"Repository would be mutually helpful to both the individuals who are willing to act as independent directors as well as companies."

Company Law Settlement Scheme (CLSS) 2014

Announcement of Company Law Settlement Scheme (CLSS), 2014 vide General Circular No. 34/2014 dated 12th August 2014

One Time Opportunity for Defaulting Companies and Its Directors Companies Who Have Not Filed

Their Annual Reports, Financial Statements and Related Documents Due For Filing on Or Before 30/06/2014 Can File These Documents Before 15/10/2014

And Avail Of The Following

- Pay Only 25% Of Payable Additional Fee, And

- Enjoy Immunity From Prosecution.
- Directors Will Also Not Be Disqualified Under Section 164(2) Of The Companies Act, 2013.



ICAI Clarification on High Court Order on UP VAT

This is with reference to the order passed by the Lucknow Bench of the Allahabad High Court in the matter of Tax Lawyers Association & Anr. v/s State of U.P. & Ors. whereby only registered advo-

cates are permitted to appear before the Authority under the VAT Act in the State of U.P.

The Institute is seized of the matter and taking all steps to ensure that the status quo ante is re-

stored in the matter and interest of the profession is preserved. As a first step, it is proposed to implead ICAI in the aforesaid matter as ICAI is not a party to the said case.





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*Wish u a Happy Ganmashtami
&
Ganesh Chaturthi*

Knowledge to Fight ... Confidence to win

India - Fiji DTAA - Notified

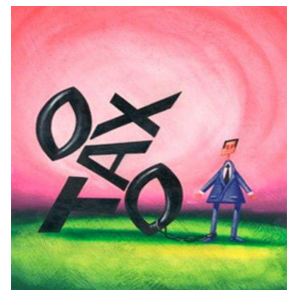
Whereas, an Agreement between the Government of the Republic of India and the Government of the Republic of Fiji for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income was signed in India on the 30th day of January, 2014 (hereinafter referred to as the Agreement);

And whereas, the said Agreement entered into force on the 15th day of May, 2014, being the date of the later of the notifications of the com-

pletion of the procedures required by the respective laws for entry into force of the Agreement, in accordance with paragraph 2 of Article 30 of the Agreement;

And whereas sub-paragraph (a) of paragraph 3 of Article 30 of the said Agreement provides that the provisions of the Agreement shall have effect in India in respect of income derived in any fiscal year beginning on or after the first day of April following the calendar year in which the Agreement enters into force;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies that all the provisions of the said Agreement, as annexed hereto, shall be given effect to in the Union of India.



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