Connection

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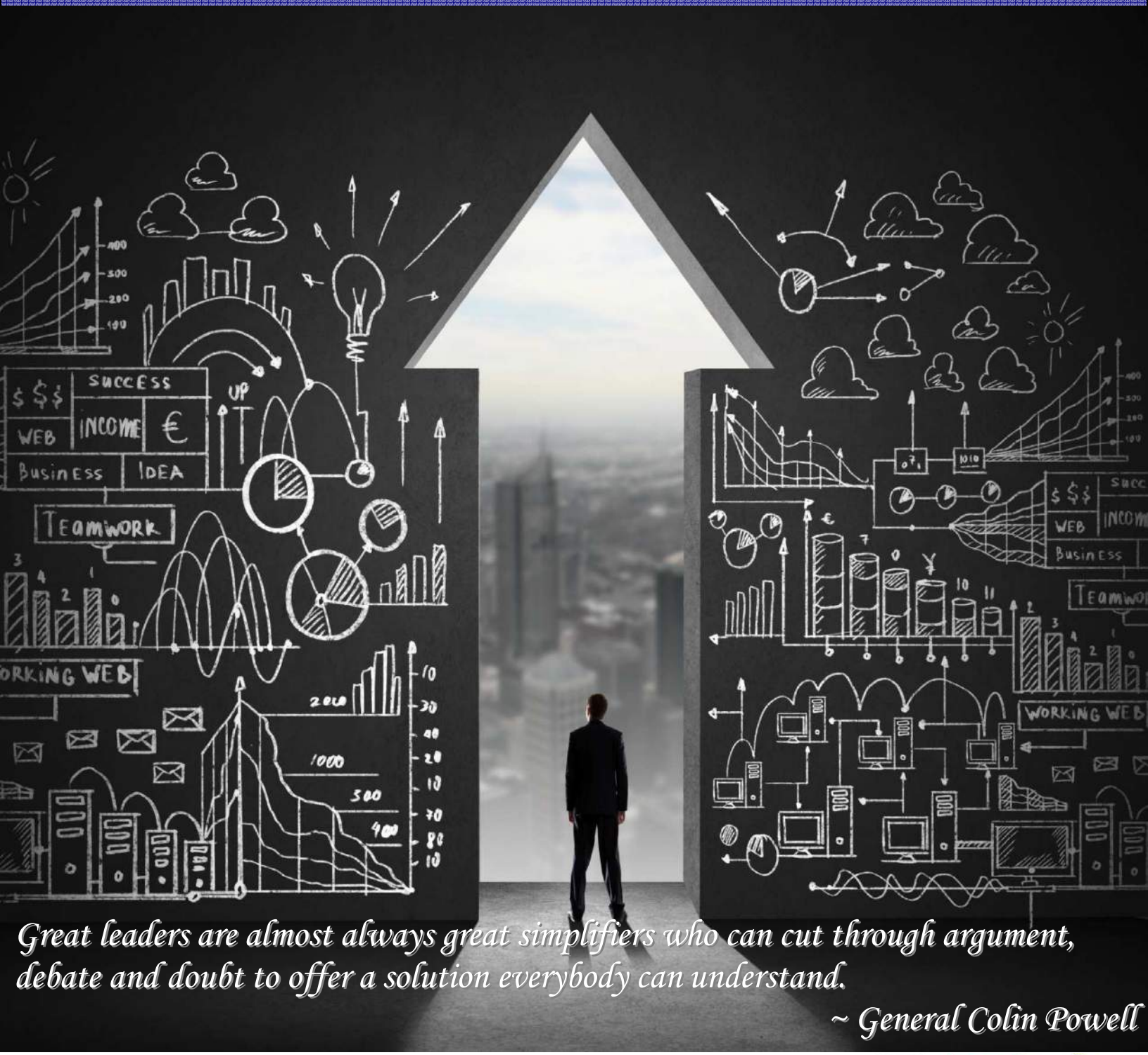

Great leaders are almost always great simplifiers who can cut through argument, debate and doubt to offer a solution everybody can understand.

~ General Colin Powell

Lalit Bajaj & Associates
Chartered Accountants

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JUST TO REMIND YOU

- Jul 7 - TDS Return for June Quarter
- Jul 21 - Payment of MVAT & WCT TDS for June
- Jul 30 - Issue of Quarterly TDS/ TCS Certificate
- Jul 31 - Payment of Monthly Return of Maharashtra PT
- Jul 31 - Filing of Wealth Tax Return

INSIDE THIS ISSUE:

PRIVATE EQUITY AND VENTURE CAPITAL INVESTMENTS IN INDIA

Private equity (PE) and venture capital (VC) investments in India looks poised to hit its highest level ever in a single year if the deal activity since January is anything to go by. Led by early-stage investments, the volume of PE and VC deals in the country has already hit the highest level ever in the first half of any calendar year and almost equalled the aggregate value of investments in the go-go years in the corresponding period, as per data collated by VCCEdge, the data research platform of VCCircle. The total number of PE, VC deals (including angel and seed funding) and debt styled realty PE deals in the first six months of 2015 has hit 553 mark with deals worth US$9.3 billion announced in the January-June period. Add the deal activity announced on July 1, including the US$500 million deal in Atria Convergence, India has already hit almost the previous peak in 2008 when the country saw some 421 deals worth US$10 billion in the first half. If the deal momentum continues through the next six months, India could well equal and even beat the previous record year of 2007 when it registered some 771 deals worth US$21.4 billion. To be fair, not all the money is coming into India. Unlike 2007 when bulk of the money represented primary deals where investors subscribed to fresh securities, a lot of deal activity this year involves secondary transactions. In a secondary transaction, an existing investor sells shares to a new investor. This makes for one of a few exit options for an existing investor. Indeed, the aggregate value this year is also bumped up by an international asset sale by an Indian firm. In a large buyout deal, wind turbine maker Suzlon sold its German arm Senvion to Centerbridge in an over US$1 billion deal.

This is not a pure Indian PE deal/buy-out. From a volume perspective, deal activity has become even more polarised at the early-stage end of the investment cycle. Four of five deals are being signed by VC firms or angel investors. In the 2007-08 period, when VC investments were far less, the deal quotient was led by PE firms which comprised over half of the deals and bulk of the investment value. Here's a snapshot of the deal activity in the first half:

Priavte Equity

There were a total of 104 PE deals with an announced value of US$6 billion in January-June. While the value of deals has risen by a quarter skewed by Senvion buyout, what's worrying is that the number of PE deals has slid by one-third over the year-ago period. This means that the PE firms are backing fewer firms with more money. The sharp rise in benchmark stock market indices (and thereby share prices in general) has pushed up valuation expectation of promoters. Although valuation of larger private companies which attract PE investors is not directly linked to the stock market, it tends to follow the same direction. Sudden spikes in valuations make PE investors cautious in striking deals. This perhaps explains why PE deals are yet to perk up despite positive investment sentiments around India being the fastest growing major economy in the world. The momentary market correction could reignite PE deals going forward. Another factor is rising valuation of startups and PE firms striking VC style investments. Big PE transactions besides those mentioned above include Carlyle committing US$500 million to India-focused oil & gas firm Magna Energy.

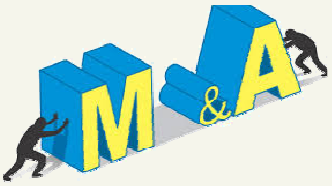
Venture Capital

At the same time, there was a strong momentum in venture capital deals. VC firms inked 200 transactions with an aggregate announced investment value of US$2.3 billion in the first half. This translates

into a big jump with the quantum of VC money rising three times over H1 2014 and number of deals rising 42 per cent in the same period. Some of these deals also involve an international venture where Indian VC firms participated, hence do not necessarily represent deals involving only Indian startups. The jump in value is partly skewed due to a clutch of ten US$50 million plus deals. In the same period last year just two deals where big enough to figure in this bracket. Even as these deals hog the limelight, what is significant is that almost one in three VC deals in India last quarter involved investments of US$10 million or more. Last year in the same period, under one in five could boast of such size. What adds to the buzz in the early-stage investment activity is the spike in angel and seed investments. This rose almost 50 per cent to 230 deals with the aggregate investment amount almost tripling to US$123 million. These investments are critical for the VC firms as this expands the list of startups which get early backing to scale up and join the pool of firms which become possible investment opportunity for VC firms in the future. This shows the maturing startup ecosystem in India. Overall, on an average, an Indian startup gets funding (angel or seed or VC) every 10 hours. Indeed, if we break it down into angel & seed deals and VC deals (pre-Series A and thereon), angel and seed investments have become the single-biggest driver of private capital in the alternative investment industry. Till last year, larger private equity deals were the single-biggest force of private investment deals followed by VC deals and then angel/seed deals. This has turned upside down this year, reflecting the strong momentum of very early-stage investment activity in the country. While on the one hand, this is driven by expansion in angel investment activity, it is also dictated by the surge of new private startup accelerators in the ecosystem.

Mergers & Acquisitions

Mergers & acquisitions (M&A) rose marginally in terms of volume but lack of large oil & gas and infrastructure deals like the previous year, almost halved the announced value of deals in the first half. There were 444 M&A deals worth US$7.9 billion announced in the first half of this year. Like the trend in the recent years, domestic deals continued to dominate with more than half of both transaction numbers and value. The value fell sharply as the deal-street did not see another transaction like Sun Pharma's buy of Ranbaxy. The deal which was completed three months ago, was announced in April 2014. Some significant transactions for this year include Mylan buying a part of Famy Care; Sun Pharma promoter Dilip Shanghvi and family members buying a significant minority stake in debt ridden Suzlon and coming in as co-promoters; and Anil Ambani's Reliance Group coming in as new promoter of Pipavav Defence & Offshore Engineering after pipping other industrial houses to get control of the firm. Notably, the M&A deal value includes the announced open offer size for proposed takeovers or associate deals for listed firms such as Suzlon-Sun Pharma promoters and Reliance-Pipavav. The actual value of such deals may shrink as it is rare for open offers to see full participation by public shareholders. In fact, many see almost zero shares tendered in such open offers. Hence, the M&A deal value stands to be revised downwards in the future.



Foreign Liabilities And Assets (FLA) Return

Which Companies Are Eligible Are Eligible To File FLA Return?

The Annual return of foreign liabilities and assets (FLA) is required to be submitted by all the Indian Companies which have received FDI and /or made FDI abroad in the previous year (S) including the current year i.e. who holds foreign assets or liabilities in their Balance sheets.

What Are the Due Date of Submission of The FLA Return?

FLA return is mandatory under FEMA 1999 and companies are required to submit the same based on audited/ unaudited account by July 15 every year.

What Information Should Be Reported In FLA Return, If Balance Sheet Of The Company Is Not Audited Before The Due Date Of Submission?

If the company's accounts are not audited before the due date of submission i.e. July 15, then the FLA return should be submitted based on unaudited account. Once the accounts get audited and there are revisions from the provisional information submitted by the company, they are supposed to submit the revised FLA return based on audited accounts by end of September.

If a company did not receive FDI or made overseas investment in any of the previous year (s) including the current year, do we need to submit the FLA return?

If the Indian company does not have any outstanding investment in respect of Inward or outward FDI as on end March of reporting year, the company need not submit the FLA return.

If Company has only share application money, and then is that company supposes to submit FLA return?

If a company has received only share application money and does not have any foreign direct investment or overseas direct investment outstanding as of end-March of the reporting year, then that company is not required to fill up FLA return.

If the company has not received any inward FDI / made overseas investment in the latest year, do they need to submit the FLA Return?

If the company has not 'received any fresh FDI and/or ODI (overseas direct investment)' in the latest year but the company has outstanding FDI and/or ODI, then that company is required to submit the FLA Return every year by July 15.

Whether FLA Return is required to be submitted by Registered Partnership Firms (Registered under Partnership Registration Act) or branches or trustees, who have made Overseas Direct Investment or it is mandatory only for Companies (Registered under Companies Act, 1956)?

If the Partnership firms, Branches or Trustees have any outward FDI outstanding as of end-March of the reporting year, then they are required to send a request mail to get a dummy CIN number which will enable them to file the Excel based FLA Return. If any entity has already got the dummy CIN number from the previous survey, they should use the same CIN number in the current survey also.

It is also informed that these dummy CIN numbers are provided by RBI for filling the excel based FLA return only and not for any other purpose.

Is it required to submit Annual Performance Report for ODI, if we have submitted FLA Return?

FLA Return and Annual Performance Report (APR) for ODI are two different returns and monitored by two different departments of RBI. So you are required to submit both the returns if these are applicable for your company.

If non-resident shareholders of a company has transferred their shares to the residents during the reporting period, then whether that company is required to submit the FLA Return?

If all non-resident shareholders of a company has transferred their shares to the residents during the reporting

period and the company does not have any outstanding investment in respect of inward and outward FDI as on end-March of reporting year, then the company need not submit the FLA Return.

If Company issued the shares to Nonresident on non repatriable basis, whether that company is required to submit FLA return?

Shares issued by reporting company to non-resident on Non-Repatriable basis should not be considered as foreign investment; therefore, companies which have issued the shares to non-resident only on Non-Repatriable basis, is not required to submit the FLA Return.

What will be the consequences in case we do not file the said FLA Return by 15th July, as our accounts are not audited as yet, and we do not wish to file it with unaudited figures. Will there be any imposition of penalty or prosecution initiated against the company by RBI or FEMA? Since nowhere it is mentioned either in the Circular No. 145 dated June 18, 2014 or in the Annex to AP (DIR Series) Circular No. 145 about the penalty or the prosecution, so, can we assume that we can file the same once our accounts are audited without any risk of penalty or other proceedings from the concerned authority in future?

Annual return on Foreign Liabilities and Assets has been notified under FEMA 1999 and it is required to be submitted by all the India resident companies which have received FDI and/ or made overseas investment in any of the previous year(s), including current year by July 15 every year. Non-filing of the return before due date will be treated as a violation of FEMA and penalty clause may be invoked for violation of FEMA.

What information should be reported in FLA return, if balance sheet of the company is not audited before the due date of submission?

If the company's accounts are not audited before the due date of submission, i.e. July 15, then the FLA Return should be submitted based on unaudited (provisional) account. Once the accounts gets audited and there are revisions from the provisional information submitted by the company, they are supposed to submit the revised FLA return based on audited accounts by end - September.

In case where Account Closing Period of the company is different from reference period (end-March), can we report the information as per Account Closing Period?

No. Information should be reported for all the reference period, i.e. Previous March and Latest March. If Account Closing Period of the company is different from the reference period, then information should be given for the reference period on internal assessment.

"The due date foe submission of FLA Return is July 15 every year"

CBDT Notifies Dates for Compliance Window under Black Money Act

The Finance Minister, in the budget speech this year, had announced that a comprehensive new law to deal with black money stashed away abroad would be enacted. The Bill to enact the proposed new law was passed by the Parliament in its Budget Session. The Bill received Presidential assent and became law on 26th May, 2015. The Act provides for separate taxation of undisclosed foreign income and assets. Stringent penalties and prosecution, including rigorous imprisonment upto ten years and penalty equal to three times of the tax have been prescribed for violation. The Act also provides a compliance window for a limited period to persons who have undisclosed foreign assets which they have not disclosed for the purposes of Income-tax so far.

The Central Government has

notified the **30th day of September, 2015,** as the date on or before which a person may make a declaration in respect of an undisclosed asset located outside India under the compliance provisions of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 ('Black Money Act').

The last date by which a person must pay the tax and penalty in respect of the undisclosed foreign assets so declared shall be the **31st day of December, 2015.**

Detailed features of the compliance window are notified separately.

Explanatory circular for compliance window under black money act

THE BLACK MONEY (UNDISCLOSED FOREIGN INCOME AND ASSETS) AND IMPOSITION OF TAX ACT, 2015 (referred to here as 'the Act') as passed by the Parliament received the assent of the President on the 26th of May 2015. The Act contains provisions to deal with the menace of black money stashed away abroad. It, inter alia, levies tax on undisclosed assets held abroad by a person who is a resident in India at the rate of 30 percent of the value of such assets, provides for a penalty equal to 90 percent of the value of such asset, and also provides for rigorous imprisonment of three to ten years for wilful attempt to evade tax in relation to a undisclosed foreign income or asset.

2. Considering the stringent nature of the provisions of the new law, Chapter VI of the Act, comprising sections 59 to 72, provides for a one-time compliance opportunity for a limited period to persons who have any foreign assets which have hitherto not been disclosed for the purposes of Income-tax. This circular explains the substance of the provisions of the compliance window provided for in the said Chapter VI of the Act.

Scope of compliance window

3. A declaration under the aforesaid chapter can be made in respect of undisclosed foreign assets of a person who is a resident other than not ordinarily resident in India within the meaning of clause (6) of section 6 of the Income-tax Act.

4. A declaration under the aforesaid Chapter may be made in respect of any undisclosed asset located outside India and acquired from income chargeable to tax under the Income-tax Act for any assessment year prior to the assessment year 2016-17 for which he had, either failed to furnish a return under section 139 of the Income-tax Act, or failed to disclose such income in a return furnished before the date of commencement of the Act, or such income had escaped assessment by reason of the omission or failure on the part of such person to make a return under the Income-tax Act or to disclose fully and truly all material facts necessary for the assessment or otherwise.

Rate of tax and penalty

5. The person making a declaration under the provisions of the chapter would be liable to pay tax at the rate of 30 percent of the value of such undisclosed asset. In addition, he would also be liable to pay penalty at the rate of 100% of such tax (i.e., a further 30% of the value of the asset as on the date of commencement of the Act). Therefore, the declarant would be liable to pay a total of 60 percent of the value of the undisclosed asset declared by him. This special rate of tax and penalty specified in the compliance provisions will override any rate or rates specified under the provisions of the Income-tax Act or the annual Finance Acts.

"The Central Government has notified 30th September 2015 as the last date for making the declaration"

Time limits for declaration and making payment

6. A declaration under the Act can be made anytime on or after the date of commencement of the Act but before a date to be notified by the Central Government. As regards the commencement of the

Act, section 1 provides that the Act shall come into force on the 1st of April, 2016. However, section 3 which specifies the charge of tax, lays down that tax shall be charged for every assessment year commencing on or after the 1st day of April, 2016. Hence, under the Act, tax is also chargeable for assessment year 2016-17 for which the relevant previous year is 2015-16. In exercise of its power to remove difficulties under section 86 of the Act, the Central Government by an order has clarified that the Act shall come in to force on 1st July, 2015. Accordingly, the compliance provisions under Chapter VI shall also come into force with effect from the date of commencement of the Act i.e. 1st of July, 2015.

7. The Central Government has further notified 30th September, 2015 as the last date for making the declaration before the designated Principal Commissioner or Commissioner of Income Tax (PCIT/CIT) and 31st December, 2015 as the last date by which the tax and penalty mentioned in para 5 above shall be paid. Accordingly, a declaration under Chapter VI in Form 6 as prescribed in the Rules may be made at any time before 30.09.2015. After such declaration has been furnished, the designated Principal CIT/ CIT will issue an intimation in the proforma annexed to the Circular to the declarant by 31.10.15 whether any information in respect of the declared asset had been received by the Competent Authority on or before 30th June 2015, under an agreement entered into by the Central Government under section 90 or 90A of the Income-tax Act. Where any such information had been received, the declarant shall file a revised declaration in Form 6 excluding such asset.

The declarant shall not be liable for any consequences under the Act in respect of, any asset which has been duly declared but has been found ineligible for declaration as the Central Government had prior information on such asset. However, such information may be used under the provisions of the Income-tax Act. The revised declaration shall be filed within 15 days of receipt of intimation from the designated Principal Commissioner /Commissioner i.e. if a declarant has received the intimation on 10th October 2015, he can file a revised declaration on or before 25th October, 2015. However, in all cases, the declarant is required to pay the requisite tax and penalty on the assets eligible for declaration latest by 31.12.2015. After the intimation of payment by the declarant, the Principal CIT/CIT will issue an acknowledgement in Form 7 of the accepted declaration within 15 days of such intimation of payment by the declarant.

Form for declaration

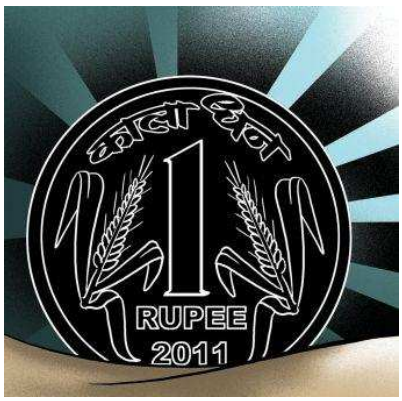
8. As per the Act, declaration under the chapter is to be made in such form and shall be verified in such manner as may be prescribed. The form prescribed for this purpose is Form 6 which has been duly notified.

The declaration may be filed with the Commissioner of Income-tax, Delhi. The declaration may also be filed online on the e-filing website of the Income Tax Department using the digital signature of the declarant.

Declaration not eligible in certain cases

9. As per the provisions of section 71 of the Act no declaration under the compliance window can be made in respect of any undisclosed foreign asset which has been acquired from income chargeable to tax under the Income-tax Act for assessment year 2015-16 or any earlier assessment year in the following cases –

- where a notice under section 142 or section 143(2) or section 148 or section 153A or section 153C of the Income-tax Act has been issued in respect of such assessment year and the proceeding is pending before the Assessing Officer. For the purposes of declaration under section 59 it is clarified that the person will not be eligible under the compliance window if any notice referred above has been served upon the person on or before



30th June 2015 i.e. before the date of commencement of this Act.

In the form of declaration (Form 6) the declarant will verify that no such notice has been received by him on or before 30th June 2015.

- where a search has been conducted under section 132 or requisition has been made under section 132A or a survey has been carried out under section 133A of the Income-tax Act in a previous year and the time for issuance of a notice under section 143 (2) or section 153A or section 153C for the relevant assessment year has not expired. In the form of declaration (Form 6) the declarant will also verify that these facts do not prevail in his case.
- where any information has been received by the competent authority under an agreement entered into by the Central Government under section 90 or section 90A of the Income-tax Act in respect of such undisclosed asset. For the purposes of declaration under section 59 it is clarified that the person will not be eligible under the compliance window if any information referred above has been received by the competent authority on or before 30th June 2015 i.e. before the date of commencement of this Act.

A person in respect of whom proceedings for prosecution of any offence punishable under Chapter IX (offences relating to public servants) or Chapter XVII (offences against property) of the Indian Penal Code or under the Unlawful Activities (Prevention) Act or the Prevention of Corruption Act are pending shall not be eligible to make declaration under Chapter VI.

Circumstances where declaration shall be invalid

10. In the following situations, a declaration shall be void and shall be deemed never to have been made:-

- If the declarant fails to pay the entire amount of tax and penalty within the specified date, i.e., 31.12.2015;
- Where the declaration has been made by misrepresentation or suppression of facts or information.

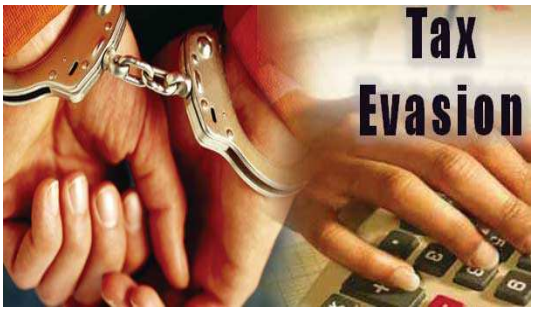
Where the declaration is held to be void for any of the above reasons, it shall be deemed never to have been made and all the provisions of the Act, including penalties and prosecutions, shall apply accordingly.

Any tax or penalty paid in pursuance of the declaration shall, however, not be refundable under any circumstances.

Effect of valid declaration

11. Where a valid declaration as detailed above has been made, the following consequences will follow:

- The amount of undisclosed investment in the asset declared shall not be included in the total income of the declarant under the Income-tax Act for any assessment year;
- The contents of the declaration shall not be admissible in evidence against the declarant in any penalty or prosecution proceedings under the Income-tax Act, the Wealth Tax Act, the Foreign Exchange Management Act, the Companies Act or the Customs Act;
- The value of asset declared in the declaration shall not be chargeable to Wealth Tax for any assessment year or years.
- Declaration of undisclosed foreign asset will not affect the finality of completed assessments. The declarant will not be entitled to claim re-assessment of any earlier year or revision of any order or any benefit or set off or relief in any appeal or proceedings under the Act or under Income-tax Act in respect of declared undisclosed asset located outside India or any tax paid thereon.



CBEC SPECIFIES CONDITIONS FOR MAINTAINING E-RECORDS

The Service Tax Rules, 1994 (**'the Service Tax Rules'**) were amended vide Notification No. 5/2015 – ST dated March 1, 2015 to insert New Rule 4C after Rule 4B thereof. In terms of Rule 4C of the Service Tax Rules, provision for issuing digitally signed invoices, bill or challan has been added along with the option of maintaining of records in electronic form and their authentication by means of digital signatures effective from March 1, 2015.

Corresponding changes were also made in Rule 5 of the Service Tax Rules. Further similar provisions were also incorporated under Rule 10 and 11 of the Central Excise Rules, 2002 vide Notification No. 8/2015 – CE(NT) dated March 1, 2015.

However, it was further provided that the conditions and procedure in this regard shall be specified by the Central Board of Excise and Customs (**"CBEC"** or **"the Board"**).

CBEC specifies conditions, safeguards and procedures:

The CBEC vide **Notification No. 18/2015-CE (NT) dated July 6, 2015** has now specified the conditions, safeguards and procedures for issue of invoices, preserving records in electronic form, authentication of records and invoices by digital signatures, summarised here under for easy digest:

- Use of only Class 2 or Class 3 Digital Signature Certificate duly issued by the Certifying Authority in India;
- Intimating specified details like name, e-mail id etc., of the person authorised, name of the Certifying Authority etc., to the jurisdictional Deputy Commissioner or Assistant Commissioner of Central Excise, at least 15 days in advance;
- Submitting complete details afresh in case of any change in the details already submitted within 15 days of such change;
- Maintaining separate electronic records for each factory or each Service Tax Registration;
- Producing the specified records in electronic form and invoices through e-mail or on a specified storage device in an electronically readable format for verification, on request by the Central Excise Officer;
- The Central Excise Officer, during an enquiry, investigation or audit, in accordance with the provisions of Section 14 of the Central Excise Act, 1944 (as made applicable to Service Tax by virtue of Section 83 of the Finance Act, 1994) may direct an assessee to furnish printouts of the records in electronic form and invoices and may resume printouts of such records and invoices after verification and after signing of print outs by the assessee, if so requested;
- Preservation of appropriate back up of records in electronic form for a period of 5 years.

"Appropriate back up of records in electronic form should be preserved for a period of 5 years"

Detailed manual scrutiny of service tax returns

In the era of self-assessment, the need for a strong compliance verification mechanism cannot be over emphasized. Such a mechanism has three important prongs – audit, anti-evasion and return scrutiny. In order to put in place a strong 'return scrutiny' system, a two-part system of return scrutiny was envisaged- a preliminary scrutiny which would be online covering all the returns; and a detailed manual scrutiny of select returns, identified on the basis of risk parameters, to be done by the Division/ Range offices.

The Board vide Circular No. 113/07/2009-ST dated 23-4-2009 had laid down the procedure for carrying out detailed scrutiny of returns and had circulated a Return Scrutiny Manual for Service Tax. However, with the introduction of the Point of Taxation Rules, 2011, which shifted the liability of payment of service tax from receipt basis to accrual basis, and the advent of negative list-based comprehensive taxation of services in 2012, it was felt that the guidelines for detailed scrutiny of returns needed a revision. In this background, it has been decided that **detailed scrutiny of ST-3 returns, with effect from 01.08.2015**, should be carried out in the manner outlined below:-

PRELIMINARY ONLINE SCRUTINY

The purpose of preliminary scrutiny of returns includes ensuring the completeness of the information furnished in the return, arithmetic correctness of the amount computed as tax and its timely payment, timely submission of the return and identification of non-filers and stop-filers. On the basis of the validation checks incorporated in ACES by the Directorate General of Systems & Data Management (DGS&DM), preliminary scrutiny of all returns is done online in ACES and the returns having certain errors are marked for Review and Correction (RnC). These have to be processed accordingly by the Range Officers.

SCOPE OF DETAILED MANUAL SCRUTINY

The purpose of detailed manual scrutiny of returns is to ensure the correctness of the assessment made by the assessee. This includes checking the taxability of the service, the correctness of the value of taxable services in terms of Section 67 of the Finance Act, 1994, read with the Service Tax (Determination of Value) Rules, 2006 and the effective rate of tax after taking into account the admissibility of an exemption notification, abatement, or exports, if any; ensuring the correct availment/utilization of CENVAT Credit on inputs, capital goods, and input services in terms of the CENVAT Credit Rules, 2004, etc. In doing this, the proper officer must rely mainly on assessment-related documents like agreements/contracts and invoices. Detailed financial records should not be called for in a routine manner.

A detailed scrutiny programme typically supplements the audit programme. The scope of audit, on the other hand, is to inspect the financial records of a company for a complete financial year in order to identify non-compliance issues and to evaluate the assessee's internal control system. The two processes of audit and scrutiny are, in fact, complementary to each other.

SELECTION OF RETURNS FOR DETAILED SCRUTINY

The detailed manual scrutiny programme must replicate some of the best practices in audit. A Return Scrutiny Cell should be created in the Commissionerate's Headquarters. The Return Scrutiny Cell shall maintain the records of the assessees and the returns which are selected for detailed scrutiny and also the results thereof.

The focus of detailed manual scrutiny of the returns would be on the returns of those assessees which are not being audited. The detailed return scrutiny would be conducted in respect of such assessees whose total tax paid (Cash + CENVAT) for the FY 2014-15 is below Rs 50 lakhs. Each Commissionerate has to select equal number of assessees for carrying out returns' scrutiny from each of the these three total tax paid bands (Cash+CENVAT) viz., Rs 0 to Rs 10 lakhs, Rs 10-25 lakhs and Rs 25-50 lakhs for the financial year 2014-15.

The risk parameters and the risk tools which would govern the selection of the returns for detailed manual scrutiny have been developed. The risk scores for the Service Tax returns for the financial year 2014-15 have been calculated. The data has been segregated on the basis of Zone/Commissionerate/Division/Range. The data resides with DGS&DM which will be shared with the Service Tax & Central Excise field formations through secure data exchange in the following manner:-

The risk score files will be placed on a server. Chief Commissioners of Service Tax & Central Excise Zones are required to nominate a 'Zonal Nodal Officer' who shall access these data and distribute the same to the Zonal Commissionerates dealing with Service Tax. The said officer should preferably be of the rank of Additional/Joint Commissioner and should necessarily have an official email id (ICEGATE or NIC email).

The nomination of Zonal Nodal Officers should be informed to the Service Tax Wing, CBEC by email addressed to commr.s1-cbec@nic.in alongwith attaching a scanned copy of the nomination letter. The said communication should contain the nomination by the Chief Commissioner along with the designation, email id, telephone numbers (mobile & land line numbers) of the nominated Nodal Officer.

An email will be sent by DGS&DM to the Zonal Nodal Officer. These Zonal Nodal Officers would need to copy and paste on the internet browser the 'weblink' of the page hosting the folders. They would need to login using the username and password which would be shared with them through a separate email sent on their official email id. They would then need to click on the folder bearing the respective Zone name (available on the left panel) to access the files placed there.

The Return Scrutiny Cell, through an officer authorized by the Commissioner, shall collect the Risk Score data for the Commissionerate from the Zonal Nodal Officer.

The list of returns to be taken up for detailed scrutiny would be finalized by the Additional/Joint Commissioner incharge of Division (or in his absence by the Commissioner) as per the risk score in conjunction with the total tax paid by the assessee, local risk parameters (including sensitive and evasion prone sectors), past compliance record of the assessee and manpower availability. The list of the assessees selected will be sent to the respective Divisions.

The assessees who have been selected for audit or have been audited recently (in the past three years) should not be taken up for detailed scrutiny. However, the Chief Commissioner, may direct detailed manual scrutiny of an assessee's return who has paid service tax (Cash + CENVAT) more than Rs 50 lakhs in certain specific cases. In no event should an assessee be subjected to both audit and detailed manual scrutiny.

All the officers should maintain strict confidentiality regarding the Risk Score data including the original score, further selection by the Commissionerate, etc. Under no circumstances it is to be shared with the assessee or any other authority since this is information available in a fiduciary relationship, pertaining to a third party, and which may entail further investigation.

METHODOLOGY

Detailed scrutiny of returns must be conducted by the Service Tax Range headed by the Superintendent and assisted by a complement of Inspectors. However, the Divisional DC/AC shall be responsible for the overall supervision of this business process in respect of his/her division. Before return scrutiny is initiated, the assessee must be given prior intimation of at least fifteen days and the purpose of the exercise must be spelt out in an **Intimation Letter** in a format given as **Annexure I.** Once an assessee's returns are taken up for detailed

scrutiny, the Range should compile the **Assessee Master Information** to facilitate trend analysis in a format given as **Annexure II.** Since this information is based on the returns, it can be obtained from the returns filed in ACES without making any reference to the assessee. Returns scrutiny must be done for a complete financial year by looking at two half-yearly returns in conjunction. Before scrutinizing the return for evaluating the correctness of assessment, the information available in the assessee master should be carefully studied by the Divisional DC/AC and discussed with his officers, much like Desk Review in Audit. To begin with, the returns for the **financial year 2013-2014** should be taken up for detailed scrutiny.

One of the important objectives of return scrutiny is to ensure validation of the information furnished in the self-assessed ST-3 return. The validation exercise would require reconciling information furnished in the ST-3 return with ITR Form Nos. 4, 5, 6 and 26AS and any third party information made available. In addition to this, the scrutiny exercise must also look at the correctness of self-assessment with respect to taxability, admissibility of abatement and eligibility for exemption, valuation and CENVAT credit availed/utilized.

A **Checklist** has been prepared for carrying out detailed manual scrutiny of selected ST-3 returns (**Annexure III**). For achieving the stated objectives, the checks have been categorized as follows:

- Reconciliation for validation of the information furnished in the ST-3 return;
- Taxability in respect of services which may have escaped assessment;
- Classification (for the purposes of due availment of abatement/exemption benefit);
- Valuation; and
- CENVAT credit availment/utilization.

In case any additional details are required, the same may be obtained from the assessee through requisition rather than through a visit. Calling of such additional documents must be done with the approval of the jurisdictional DC/AC so as to obviate the complaint of administrative intrusion.

Based on the experience of some Zones/Commissionerates, it is seen that in a month an Inspector will be able to perform detailed manual scrutiny of a minimum of three assessees. While some cases may take time, the scrutiny process of an assessee should be completed in a period not exceeding three months.

DOCUMENTATION OF FINDINGS

In order to ensure transparency of the scrutiny process, it is important to document the findings flowing from the scrutiny effort. For this purpose, an Observation Sheet should be prepared. The format of the **observation sheet,** enclosed as **Annexure IV,** bears a one-to-one co-relation with the checklist. The scrutiny officer must record his findings under each of the subject of the checklist namely, reconciliation, taxability, classification, valuation and CENVAT credit. Under each of these heads, the officer should record any action that needs to be taken by the Range. The findings should clearly outline the process of scrutiny that led to the outcome. It is also possible that the officer may come across some issues which may have to be referred to audit or anti-evasion. These should also be noted in the relevant column given in the observation sheet. In cases where detailed scrutiny of returns results in detection of defaults in service tax payment and it appears that the proviso to section 73(1) of the Finance Act, 1994 is invokable, the ST-3 returns of the past periods should also be verified and the results of such verification should be recorded.

All scrutiny findings in a month must be discussed in a **Monthly Scrutiny Monitoring Committee Meeting** headed by the Additional/Joint Commissioner in-charge of the Division (or in his absence by the Commissioner) where each Range should present their scrutiny findings in the form of a **'Scrutiny Report'** given as **Annexure V.** The meeting should be attended by all the Range Inspectors, Superintendents and DC/ACs of the Divisions whose supervisory control is with the said ADC/JC. This would provide an opportunity to the officers from other Ranges to respond to the findings and also share best practices. The views of the committee on the return scrutiny findings must be docu-

mented and follow up action taken. Important issues may be put up to the Commissioner for information. The minutes of the meeting and the decisions including detection and recovery of service tax dues should be properly recorded and maintained by the Scrutiny Cell of the Commissionerate.

Zonal Chief Commissioners are requested to submit monthly reports in the format given in **Annexure VI** to the Directorate General of Service Tax till facilities are developed to enable the Commissionerates to upload the data in the MIS of CBEC.

Based on the past experiences in performing detailed manual scrutiny, a few Templates/Case studies have been prepared and are enclosed as **Annexures VII and VIII**. These Case Studies will help and guide the officers who are not conversant with the process of Detailed Scrutiny.

The timelines to be followed for starting detailed manual scrutiny as per the above detailed process are as below:

Forwarding of official mail ids of the Zonal Nodal Officers by **06.07.2015**

Forwarding of data by DGS&DM by **08.07.2015**

Finalization of the list of the returns of the assessees selected for detailed manual scrutiny and dispatch of the Intimation Letter by 15.07.2015

Commencement of detailed manual scrutiny of selected returns by **01.08.2015.**

Even after the introduction of GST, it may be appreciated that the basic principles of scrutiny of returns and reconciliation of records would remain the same.

COMPANIES ACT, 2013 – EXEMPTION TO PRIVATE COMPANIES

MCA has issued exemption vide Notification dated **05/06/2015** under section 462 of the Companies Act 2013 providing necessary exemptions to private company other than subsidiary of public companies from the provisions of Companies Act, 2013.

Summary of such exemptions to private company other than subsidiary of the Public Companies from the provision of the Companies Act, 2013 is as follows :-

Related Party Transactions

1) Related party

The definition of related parties under Section 2(76)(viii) not to include the following w.r.t a private company:

- Holding Company
- Subsidiary Company
- Associate Company
- Fellow subsidiaries;

2) PARTICIPATION OF INTERESTED DIRECTORS

Section 184(2) to apply on private companies with the exception that interested directors can participate and vote on matters in which they are interested after providing the disclosure of interest.

3) PARTICIPATION OF RELATED SHAREHOLDERS

Second proviso to Section 188(1) **not to apply on private company** which states that no member of the company shall vote on such special resolution, to approve any contract or arrangement which may be entered in to by the company, if such member is a related party.

Accordingly, a member who is a related party can vote on special resolution required to be passed to approve related party transaction.

4) KINDS OF SHARE CAPITAL AND VOTING RIGHTS

Section 43 and 47 of the Act, dealing with kinds of share capital and voting rights respectively, shall not apply to private companies if Memorandum and Articles of Association so provide.

5) RELAXATION IN PROVISIONS OF RIGHT ISSUE

With respect to Section 62, the notification provides that if 90% of members of a private company provide their consent in writing or in electronic mode, then the company can:

- Disregard the limit on time period of offer may be;
- Dispatch notice of a less than 3 days prior to the opening of the issue.

Note: The time limits cannot be increased, they can only be reduced. –

ESOP PROVISION

Further, for ESOP only Ordinary Resolution is required to be passed by the private companies. The words "special resolution", the words "ordinary resolution" shall be substituted. –

6) LENDING AGAINST THE SHARES OF THE COMPANY

Section 67(1) clearly prohibits buy back of shares and lending against its own shares by a company. **The notification provides exemption** to private company from lending against its own shares subject to the following:

- there is no body corporate shareholder in the lending/guaranteeing company;
- the lending company's aggregate borrowings from other bodies corporate or banks or financial institutions is less than to:

  twice of net worth of company; or

  Rs 50 crores

  Whichever is lower;
- Such a company is not in default in repayment of such borrowings subsisting at the time of making transactions under this section.

7) ACCEPTANCE OF DEPOSITS FROM MEMBERS

Earlier Private Limited Company could accept deposits from the Member after follow up the procedure mention under Section 73. –

Now Private Limited Company can accept deposit from the Members upto 100% of aggregate of the paid up share capital and free reserves without the followings:

- Issuance of Circular
- Filing of circular with ROC
- Maintaining deposit repayment reserve
- Providing deposit insurance

8) GENERAL MEETING PROVISIONS (SECTIONS 101 TO 107 AND 109)

If anything else mentioned in AOA then AOA prevail over the section 101-107 & 109.

- Content & Length of Notice (Section 101)
- Explanatory Statement (section 102)
- Quorum (Section 103)
- Chairman (Section 104)
- Proxies (Section 105)
- Restriction on Voting Rights (Section 106)
- Show of Hands & Poll (Sections 107 and 109)

9) FILING OF FORM MGT-14 FOR BOARD RESOLUTIONS (SECTION 117(3)(G))

Now there is NO NEED TO FILE FORM MGT-14 for the purposes of resolutions passed u/s 179(3) read with rule 8 of Companies (Meeting of Board & its power) Rules, 2014 – After a complete year of filing MGT-14 with the MCA, the private companies are now exempt from such filing with respect to board resolutions.

10) RELIEF IN LIMITS OF STATUTORY AUDIT

Earlier Auditor can't be appoint as auditor in more than 20 (Twenty) Companies.

Section 141(3)(g) permitted the audit of 20 companies per partner of an audit firm. Now under the limit of 20 (Twenty) Companies following will not include 2013.

- One person companies;
- Dormant companies;
- Small companies;

d) **Private companies having a paid up share capital of less than 100 crores.**

"Private Limited can accept upto 100% of aggregate of paid up capital and free reserves"

11) CANDIDATURE NOT REQUIRED FOR APPOINTMENT OF DIRECTOR AT GENERAL MEETING

Section 160 dealing with any person other than a retiring director or any member of the company to propose candidature of such person for directorship along with deposit of Rs. 1 lac shall not apply on private company. It means Now there is no need to deposit Rs. 100,000/- by the Director at the time of appointment

12) APPOINTMENT of Directors vide single resolution (Section 162)

Appointment of directors needs not to be voted individually in private company. Accordingly, more than one director can be appointed via single resolution in private company.

13) NO RESTRICTION ON POWERS OF BOARD

Section 180 of the Act has been finally aligned with its corresponding section of the erstwhile Act, 1956, i.e., Section 293. The Board of private companies shall now be free to address and decide upon matters mentioned under Section 180 and the requirement for shareholders' approval has been dispensed with.

Following are the matters are prescribed under Section 180:

- Selling, leasing or otherwise disposing whole or substantially the whole of undertaking of the company;
- Investing the compensation amount received by it as a result of any merger or amalgamation;
- Borrowing money in excess of its paid up capital and free reserves;
- Remitting or giving time for repayment of any debt due from a director.

14) RELAXATION IN LOAN TO DIRECTORS

Loan to directors under Section 185 are allowed for private company if it fulfills the below mentioned conditions:

- Body Corporate should not be Shareholder
- Not borrowed money from Bank/ Financial Institution/ Body Corporate exceeding lower of the following:-

  Twice it's paid up capital

  Rs. 50 crores
- No repayment default subsisting of such borrowings at time of giving loan.

15) Appointment of MD, WTD and Manager

Now there is no need to Pass Resolution in General Meeting for appointment of Managerial Personnel and no need to file form MR-1. Managerial Personnel can be appointed in Private limited Company without:

- Shareholders' ratification;
- Schedule V not applicable.
- Filing of MR-1 with ROC;
- No need to mention Terms & Conditions of appointment and remuneration in the resolution.

CHARGE UNDER COMPANIES ACT 2013

What is a Charge?

A charge is a right created by any person including a company referred to as "the borrower" on its assets and properties, present and future, in favour of a financial institution or a bank, referred to as "the lender", which has agreed to extend financial assistance Section 2(16) of the Companies Act, 2013 defines charges so as to mean an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage.

The following are the essential features of the charge which are as under:

- There should be two parties to the transaction, the creator of the charge and the charge holder.
- The subject-matter of charge, which may be current or future assets and other properties of the borrower.

- The intention of the borrower to offer one or more of its specific assets or properties as security for repayment of the borrowed

money together with payment of interest at the agreed rate should be manifested by an agreement entered into by him in favour of the lender, written or otherwise. A charge may be fixed or floating depending upon its nature.

Need for creating a charge on company's assets:

Almost all the large and small companies depend upon share capital and borrowed capital for financing their projects. Borrowed capital may consist of funds raised by issuing debentures, which may be secured or unsecured, or by obtaining financial assistance from financial institution or banks.

The financial institutions/banks do not lend their moneys unless they are sure that their funds are safe and they would be repaid as per agreed repayment schedule along with payment of interest. In order to secure their loans they resort to creating right in the assets and properties of the borrowing companies, which is known as a charge on assets. This is done by executing loan agreements, hypothecation agreements, mortgage deeds and other similar documents, which the borrowing company is required to execute in favour of the lending institutions/ banks etc.

As a matter of convenience and practice, as and when more funds are required by companies, they approach the same institutions/banks or certain new institutions/ banks and offer same assets as security for fresh loans. However, when the same assets are charged for a second and subsequent time, a very important question arises as to priority in respect of the charges in favour of different institutions. This situation is managed by securing consent of the earlier lending institutions to the creation of second and subsequent charges on the same assets. With their consents, the charge of all the lending institutions ranks paripassu, i.e. on the same footing.

However, the earlier lending institution may not give its consent to the creation of second charge on the ground that the realizable value of the asset charged in its favour is not adequate to cover its loan and as such it cannot share its right of charge with the lending institutions which seek second and subsequent charges.

Duty to register charge:

Primarily, under section 77 of the Companies Act, 2013 every company creating a charge shall register the particulars of charge signed by the company and its charge – holder together with the instruments creating.

Important points in the Act relating to charge creation:

Any charge created within or outside India on property or assets or any of the company's undertakings whether tangible or otherwise, situated in or outside India shall be registered.

Hence all types of charges are required under the Act to be registered whether created within or outside India.

Time limit for registration of a Charge:

A charge created by a company is required to be registered with the Registrar within thirty days of its creation in such form and on payment of such fees as may be prescribed. According to Companies (Registration of Charges) Rules, 2014 e-forms prescribed for the purpose of creating or modifying the charge is Form No. CHG-1 (for other than Debentures) or Form No. CHG-9 (for debentures including rectification). Condonation of delay by Registrar: The Registrar may on an application by the company allow registration of charge within three hundred days of creation or modification of charge on payment of additional fee.

The Registrar may, on being satisfied that the company had sufficient cause for not filing the particulars and instrument of charge, if any, within a period of thirty days of the date of creation of the charge, allow the registration of the same after thirty days but within a period of three hundred days of the date of such creation of charge or modification of charge on payment of additional fee. The application for delay shall be made in Form No. CHG-10 and supported by a declaration from the company signed by its secretary or director that such belated filing shall not adversely affect rights of any other intervening creditors of the company.

Condonation of delay by the Central Government:

If company fails to register the charge even within this period of three hundred days, it may seek extension of time in accordance with Section 87 from the Central Government. The same has been discussed later in this chapter.

Application for registration of charge by the charge-holder:

According to Section 78 where a company fails to register the charge within the period specified above, the person in whose favour the charge is created may apply to the Registrar for registration of the charge along with the instrument created for the charge in Form No.CHG-1 or Form No. CHG-9, as the case may be, duly signed along with fee. The registrar may, on such application, give notice to the company about such application. The company may either itself register the charge or shows sufficient cause why such charge should not be registered.

On failure on part of the company, the Registrar may allow registration of such charge within fourteen days after giving notice to the company shall allow such registration.

Where registration is affected on application of the person in whose favour the charge is created, that person shall be entitled to recover from the company, the amount of any fee or additional fees paid by him to the Registrar for the purpose of registration of charge.

Certificate of registration of charge:

Where a charge is registered with the Registrar, Registrar shall issue a certificate of registration of charge in Form No. CHG-2 and for registration of modification of charge in Form No. CHG-3 to the company and to the person in whose favour the charge is created. The certificate issued by the Registrar whether in case of registration of charge or registration of modification, shall be conclusive evidence that the requirements of Chapter VI of the Act (Registration of Charges) and the rules made there under as to registration of creation or modification of charge, as the case may be, have been complied with.

Further the Act provides that no charge created by the company shall be taken into account by the liquidator or any other creditor unless it is duly registered and a certificate of registration is given by the Registrar. However, this does not prejudice any contract or obligation for the repayment of the money secured by a charge.

Notice of charge:

According to section 80, where any charge on any property or assets of a company or any of its undertakings is registered under section 77, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration. The section clarifies that if any person acquires a property, assets or undertaking for which a charge is already registered, it would be deemed that he has complete knowledge of charge from the date the charge is registered.

Register of charges maintained in ROC's office:

In accordance with section 81 and the rules the Registrar of Companies shall maintain a register containing particulars of the charges registered in respect of every company. The particulars of charges maintained on the Ministry of Corporate Affairs portal (www.mca.gov.in/MCA21) shall be deemed to be the register of charges for the purposes of section 81 of the Act. This charge register shall be open to inspection by any person on payment of fee for each inspection.

Intimation of appointment of receiver or manager:

Section 84 provides that if any person obtains an order for the appointment of a receiver of, or of a person to manage, the property, subject to a charge, of a company or if any person ap-

Ministry of Corporate Affairs

points such receiver or person under any power contained in any instrument, he shall, within a period of thirty

days from the date of the passing of the order or of the making of the appointment, give notice of such appointment to the company and the Registrar along with a copy of the order or instrument and the Registrar shall, on payment of the prescribed fees, register particulars of the receiver, person or instrument in the register of charges. Any person so appointed shall, on ceasing to hold such appointment, give to the company and the Registrar a notice to that effect and the Registrar shall register such notice. The notice of appointment or cessation of a receiver of, or of a person to manage, the property, subject to charge, of a company shall be filed with the Registrar in Form No. CHG.6 along with fee.

Company's register of charges:

Section 85 provides that every company shall keep at its registered office a register of charges in Form No. CHG.7 which shall include therein all charges and floating charges affecting any property or assets of the company or any of its undertakings, indicating in each case such particulars as may be prescribed.

The entries in the register of charges maintained by the company shall be made forthwith after the creation, modification or satisfaction of charge, as the case may be. Such register of charges shall contain the particulars of all the charges registered with the Registrar on any of the property, assets or undertaking of the company and the particulars of any property acquired subject to a charge as well as particulars of any modification of a charge and satisfaction of charge.

All the entries in the register shall be authenticated by a director or the secretary of the company or any other person authorized by the Board for the purpose. The register of charges shall be preserved permanently and the instrument creating a charge or modification thereon shall be preserved for a period of eight years from the date of satisfaction of charge by the company. A copy of the instrument creating the charge shall also be kept at the registered office of the company along with the register of charges.

Inspection of Charges:

The register of charges and instrument of charges shall be kept open for inspection during business hours by members, creditors or any other person subject to reasonable restriction as the company by its article imposes. The register of charges and the instrument of charges kept by the company shall be open for inspection- (a) by any member or creditor of the company without fees; (b) by any other person on payment of fee.

Rectification by central government in register of charges/condonation of delay (section 87):

The Central Government on being satisfied that—

- a. the omission to file with the Registrar the particulars of any charge created by a company or any charge subject to which any property has been acquired by a company or any modification of such charge; or

  b. the omission to register any charge within the time required under this Chapter or the omission to give intimation to the Registrar of the payment or the satisfaction of a charge, within the time required under this Chapter; or

  c. the omission or mis-statement of any particular with respect to any such charge or modification or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83,was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company; or

- on any other grounds, it is just and equitable to grant relief, it may on the application of the company or any person interested and on such terms and conditions as it may seem to the Central Government just and expedient, direct that the time for the filing of the particulars or for the registration of the charge or for the giving of intimation of payment or satisfaction shall be extended or, as the case may require, that the omission or mis-statement shall be rectified.

Where the instrument creating or modifying a charge is not filed within a period of three hundred days from the date of its creation (including acquisition of a property subject to a charge) or modification and where the satisfaction of the charge is not filed within thirty days from the date on which such payment of satisfaction, the Registrar shall not register the same unless the delay is condoned by the Central Government.

The section implies that the Central Government has power to condone delay beyond a period of three hundred days. This section empowers Central Government to condone delay for registration of modification of particulars of any charge and for filing of intimation for satisfaction of charges. Further this section empowers central Government to rectify the omission or misstatement in register of charges. The application may be filed by the company or any other person interested with the Central Government in Form No.CHG-8 along with the fee Where the Central Government extends the time for the registration of a charge, the order shall not prejudice any rights acquired in respect of the property concerned before the charge is actually registered.

The order passed by the Central Government under subsection (1) of section 87 of the Act shall be required to be filed with the Registrar in Form No.INC.28 along with the fee as per the conditions stipulated in the said order.

Consequences of non-registration of charge:

According to Section 77 of the Companies Act, 1956, all types of charges created by a company are to be registered by the ROC, where they are noncompliant and are not filed with the Registrar of Companies for registration; it shall be void as against the liquidator and any other creditor of the company. This does not, however, mean that the charge is altogether void and the debt is not recoverable. So long as the company does not go into liquidation, the charge is good and may be enforced. Void against the liquidator means that the liquidator on winding up of the company can ignore the charge and can treat the concerned creditor as unsecured creditor. The property will be treated as free of charge i.e. the creditor cannot sell the property to recover its dues.

Void against any creditor of the company means that if any subsequent charge is created on the same property and the earlier charge is not registered, the earlier charge would have no consequence and the latter charge if registered would enjoy priority. In other words, the latter charge holder can have the property sold in order to recover its money.

Thus, non-filing of particulars of a charge does not invalidate the charge against the company as a going concern. It is void only against the liquidator and the creditors at the time of liquidation. The company itself cannot have a cause of action arising out of non-registration.

Particulars of charges:

The following particulars in respect of each charge are required to be filed with the Registrar:

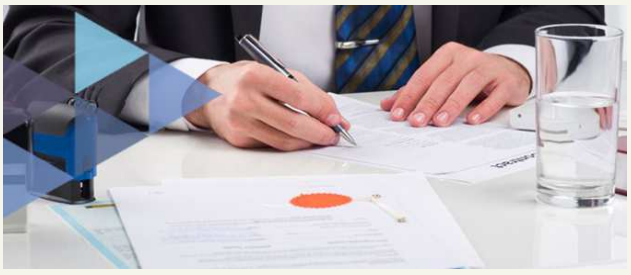
- Date and description of instrument creating charge;
- Total amount secured by the charge;
- Date of the resolution authorizing the creation of the charge; (in case of issue of secured debentures only);
- General description of the property charged;
- A copy of the deed/instrument containing the charge duly certified or if there is no such deed, any other document evidencing the creation of the charge to be enclosed;
- List of the terms and conditions of the loan; and
- Name and address of the charge holder.

Procedure for registration of creation/ modification satisfaction of charge:

If a company has passed special resolutions under Section 180(3)(c) of the Companies Act, 2013, authorizing its Board of directors to borrow funds for the requirements of the company and under Section 180(1)(a) of the Companies Act, 2013, authorizing its Board of directors to create charge on the assets and properties of the company to provide security for repayment of the borrowings in favour of the financial institutions/banks or lenders and in exercise of that authority has signed the loan documents and now proposes to have the charge, created by it registration with the ROC, should follow the procedure detailed below:

- Where the special resolution is passed as required under section 180 of the Companies Act, 2013, form MGT14 of the Companies (Management and Administration) Rules, 2014 is to be files with the registrar.
- According to section 77 of the Companies Act, 2013 every company creating any charge created within or outside India on property or assets or any of the company' sunder takings whether tangible or otherwise, situated in or outside India shall have to be registered., For the purpose of creating/modifying a charge file particulars of the charge with the concerned Registrar of Companies within thirty days of creating the Form No. CHG -1 (for other than Debentures) or Form No. CHG - 9 (for debentures including rectification), as the case may be.
- Attach the following documents with e-form No. CHG- 9/ CHG -1: A certified true copy of every instrument evidencing any creation or modification of charge. In case of joint charge and consortium finance, particulars of other chargeholders. Instrument(s) evidencing creation or modification of charge in case of acquisition of property which is already subject to charge together with the instrument evidencing such acquisitions
- Payment of fees can be made online in accordance with Annexure 'B' of Companies (Registration offices and fees) Rules, 2014. Electronic payments through internet can be made either by credit card or by internet banking facility.
- If the particulars of charge cannot be filed within thirty days due to unavoidable reasons, then it may be filed within three hundred days of such creation after payment of such additional fee as prescribed in with Annexure 'B' of Companies (Registration offices and fees) Rules, 2014.
- Such application for delay to the registrar shall be made in Form No.CHG-10 and supported by a declaration from the company signed by its secretary or director that such belated filing shall not adversely affect rights of any other intervening creditors of the company.
- Verification of every instrument evidencing any creation or modification of charge, where the instrument or deed relates solely to the property situated outside India, the copy shall be verified by a certificate issued either under the seal of the company, or under the hand of any director or company secretary of the company or an authorized officer of the charge holder or under the hand of some person other than the company who is interested in the mortgage or charge.
- Verification of every instrument evidencing any creation or modification of charge, where the instrument or deed relates, whether wholly or partly, to the property situated in India, the copy shall be verified by a certificate issued under the hand of any director or company secretary of the company or an authorized officer of the charge holder.
- Where a charge is registered with the Registrar obtain a certificate of registration of such charge in Form No. CHG-2. Where the particulars of modification of charge are registered the Registrar shall issue a certificate of modification of charge in Form No. CHG-3.

- A company shall within a period of thirty days from the date of the payment or satisfaction in full of any charge registered, give intimation of the same to the Registrar in Form No.CHG-4 along with the fee as prescribed in with Annexure 'B' of Companies (Registration offices and fees) Rules, 2014.
- Where the Registrar enters a memorandum of satisfaction of charge in full obtain a certificate of registration of satisfaction of charge in Form No.CHG-5.
- Incorporate changes in relation to creation, modification and satisfaction of charge in the register of charges maintained by the company in Form No. CHG.7 and enter therein particulars of all the charges registered with the Registrar on any of the property, assets or undertaking of the company and the particulars of any property acquired subject to a charge as well as particulars of any modification of a charge and satisfaction of charge. Such register is to be kept at its registered office of the company.
- All the entries in the register shall be authenticated by a director or the secretary of the company or any other person authorized by the Board for the purpose.
- The register of charges shall be preserved permanently and the instrument creating a charge or modification thereon shall be preserved for a period of eight years from the date of satisfaction of charge by the company.
- Where the satisfaction of the charge is not filed with the Registrar within thirty days from the date on such payment of satisfaction, an application for condonation of delay shall be filed with the Central Government in Form No. CHG-8 along with the fee as prescribed in with Annexure 'B' of Companies (Registration offices and fees) Rules, 2014.
- Where the instrument creating or modifying a charge is not filed with the Registrar within a period of three hundred days from the date of its creation (including acquisition of a property subject to a charge) or modification an application for condonation of delay shall be filed with the Central Government in Form No. CHG-8 along with the fee as prescribed in with Annexure 'B' of Companies (Registration offices and fees) Rules, 2014.
- The order passed by the Central Government shall be required to be filed with the Registrar in Form No.INC.28 along with the fee as per the conditions stipulated in the said order.
- For all other matters other than condonation of delay, application shall be made to the Central government in Form No.CHG-8 along with the fee.



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CLARIFICATION ON GENERAL AMNESTY SCHEME

In regard to the General Amnesty Scheme for retrospective restoration of membership which was extended upto 15th May, 2015 vide Announcement dated 5th May, 2015 on the website of the Institute, it is hereby clarified that under the said amnesty scheme, the names of only those members would be included in the List of Members as on 1.4.2015 whose application for restoration of membership/enrolment as a new member along with the prescribed fee was received in the office of the Institute on or before 1.4.2015.