

Volume IV
Issue 8

Connection

December
2015



“We must create a balance between economy and ecology.”

~ Narendra Modi



Lalit Bajaj & Associates
Chartered Accountants

LALIT BAJAJ & ASSOCIATES

JUST TO REMINDE YOU

- Dec 6 - E-
Payment of
Service Tax
- Dec 10 - Sub-
mission of
Excise Return
- Dec 15 - E-
Payment of
PF
- Dec 21 -
Payment of
MVAT
- Dec 31 - Filing
of ROC An-
nual Returns

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Communiqué

Dear Seniors, Friends & Colleagues,

Wishing a very Happy Deepawali and New Year to one and all. Hope everyone had a sparkling deepawali celebration with their dear ones. Deepawali is celebration of joyness happiness and is expressed in the form of lights everywhere. This is a festival where everyone expresses their happiness in the form of lights and which denotes the prosperity and light to venture into new work, new resolution and positive attitude towards everywhere. It depicts that there is light, means path to go ahead. Some one has rightly said that most important thing in life is expression of thoughts and communication. Communication may be in words or gesture but it denotes the personality of the person and how he is putting up their ideas in the commuting with others. Leaders get popularity and recognition because of their communication skills.

Like communication skills clarity of thoughts is also equally most important aspect in everyone life as it brings in clarity in actions to achieve the desired outcome.

Its time to sit and deliberate vision and manifesto of various candidates contesting this year in the Council Elections of the Institute of Chartered Accountants of India. When this edition will be out to the readers, elections will be almost on the head. I would request everyone one to vote to their best candidates as non voting defeats the purpose of democracy and you will be guided by people who voted.

We are glad to inform that CA Lalit Bajaj is contesting the Western India Regional Council Elections of ICAI. CA Lalit Bajaj has positively contributed to the profession and we strongly recommend you to cast your first preference vote in his favour. Kindly also request your friends to cast their first preference vote in his favour and ensure that he is elected to the Regional Council with a thumping majority.

"Regardless of who wins, an election should be a time for optimism and fresh approaches."

~ Gary Jhonson

Wishing you a Merry Christmas and a Happy New Year 2016!

Best Wishes

Team **Connection**

Small Shareholders' Director



“Small shareholder is a shareholder holding shares of nominal value of not more than twenty thousand”



Section 151 read with Rule 7 of Companies Appointment & Qualification of Directors Rules, 2014

Section 151 – Appointment of director elected by small shareholder.

What is ‘small shareholder’?

Explanation of section 151(1) defines ‘small shareholder’ as a shareholder holding shares of nominal value of not more than twenty thousand.

Here person elected by small shareholder as ‘director’ may or may not be a shareholder of a company but a person electing such ‘director’ shall be the ‘small shareholders’.

Subsection (1) states that a listed company ‘may’ have one director elected by such small shareholders in such manner as may be prescribed (i.e. Rule 7).

The term ‘may’ makes it clear that there is no mandatory requirement for a listed company to have a director elected by such small shareholders on its Board.

Rule 7 (Appointment and qualification of directors)

Sub rule (1) – A listed company, may upon a notice of at least 1000 small shareholders or 1/10th of total number of ‘such’ shareholder (i.e. 1/10th of total no. of small shareholders), whichever is lower, have a director elected by the small shareholders.

Proviso to sub rule (1) makes it clear that company may suo-moto appoint a director

representing small shareholders and in such case sub rule (2) shall not apply which is nothing but the procedure for the appointment of person as director by the small shareholders.

Sub rule (2) requires that the small shareholders intending to propose a person as a candidate for the post of small shareholder shall leave a notice of their intention with the company at least 14 days before the meeting under their signatures specifying the name, address, shares held, folio no. of the person whose name is being proposed for the post of director and of the small shareholders who are proposing such person for the office of director.

Proviso to sub rule provides that if the person being proposed does not hold any shares in the company, the details regarding shares held, folio no. need not be specified in the notice. The above proviso makes it clear that the person being proposed need not to be a shareholder of the company.

Sub rule (3) – The notice given under sub rule (2) shall be accompanied by the statement signed by the person whose name is being proposed for the name of small shareholders’ director stating

- His DIN;
- That he is not disqualified to become a director under the Act;
- His consent to act as a director.

Sub rule (4) states that if the director elected by small directors fulfills the criteria of independent director laid down under section 149(6) and gives the declaration of his independence in accordance with section 149(7) then such director shall be considered as independent director. In nutshell, we can say that a small shareholders’ director shall be considered as independent director subject to 2 conditions

- If he fulfills the criteria of independent director specified under section 149(6); and
- If he gives the declaration under section 149(7).

Sub rule (5) – All the provision of section 152 shall apply for the appointment of small shareholders’ director except 3 given below

- Such director shall not be liable to retire by rotation;
- Tenure of such director shall not exceed 3 consecutive years; and
- On the expiry of the tenure, such director shall not be eligible for re-appointment.

Sub rule (6) – A person shall not be appointed as small shareholders’ director if person is not eligible for appointment in terms of section 164.

Sub rule (7) deals with the vacation of office of small shareholders’ director. It

states that a person appointed as small shareholders' director shall vacate the office if

- He incurs any disqualification specified under section 164.
- The office of director becomes vacant in pursuance of section 167.
- The director ceases to meet the criteria of independence as provided under section 149(6).

Language of Clause (c) of sub rule (7) above makes it general that every small shareholder's director shall vacate his office if he ceases to meet the criteria of independent director even if he is not considered as independent director as stated above in sub rule (4). If we assume that clause (c) of sub rule (7) only deals with the small shareholder's director which are considered as independent director then it make sense but if we analyze this a bit more we will find that still there is an uncertainty

which I would like to explain with an example given below- Mr. A is appointed as small shareholders' director of ABC Ltd. By satisfying the condition laid down under sub rule (4) he is considered as independent director. After a while he ceases to meet the criteria of independent director and according to clause (c) of sub rule (7) he has to vacate his office as small shareholders' director but logically he should vacate his office as independent director and continue to hold his office as small shareholders' director.

Under the Companies Act, 2013 there are two classes of independent directors.

1st- Those who are appointed under section 151 as small shareholders' director and fulfill the conditions given under Rule (7) (4) of Appointment and qualifications of director. Tenure of such directors is maximum of 3 years and are not eligible for re-appointment.

2nd- Those who are appointed under section 149(4) as independent directors. Tenure of such director is 5 years and

are eligible for re-appointment for further period of 5 years

Sub rule (8) – No person shall hold office of small shareholders' director in more than 2 companies at same time.

Whereas proviso states that the second company in which he has been appointed shall not be in a business which is competing or is in conflict with the business of first company. However it is important to mention that if a small shareholders' director accepts appointment in any other company which is in competition with the 1st company or he accepts the appointment in more than 2 companies then he does not automatically vacate office as this ground is not mentioned under sub rule (7) although he may be removed on this ground. Sub-rule (9) – After the completion of tenure as a small shareholders' director, such director shall not be appointed or be associated with such company in any other capacity, either directly or indirectly for a period of 3 years.



Board of Directors

Investor Grievance Redressal System

Pursuant to Section 131 of the Finance Act, 2015 and Central Government notification F.No. 1/9/SM/2015 dated August 28, 2015, all recognized associations under the Forward Contracts (Regulation) Act, 1952 are deemed to be recognized stock exchanges under the Securities Contracts (Regulation) Act, 1956 with effect from September 28,

2015. This circular applies to National Commodity Derivatives Exchanges as defined in the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) (Amendment) Regulations, 2015

This circular is issued with an objective to streamline and strengthen the framework of investor redressal and arbitration

mechanism at commodity derivatives exchanges in line with the securities market. The provisions of this circulars are as under :

A. Investor Service Centre (ISC)/ Investor Grievances Redressal Committee (IGRC) :

- The national commodity derivative exchanges shall set up investor service centers (ISC) for



the benefit of the public/investors in accordance with the circular CIR/MRD/DSA/03/2012 dated January 20, 2012.

- The national commodity derivatives exchanges shall constitute IGRC in accordance with the SEBI circular no CIR/MRD/DSA/03/2012 dated January 20, 2012 and shall perform all such functions and responsibilities as stated in the SEBI circular no CIR/MRD/ICC/30/2013 dated September 26, 2013.

B. Arbitration Committee / Panel and Appellate Arbitration:

- The national commodity derivatives exchanges shall maintain panel of arbitrators, code of conduct for arbitrators, arbitration process, appellate arbitration, place of arbitration (nearest address provided by the client in the KYC form), implementation of arbitration award in favour of clients, records and disclosures as per the provisions of SEBI Circulars no CIR/MRD/DSA/24/2010 dated August 11, 2010, CIR/MRD/DSA/04/2012 dated January 20, 2012 and CIR/MRD/ICC/20/2013 dated July 05, 2013.

- The national commodity derivatives exchanges shall make applicable the arbitration fees to each parties to the arbitration in accordance with the SEBI Circular No CIR/MRD/DSA/29/2010 dated August 31, 2010 read with CI R/M RD/1 CC/29/2012 dated November 07, 2012 and CI R/M RD/ICC/29/2013 dated September 26, 2013.

C. Automatic Process and Common Pool of arbitrators :

1. The national commodity derivatives exchanges shall pool all arbitrators of their exchange in the common pool across all national commodity derivatives exchanges, facilitate automatic selection of arbitrators from the common pool and shall also follow all other provisions mentioned in the SEBI Circular CIR/MRD/ICC/8/2013 dated March 18, 2013
2. All the provisions of this circular shall be implemented by national commodity derivatives exchanges latest by April 1, 2016, unless otherwise approved by SEBI.
3. All the provisions of this circular shall be implemented by Forward Markets Commission shall continue to be in force to the extent not modified or repealed by this circular.

5. The implementation of this circular should be reported by the national commodity derivatives exchange to SEBI on monthly basis.

6. The national commodity derivatives exchanges are advised to:

- make necessary amendments to relevant bye-laws for the implementation of this circular
 - bring the provisions of this circular to the notice of the members of the commodity derivatives exchanges and also to disseminate the same through their website
 - take necessary steps to make investors aware of the grievances redressal mechanism and arbitration process.
 - communicate SEBI, the status of implementation of the provisions of this circular
7. The circular is issued in exercise of the powers conferred under section 11(1) of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.



SEBI Guidelines on System Audit

Pursuant to Section 131 of the Finance Act, 2015 and Central Government notification F.No. 1/9/SM/2015 dated August 28, 2015, all recognized associations under the Forward Contracts (Regulation) Act, 1952 are deemed to be recognized stock exchanges under the Securities Contracts (Regulation) Act, 1956 with effect from September 28, 2015. This circular applies to National Commodity Derivatives Exchanges (Exchanges) as de-

finied in the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) (Amendment) Regulations, 2015. While technological developments and innovations bring efficiency to the markets, they may also pose certain risks to the stability and integrity of the markets, if not identified and managed effectively. Further, any events of disaster will disrupt trading systems adversely, thereby impacting the market integrity and the confi-

dence of investors. Exchanges should therefore have robust Business Continuity Plan (BCP) and Disaster Recovery (DR) to ensure continuity of operations. In view of above, the guidelines relating to Annual System Audit, BCP and DR are as follows:

A. Annual System Audit

1. The exchanges shall conduct annual system audit as per the prescribed audit framework which





includes, audit process, auditor selection norms, Terms of Reference (TOR) and audit report guidelines in accordance with SEBI circular no. C I R / M R D / DMS/13/2011 dated November 29, 2011.

II. First Annual System Audit of Exchanges shall be conducted on or before June 30, 2016 for the year 2015-16 as per the provisions of the above mentioned circular. The Systems Audit Report and compliance status should be placed before the governing board of the exchange and communicated to SEBI along with their comments.

B. Business Continuity Plan (BCP) and Disaster Recovery (DR)

I. The exchanges shall have BCP & DR policy in place and implement the broad guidelines regarding the setting up of Disaster Recovery Site (DRS) and Near Site (NS), Configuration of DRS/NS with Primary Data Centre (PDC),

DR drills / Testing, BCP DR policy document as per the provisions of SEBI circular no. CIR/MRD/DMS/12/2012 dated April 13, 2012 read with circular no. CIR/MRD/DMS/17/2012 dated June 22, 2012.

II. The exchanges having DRS / NS shall align their entire set up in accordance with the provisions as mentioned in the circulars at Point B(I) on or before April 01, 2016

III. The exchanges which do not have DRS / NS presently shall set up DRS/NS on or before September 30, 2016 in accordance with the provisions as mentioned in the circulars at Point B(I).

IV. The exchanges shall submit their BCP - DR policy along with detailed plan of action for implementation to SEBI on or before April 01, 2016.

4. The national commodity derivatives exchanges are advised to:-

Make necessary amend-

ments to relevant bye-laws for the implementation of this circular

Communicate SEBI, the status of implementation of the provisions of this circular

5. All the provisions of this circular shall be implemented by national commodity derivatives exchanges, unless otherwise approved by SEBI.

6. The circular is issued in exercise of the powers conferred under section 11(1) of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

Compliance of Law by Commodity Exchanges

1. Pursuant to Section 131 of the Finance Act, 2015 and Central Government Notification O. 2362 (E) dated August 28, 2015, all recognized associations (commodity derivatives exchanges) under the Forward Contracts (Regulation) Act, 1952 ('FCRA') are deemed to be recognized stock exchanges under the Securities Contracts (Regulation) Act, 1956 ('SCRA') with effect from September 28, 2015.

2. Section 131 of the Finance Act, 2015 also stipulates that SEBI may provide such

deemed exchanges, adequate time to comply with the provisions of SCRA and any regulations, rules, guidelines or like instruments made under SCRA. Accordingly, commodity derivatives exchanges shall comply with the provisions of SCRA, applicable provisions of Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012, ('SECC Regulations') and SEBI circular CIR/MRD/DSA/33/2012 dated December 13, 2012, on procedural norms on recognition, owner-

ship and Governance for Stock Exchanges and Clearing Corporation ('SECC Circular').

3. The timelines provided in this circular shall be reckoned from the date of recognized associations under FCRA having been deemed to be recognized stock exchanges under SCRA, i.e. September 28, 2015.

Corporatization and Demutualization:

4. Regional commodity derivatives exchanges shall corporatize and demutualize



within a period of three years in accordance with the provisions contained in section 4B of SCRA. In this regard, regional commodity derivatives exchanges shall submit a scheme for corporatization and demutualization for SEBI approval within a period of two years, as per the procedure laid down in section 4B of SCRA.

Clearing and Settlement:

5. Commodity derivatives exchanges shall transfer the functions of clearing and settlement of trade to a separate clearing corporation within three years. Till then, the exchanges may continue with the existing arrangement for clearing and settlement of trades.

Validity of recognition of Commodity Derivative Exchanges:

6. Validity of recognition of commodity derivatives exchanges under SCRA shall be taken to be the same as the validity of their recognition under FCRA. Further, the renewal of recognition, if any, will be as per SCRA and SECC Regulations.

7. The conditions required to be continuously complied with by recognized stock exchanges as given in Regulation 7(3) of SECC Regulations shall be complied with by national commodity derivative exchanges within one year and by regional commodity derivatives exchanges within three years.

However, commodity derivatives exchanges shall immediately put in place adequate surveillance system to monitor positions, prices and volumes etc. so as to ensure market integrity till online real-time surveillance systems are set up and operationalized.

8. Conditions required to be continuously complied with by recognized clearing corporations given in Regulation 7(4) of SECC Regulations, to the extent applicable, shall be complied with by national

commodity derivatives exchanges within one year and by regional commodity derivatives exchanges within three years.

Regulatory Fee:

9. Commodity derivatives exchanges shall pay the regulatory fee in terms of Securities and Exchange Board of India (Regulatory Fee on Stock Exchanges) Regulations, 2006.

Networth Requirements:

10. Commodity derivatives exchanges shall comply with Regulation 14(1) of SECC Regulations as specified below:

a) Any national commodity derivatives exchange having a networth of less than INR 100 crore, shall achieve a minimum networth of INR 100 crores by May 5, 2017. Further, it shall submit a plan duly approved by its shareholders to SEBI for achieving the networth in terms of Regulation 14 of SECC Regulations, within six months.

b) Any regional commodity derivatives exchange having networth of less than INR 100 crore, shall achieve a minimum networth of INR 100 crores within three years. Further, it shall submit a plan duly approved by its shareholders to SEBI for achieving the networth in terms of regulation 14 of SECC Regulations, within six months.

11. It may be stated that commodity derivative exchanges shall not distribute profits in any manner to its shareholders until the requisite networth of INR 100 crores is achieved in terms of Regulation 14(4) of SECC Regulations.

12. It may also be stated that commodity derivatives exchanges shall submit audited networth certificate from the statutory auditor on an yearly basis by the thirtieth day of September every year for the preceding financial year in terms of Regulation 14(5) of SECC

Regulations. The networth certificate for the financial year ended on 31st March, 2015 shall be submitted by 31st December, 2015.

Ownership:

13. National commodity derivatives exchanges shall comply with the shareholdings limits specified under SECC Regulations, 2012 by May 5, 2019. As per clause 5 of SECC Circular, they shall put in place a monitoring mechanism to ensure compliance with the shareholding restrictions specified in SECC Regulations.

14. Shareholdings of existing shareholders of national commodity derivatives exchanges, whose shareholdings were approved by Forward Markets Commission (FMC), shall not require fresh approval from SEBI. However, any fresh holdings will be governed by the provisions of Regulation 19 of SECC Regulations and SECC Circular.

15. Regulations 20 to 22 of SECC Regulations shall be applicable to national commodity derivative exchange with immediate effect. The format for submitting shareholding pattern to SEBI is annexed to this circular.

16. Regional Commodity Derivatives Exchanges shall comply with the provisions specified in Chapter IV of SECC Regulations within three years.

Governance:

17. Provisions of Regulations 23 to 26 shall be applicable to national commodity derivatives exchanges, subject to the following:

a) Existing Independent Directors on the boards of national commodity derivatives exchanges





“All commodity derivative exchange shall appoint a compliance officer in terms of Regulation 32 of SECC Regulations”

**COMMODITIES
& DERIVATIVES EXCHANGE**

shall be deemed to be Public Interest Directors (PIDs) under SECC Regulations,

b) All existing directors on the governing boards of national commodity derivatives exchanges who are not in compliance with SECC Regulations may be allowed to continue for one year or till completion of their term, whichever is earlier,

c) All new appointments on the governing boards of national commodity derivatives exchanges shall be governed by the provisions of SECC Regulations and SECC

18. National Commodity Derivatives Exchanges shall comply with the provisions of Regulation 27 of SECC Regulations within one year.

19. Regional Commodity Derivatives Exchanges shall comply with the provisions of Regulations 23 to 27 of SECC Regulations within three years.

Segregation of Regulatory Departments:

20. Commodity derivatives exchanges shall segregate their regulatory departments (as indicated in SECC Circular) from other departments in the manner specified in Part C of Schedule II of SECC Regulations within six months.

Oversight Committees:

21. Commodity derivative exchanges shall comply with the requirements of Regulation 29 read with Regulation 44D (1) (b) of SECC Regulations within three months. National commodity derivatives exchanges shall constitute an oversight committee for ‘Product design’, chaired by a Public Interest Director,

within three months.

Advisory Committee and other Statutory Committees:

22. National commodity derivatives exchanges shall constitute Advisory committees in line with Regulation 30 of SECC Regulations, 2012 and statutory committees as specified in SECC Circular within one year.

23. Regional commodity derivatives exchanges shall constitute Advisory committees in line with Regulation 30 of SECC Regulations, 2012 and statutory committees as pre specified scribed in SECC Circular within three

Risk Management Committee:

24. Till the functions of clearing and settlement are transferred to a separate clearing corporation, commodity derivatives exchanges shall comply with provisions of Regulation 31 of SECC Regulations relating to risk management committee. This committee shall be constituted.

Appointment of Compliance Officer:

25. All commodity derivative exchanges shall appoint a compliance officer in terms of Regulation 32 of SECC Regulations.

Transfer of Penalties:

26. National commodity derivative exchanges shall credit all settlement related penalties to their settlement guarantee fund (SGF) and other penalties to Investor Protection Fund (IPF).

27. Regional Commodity Derivatives Exchanges shall credit all penalties to their SGF. On creation of IPF, regional commodity derivatives

exchanges shall credit penalties other than settlement related to their IPF.

Disclosure and Corporate Governance Norms:

28. Regulation 35 of SECC Regulations shall be applicable to national commodity derivative exchanges immediately. Regional commodity derivatives exchanges shall comply with this Regulation within three years.

General Obligations:

29. Till the functions of clearing and settlement are transferred to a separate clearing corporation, commodity derivative exchanges shall comply with the provisions of Regulation 39 of SECC Regulations on Fund to guarantee settlement of trades.

30. The provisions of Regulations 41, 42, 43, 44 and 44A of SECC Regulations to a recognized stock exchange shall be applicable to commodity derivatives exchanges. Additionally, the provisions of Regulations 41, 42, 43, 44 and 44A of SECC Regulations in so far as they pertain to a recognized clearing corporation shall be applicable to commodity derivatives exchanges till the functions of clearing and settlement are transferred to a separate clearing corporation

31. Till the functions of clearing and settlement are transferred to a separate clearing corporation, commodity derivative exchanges shall have right to recover dues from its trading/clearing members arising from the discharge of their clearing and settlement functions from the collaterals, deposits and the assets of the trading/clearing members in line with Regulation 44B of



SECC Regulations.

32. Regulation 44C and 44D of SECC Regulations shall be applicable to commodity derivatives exchanges.

Listing:

33. Regulation 45 of SECC Regulations shall be applicable to commodity derivatives

Dematerialization of Securities:

34. National commodity derivative exchanges shall comply with Regulation 46 of SECC Regulations with respect to holding securities in dematerialized form within six months, and regional commodity derivatives exchanges shall comply with the same within three

35. Commodity derivative exchanges are advised to:-

- a) Make necessary amendments to the relevant rules/ bye-laws/ regulations for the implementation of the above decision;
- b) Bring the provisions of this circular to the notice of their members and also to disseminate the same through their website; and,

c) Communicate to SEBI, the status of implementation of the provisions of this circular in the Monthly / Quarterly Development Reports to SEBI.

36. This circular is issued in exercise of the powers conferred under Regulation 44D (1) and 51 of SECC Regulations read with Section 11 (1) of the Securities and Exchange Board of India Act, 1992 with a view to protect the interests of investors in securities and to promote the development of, and to regulate the securities market and shall come into with immediate effect.

“Swachh Bharat Cess @ 0.5% levied on all taxable services w.e.f. Nov 15”

CBEC Clarification on Swachh Bharat Cess

Swachh Bharat Cess will come into effect from 15th November 2015, at the rate of 0.5% on all services, which are presently liable to service tax. This will translate into a tax of 50 paise only on every one hundred rupees worth of taxable services. The proceeds from this cess will be used for financing and promoting Swachh Bharat initiatives.

Some doubts are being raised with respect to the levy of Swachh Bharat Cess, such as,-

- what would be Swachh Bharat Cess on services where service tax is being paid under the alternative rates of service tax?
- what would be the value of taxable services for computation of Swachh Bharat Cess?
- whether reverse charge mechanism would apply for

the levy of Swachh Bharat Cess?

- what would be the point of taxation for Swachh Bharat Cess ?

In this regard, it is clarified that answers to the above queries are in the provisions of sub-section (5) of Section 119 of the Finance Act, 2015 by which all the provisions of service tax as contained in Chapter V of the Finance Act, 1994 have been made applicable to Swachh Bharat Cess. It is, thus, very clear that all the provisions including those related to computation of taxable value, assessment, exemption, payment, penalty applicable to service tax would also apply in respect of Swachh Bharat Cess.

Service tax is presently levied at alternative rates in respect of service provided by air travel agents, life insurance service,

service in relation to sale/purchase of foreign exchange including money changing and service by lottery distributors/ selling agents, subject to fulfillment of conditions prescribed under the Service Tax Rules. Option has been provided for levy of Swachh Bharat Cess also at alternative rates in respect of the above mentioned services. The alternate rate of Swachh Bharat Cess would be:

Service Tax Liability (at the alternate rate) X 0.5/14.

Also Read Notification No. 25/2015 Dated 12th November 2015 on above

As regards the taxable value for the levy of Swachh Bharat Cess, it would be the same on which service tax is levied. Swachh Bharat





Cess would be calculated on abated value or value arrived at under the Service Tax (Determination of Value) Rules, 2006, as the case may be. For example, the effective Swachh Bharat Cess in respect of services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, having the facility of air-conditioning or central air-heating in any part of the establishment, would be 0.5% of 40% i.e. 0.2%. The cumulative service tax and Swachh Bharat Cess liability would be 5.8% (14.5% of 40%) of the total amount charged.

Also Read Notification No. 23/2015 Dated 12th November 2015 on above

Similarly, a person liable to pay service tax on reverse charge basis would be liable to pay Swachh Bharat Cess also on reverse charge basis. As regards Point of Taxation,

since this levy has come for the first time and all services (except those services which are in the Negative List or are wholly exempt from service tax) are being taxed, it is a new levy, which was not in existence earlier. Rule 5 of Point of Taxation Rules would be applicable in this case. Therefore, in case where payment has been received and invoice is raised before the service becomes taxable, i.e., prior to 15th November, 2015, there is no liability of Swachh Bharat Cess. In case payment has been received before the service became taxable and invoice is raised within 14 days, i.e. upto 29th November, 2015, even then the service tax liability does not arise. Swachh Bharat Cess will be payable on services which are provided on or after 15th Nov, 2015, invoice in respect of which is issued on or after that date

and payment is also received on or after that date. Swachh Bharat Cess will also be payable where service is provided on or after 15th Nov, 2015 but payment is received prior to that date and invoice in respect of such service is not issued by 29th Nov, 2015.

Also Read Notification No. 24/2015 Dated 12th November 2015 on above

Thus, it may be seen that all issues relating to Swachh Bharat Cess are addressed in the Service Tax provisions itself by virtue of the applicability of Chapter V of the Finance Act, 1994 and the rules made thereunder.

Government may bring down Corporate Tax

Government Calls for Comments on Proposed Plan of Phasing-Out Exemptions and Deductions under the Income-Tax Act in Order to Bring Down Rate of Corporate Tax from 30% to 25%

The Union Finance Minister Shri Arun Jaitley in his Budget Speech 2015 had indicated that the rate of Corporate Tax will be reduced from 30% to 25% over the next four years along with corresponding phasing-out of exemptions and deductions. This is a step towards simplification of tax laws, which is expected to bring about transparency and

clarity.

The Government proposes to implement this decision in the following manner:

Profit linked, investment linked and area based deductions will be phased out for both corporate and non-corporate tax payers.

The provisions having a sunset date will not be modified to advance the sunset date. Similarly the sunset dates provided in the Act will not be extended.

In case of tax incentives with no terminal date, a sunset date of 31.3.2017 will be

provided either for commencement of the activity or for claim of benefit depending upon the structure of the relevant provisions of the Act.

There will be no weighted deduction with effect from 01.04.2017.

The details of proposed phasing-out of deductions are available on the website of the Income Tax Department.

Comments on this proposal may be sent to Director (TPL-III) on mail at dirtpl3@nic.in



Lalit Bajaj & Associates

Office No.: 5, Barsana,
Salasar Brij Bhoomi, Near Maxus Mall,
Bhayandar (West), Thane - 401101
Maharashtra, India

Upcoming Office:
525, The Summit Business Bay,
Behind Guru Nanak Petrol Pump,
Near Western Express Highway,
Mumbai - 400069, Maharashtra, India
Phone: +91 - 22 - 28180400
+91 - 22 - 28040048



Innovate Create Lead

MCA - Extension of Due Date

General Circular No. 15/2015 Dated 30/11/2015

In continuation of this Ministry's General Circular 14/2015 dated 28.10.2015, keeping in view requests received from various stakeholders, it has been decided to relax the additional fees payable on e-forms AOC-4, AOC (CFS), AOC-4 XBRL and e-Form MGT-7 upto 30.12.2015, wherever additional fee is applicable.

This issues with the approval of the competent authority.



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