Volume VII, Issue 4 July 2018

Connection

If we want to improve, we have to embrace discomfort
~ Gaur Gopal Das

L L B & C O .

CBDT amends Place of Effective Management (PoEM) rules wef 01.04.2017

JUST TO REMIND YOU

- Jul 31 - TDS Return for June Quarter
- Jul 31 - Monthly Payment & Return Maharashtra PT
- Jul 31 - Filing of IT Return (without Audit)
- Jul 31 - GSTR1 Apr-June

INSIDE THIS ISSUE:

In exercise of the powers conferred by sub-section (1) of section 115JH of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the Act), the Central Government hereby notifies that,—

A. in a case where a foreign company is said to be resident in India on account of its Place of Effective Management (hereinafter referred to as POEM) being in India under sub-section (3) of section 6 of the Act in any previous year and such foreign company has not been resident in India in any of the previous years preceding the said previous year, then, notwithstanding anything contained in the Act, the provisions of the Act relating to the computation of total income, treatment of unabsorbed depreciation, set off or carry forward and set off of losses, collection and recovery and special provisions relating to avoidance of tax shall apply to the foreign company for the said previous year with exceptions, modifications and adaptations specified here under:

(i) If the foreign company is assessed to tax in the foreign jurisdiction, and,—

(a) where it is required to take into account depreciation for the purpose of computation of its taxable income, the written down value (hereinafter referred to as WDV) of the depreciable asset as per the tax record in the foreign country on the 1st day of the previous year shall be adopted as the opening WDV for the said previous year,

(b) in cases not covered by (a), the WDV shall be calculated in the manner, as though the asset was installed, utilised and the depreciation was actually allowed as per the provisions of the laws of that foreign jurisdiction and the WDV so arrived at as on the 1st day of the previous year, shall be adopted to be the opening WDV for the said previous year.

(ii) If the foreign company is not assessed to tax in the foreign jurisdiction, then WDV of the depreciable asset as appearing in the books of account as on the 1st day of the previous year maintained in accordance with the laws of that foreign jurisdiction shall be adopted as the opening WDV for the said previous year.

(iii) If the foreign company is assessed to tax in the foreign jurisdiction, its brought forward loss and unabsorbed depreciation as per the tax record shall be determined year wise on the 1st day of the said previous year.

(iv) If the foreign company is not assessed to tax in the foreign jurisdiction, its brought forward loss and unabsorbed depreciation as per the books of account prepared in accordance with the laws of that

country shall be determined year wise on the 1st day of the said previous year.

(v) The brought forward loss and unabsorbed depreciation of the foreign company as arrived at paras (iii) or (iv), as the case may be, shall be deemed as loss and unabsorbed depreciation brought forward as on the 1st day of the said previous year and shall be allowed to be set off and carried forward in accordance with the provisions of the Act for the remaining period calculated from the year in which they occurred for the first time taking that year as the first year.

Provided that the losses and unabsorbed depreciation of the foreign company shall be allowed to be set off only against such income of the foreign company which have become chargeable to tax in India on account of it becoming Indian resident.

(vi) In cases where the brought forward loss and unabsorbed depreciation referred to in para (iii) or (iv), as the case may be, originally adopted in India are revised or modified in the foreign jurisdiction due to

any action of the tax or legal authority, the amount of the loss and unabsorbed depreciation shall be revised or modified for the purposes of set off and carry forward as referred to in para (v).

(vii) In cases where the accounting year does not end on 31st March, the foreign company shall be required to prepare profit and loss account and balance sheet for the period starting from the date on which the accounting year immediately following said accounting year begins, upto 31st March of the year immediately preceding the period beginning with 1st April and ending on 31st March during which the foreign company has become resident. The foreign company shall also be required to prepare profit and loss account and balance sheet for succeeding periods of twelve months, beginning from 1st April and ending on 31st March, till the year the foreign company remains resident in India on account of its PoEM.

(viii) For the purpose of carry forward of loss and unabsorbed depreciation in cases where the accounting year followed by the foreign company does not end on 31st March and the period starting from the date on which immediately following year begins upto 31st March of the year, immediately preceding the period beginning with 1st April and ending on 31st March during which it has become resident, is,

(a) less than six months, it shall be included in that accounting year;

(b) equal to or more than six months, that period shall be treated as a separate accounting year.

Thus, if the accounting year followed by the foreign company is calendar year, the accounting year immediately preceding the accounting year in which the foreign company is held to be resident in India, shall be increased by three months, i.e., 1st January to 31st March; and if the accounting year followed by the foreign company is from 1st July to 30th June, the accounting year immediately preceding the accounting year in which the foreign company is held to be resident in India, shall be of nine months from 1st July to 31st March.

(ix) In cases covered under para (viii), loss and unabsorbed depreciation as per tax record or books of account, as the case may be, of the foreign company shall, be allocated on proportionate basis.

(x) Where more than one provision of Chapter XVII-B of the Act applies to the foreign company as resident as well as foreign company, the provision applicable to the foreign company alone shall apply.

(xi) Compliance to those provisions of Chapter XVI I-B of the Act as are applicable to the foreign company prior to its becoming Indian resident shall be considered sufficient compliance to the provisions of said Chapter.

(xii) The provisions contained in sub-section (2) of section 195 of the Act shall apply in such manner so as to include payment to the foreign company.

(xiii) The foreign company shall be entitled to relief or deduction of taxes paid in accordance with the provisions of section 90 or section 91 of the Act.

(xiv) In a case where income on which foreign tax has been paid or deducted, is offered to tax in more than one year, credit of foreign tax shall be allowed across those years in the same proportion in which the income is offered to tax or assessed to tax in India in respect of the income to which it relates and shall be in accordance with the provisions of rule 128 of the Income-tax Rules, 1962.

Explanation.— For the purposes of this notification,—

(i) the term “Foreign jurisdiction” would mean the place of incorporation of the foreign company.

(ii) the rate of exchange for conversion into rupees of value expressed in foreign currency, wherever applicable, shall be in accordance with provision of rule 115 of the Income-tax Rules, 1962.

B. the exceptions, modifications and adaptations referred to in para A shall not apply in respect of such income of the foreign company becoming Indian resident on account of its PoEM being in

India which would have been chargeable to tax in India, even if the foreign company had not become Indian resident.

C. in a case where the foreign company is said to be resident in India during a previous year, immediately succeeding a previous year during which it is said to be resident in India; the exceptions, modifications and adaptations referred to in para A shall apply to the said previous year subject to the condition that the WDV, the brought forward loss and the unabsorbed depreciation to be adopted on the 1st day of the previous year shall be those which have been arrived at on the last day of the preceding previous year in accordance with the provisions of this notification.

D. any transaction of the foreign company with any other person or entity under the Act shall not be altered only on the ground that the foreign company has become Indian resident.

E. subject to the above, the foreign company shall continue to be treated as a foreign company even if it is said to be resident in India and all the provisions of the Act shall apply accordingly. Consequently, the provisions specifically applicable to,—

(i) a foreign company, shall continue to apply to it;

(ii) non-resident persons, shall not apply to it; and

(iii) the provisions specifically applicable to resident, shall apply to it.

F. in case of conflict between the provision applicable to the foreign company as resident and the provision applicable to it as foreign company, the later shall generally prevail. Therefore, the rate of tax in case of foreign company shall remain the same, i.e., rate of income-tax applicable to the foreign company even though residency status of the foreign company changes from non-resident to resident on the basis of POEM.

2. This notification shall be deemed to have come into force from the 1st day of April, 2017.

CBDT INCREASES APPEAL FILING LIMIT

Reference is invited to Board's **Circular No. 21 of 2015 dated 10.12.2015** wherein monetary limits and other conditions for filing departmental appeals (in Income-tax matters) before Income Tax Appellate Tribunal, High Courts and SLPs/ appeals before Supreme Court were specified.

2. In **supersession** of the above Circular, it has been decided by the Board that departmental appeals may be filed on merits before Income Tax Appellate Tribunal and High Courts and SLPs/ appeals before Supreme Court keeping in view the monetary limits and conditions specified below.

3. Henceforth, appeals/ SLPs shall not be filed in cases where the tax effect does not exceed the monetary limits given hereunder:

- Before Appellate Tribunal - 20,00,000
- Before High Court - 50,00,000
- Before Supreme Court - 1,00,00,000

It is clarified that an appeal should not be filed merely because the tax effect in a case exceeds the monetary limits prescribed above. Filing of appeal in such cases is to be decided **on merits** of the case.

4. For this purpose, tax effect' means the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of the issues against which appeal is intended to be filed (hereinafter referred to as 'disputed issues'). **Further, 'tax effect' shall be tax including applicable surcharge and cess.** However, the tax will not include any interest thereon, except where chargeability of interest itself is in dispute. In case the chargeability of interest is the issue under dispute, the amount of interest shall be the tax effect. In cases where returned loss is reduced or assessed as income, the tax effect would include notional tax on disputed additions. In case of penalty orders, the tax effect will mean quantum of penalty deleted or reduced in the order to be appealed against.

5. The Assessing Officer shall

calculate the tax effect separately for every assessment year in respect of the disputed issues in the case of every assessee. If, in the case of an assessee, the disputed issues arise **in more** than one assessment year, appeal can be filed in respect of such assessment year or years in which the tax effect in respect of the disputed issues exceeds the monetary limit specified in para 3. No appeal shall be filed in respect of an assessment year or years in which the tax effect is less than the monetary limit specified in para 3. In other words, henceforth, appeals can be filed only with reference to the tax effect in the relevant assessment year. However, in case of a composite order of any High Court or appellate authority, which involves more than one assessment year and common issues in more than one assessment year, appeals shall be filed in respect of all such assessment years even if the tax effect is less than the prescribed monetary limits in any of the year(s), if it is decided to file appeal in respect of the year(s) in which tax effect exceeds the monetary limit prescribed. In case where a composite order/ judgement involves more than one assessee, each assessee shall be dealt with separately.

6. Further, where income is computed under the provisions of section 115JB or section 115JC, for the purposes of determination of tax effect', tax on the total income assessed shall be computed as per the following formula-

(A — B)+(C D)

where,

A = the total income assessed as per the provisions other than the provisions contained in section 115JB or section 115JC (herein called general provisions);

B = the total income that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of the disputed issues under general provisions;

C = the total income assessed as per the provisions contained in section 115JB or section 115JC;

D = the total income that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 1I5JCwas reduced by the amount of disputed issues under the said provisions:

However, where the amount of disputed issues is considered both under the provisions contained in section 115JB or section 115JC and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under item D.

7. In a case where appeal before a Tribunal or a Court is not filed only on account of the tax effect being less than the monetary limit specified above, the Pr. Commissioner of Income-tax/ Commissioner of Income Tax shall specifically record that "even though the decision is not acceptable, appeal is not being filed only on the consideration that the tax effect is less than the monetary limit specified in this Circular". Further, in such cases, there will be no presumption that the Income-tax Department has acquiesced in the decision on the disputed issues. The Income-tax Department shall not be precluded from filing an appeal against the disputed issues in the case of the same assessee for any other assessment year, or in the case of any other assessee for the same or any other assessment year, if the tax effect exceeds the specified monetary limits.

8. In the past, a number of instances have come to the notice of the Board, whereby an assessee has claimed relief from the Tribunal or the Court only on the ground that the Department has implicitly accepted the decision of the Tribunal or Court in the case of the assessee for any other assessment year or in the case of any other assessee for the same or any other assessment year, by not filing an appeal on the same disputed issues. The Departmental representatives/counsels must make every effort to bring to the notice of the Tribunal or the Court that the appeal in such cases was not filed or not admitted only for the reason of the tax effect being less than the specified monetary

limit and, therefore, no inference should be drawn that the decisions rendered therein were acceptable to the Department. Accordingly, they should impress upon the Tribunal or the Court that such cases do not have any precedent value and also bring to the notice of the Tribunal/ Court the provisions of sub section (4) of section 268A of the Income-tax Act, 1961 which read as under :

"(4) *The Appellate Tribunal or Court, hearing such appeal or reference, shall have regard to the orders, instructions or directions issued under sub-section (1) and the circumstances under which such appeal or application for reference was filed* or not *filed in respect of* any case."

9. As the evidence of not filing appeal due to this Circular may have to be produced in courts, the judicial folders in the office of Pr.CsIT/ CsIT must be maintained in a systemic manner for easy retrieval.

10. Adverse judgments relating to the following issues should be **contested on merits** notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 above or there is no tax effect:

(a) Where the Constitutional validity of the provisions of an Act or Rule is under challenge, or

(b) Where Board's order, Notification, Instruction or Circular has been held to be illegal or ultra vires, or

(c) Where Revenue Audit objection in the case has been accepted by the Department, or

(d) Where the addition relates to undisclosed foreign assets/ bank accounts.

11. The monetary limits specified in para 3 above shall not apply to writ matters and Direct tax matters other than Income tax. Filing of appeals in other Direct tax matters shall continue to be governed by relevant provisions of statute and rules. Further, in cases where the tax effect is not quantifiable or not involved, such as the case of registration of trusts or institutions under section 12A/ 12AA of the IT Act, 1961 etc., filing of appeal shall not be governed by the limits specified in para 3 above and decision to file appeals in such cases may be taken **on merits** of a particular case.

12. It is clarified that the monetary limit of Rs. 20 lakhs for filing appeals before the ITAT would apply equally to cross objections under section 253(4) of the Act. Cross objections below this monetary limit, already filed, should

be pursued for dismissal as withdrawn/ not pressed. Filing of cross objections below the monetary limit may not be considered henceforth. Similarly, references to High Courts and SLPs/ appeals before Supreme Court below the monetary limit of Rs. 50 lakhs and Rs. 1 Crore respectively should be pursued for dismissal as withdrawn/ not pressed. References before High Court and SLPs/ appeals below these limits may not be considered henceforth.

13. This Circular will apply to SLPs/appeals/cross objections/references to be filed henceforth in SC/HCs/Tribunal and it shall also apply retrospectively to pending SLPs/ appeals/ cross objections/references. **Pending appeals below the specified tax limits in para 3 above may be withdrawn/ not pressed.**

CBDT NOTIFIES PROTOCOL AMENDING INDIA-ARMENIA

Whereas, the Protocol, amending the Convention between the Government of the Republic of India and the Government of the Republic of Armenia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income which was signed at New Delhi on the 31st October, 2003, has been signed at New Delhi on the 27th January, 2016, as set out in the annexure appended to this notification and hereinafter referred to as the said amending Protocol;

And whereas, the date of entry into force of the said amending Protocol is the 14th June, 2017 being the date of the later of the notifications of completion of the legal requirements and procedures for giving effect to the said amending Protocol in accordance with paragraph 1 of Article 2 of the said amending Protocol;

And whereas, paragraph 2 of Article 2 of the said amending Protocol provides that the provisions of the same shall have effect forthwith from the date on which it enters into force;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 90 of the

Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies that all the provisions of the said amending Protocol, shall have effect in the Union of India with effect from the 14th day of June, 2017, being the date on which the said amending Protocol entered into force.

ARTICLE 1

The text of Article 26 (Exchange of Information) of the Convention shall be replaced by the following:

"Article 26

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information (including documents or certified copies of the documents) as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of , the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both Contracting States and the competent authority of the supplying Contracting State authorises such use.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

(b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).

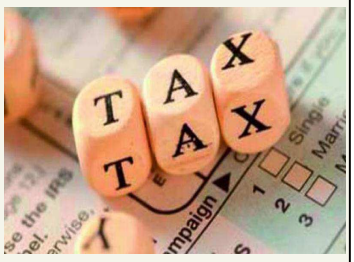
4. If information is requested by a Contracting State in accordance with this Article the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other Contracting State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person."

ARTICLE 2

1. The Contracting States shall notify each other through diplomatic channels that all legal requirements and procedures for giving effect to this Amending Protocol have been satisfied.

2. The Protocol, which shall form an integral part of the Convention, shall enter into force on the date of the later of the notifications referred to in paragraph 1 and its provisions shall have effect forthwith.



MANDATORY ANNUAL KYC OF ALL DIRECTORS OF ALL COMPANIES

DIR-3 KYC is been notified vide Companies(Appointment and Qualification of Directors) Fourth Amendment Rules, 2018 dated 5th July 2018 and would be made available shortly for filing purposes.

While filing DIR-3 KYC form, all stakeholders are requested to use PAN based DSC in case of Indian Nationals i.e., DSC should contain PAN as specified in **the form.**

In respect of foreign nationals, applicant's name in DSC would be matched with his/her name entered while filing the form(DIR-3 KYC).

In case the PAN /Name in DSC does not match with **PAN/Name entered in the form,** they would be required to get a DSC with PAN/Name as **specified in the form.**

Accordingly, every Director who has been allotted DIN on or before 31st March, 2018 and whose DIN is in 'Approved' status, would be mandatorily required to file form DIR-3 KYC on or before **31st August,2018.**

While filing the form,the **Unique Personal Mobile Number and Personal Email ID** would have to be mandatorily indicated and would be duly verified by **One Time Password(OTP).**

The form should be filed by every Director using his own DSC and should be duly certified by a practicing professional (CA/CS/CMA). Filing of DIR-3 KYC would be mandatory for **Disqualified Directors** also.

After expiry of the due date by which the KYC form is to be filed,the MCA21 system will mark all approved DINs (allotted on or before 31st March 2018) against which DIR-3 KYC form has not been filed as **'Deactivated'** with reason as '*Non-filing of DIR-3 KYC'.*

After the due date filing of DIR-3 KYC in respect of such deactivated DINs shall be allowed upon payment of a specified fee only, without prejudice to any other action that may be taken.

ADVISORY ON FILING OF COST AUDIT REPORT FOR YEAR

This advisory is issued in view of implementation of Goods and Services Tax (GST) from July 1, 2017. The companies which produce products covered under excise even after July 1st, 2017 will continue to furnish the information in the same format provided by the Companies (Cost Records and Audit) Amendment Rules, 2017. The companies having their products or services covered under GST may follow the guidance provided in this advisory.

1. CRA-3 Annexure to the Cost Audit Report – Para A 4. PRODUCT/SERVICE DETAILS (for the company as a whole):

Turnover as per Excise/Service Tax Records: Turnover information to be provided for the period upto 30th June 2017. However, information and records related to GST, as per the provisions of GST Act, for the remaining period has to be maintained by way of a statement to be kept with the company.

Suggested footnote:

"Total revenue as per Financial Accounts is for the accounting year, whereas Turnover as per Excise/Service Tax Records is for the period upto 30th June 2017."

2. CRA-3 Annexure to the Cost Audit Report – Para B 1. QUANTITATIVE INFORMATION

3. Production as per Excise Records: Production information to be provided for the period upto 30th June 2017. However, information and records related to GST, as per the provisions of GST Act, for the remaining period has to be maintained by way of a statement to be kept with the company.

Suggested Footnote:

"Total production as per Cost Records (2d) is for the accounting year, whereas Pro-

duction as per Excise Records is for the period upto 30th June 2017."

3. CRA-3 Annexure to the Cost Audit Report – Para C 1. QUANTITATIVE INFORMATION

3. Total Services provided as per Service Tax Records: Information related to services provided for the period upto 30th June 2017. However, information and records related to GST, as per the provisions of GST Act, for the remaining period has to be maintained by way of a statement to be kept with the company.

Suggested Footnote:

"Total Services provided as per Cost Records (2d) is for the accounting year, whereas Total Service provided as per Service Tax Records is for the period upto 30th June 2017."

4. CRA-3 Annexure to the Cost Audit Report – Para D 6. Reconciliation of Indirect Taxes (for the Company as a whole)

Para D-6: Information related to indirect taxes for the period upto 30th June 2017 to be provided. However, information and records related to GST, as per the provisions of GST Act, for the remaining period has to be maintained by way of a statement to be kept with the company.

Suggested Footnote:

"Information furnished in this para pertains to the period upto 30th June 2017."

APPOINTMENT OF AUTHORISED REPRESENTATIVE FOR CLASSES OF CREDITORS UNDER IBC

Section 21 (6A) (b) of the Insolvency and Bankruptcy Code, 2016 (Code) read with regulation 16A (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016(Regulations) provide that where the corporate debtor has at least ten financial creditors in a class, the interim resolution professional shall offer a choice of three insolvency professionals and a creditor in the class may indicate its choice of an insolvency professional, from amongst the three, to act as its authorised representative. The insolvency professional, who is the choice of the highest number of creditors in the class, is appointed as the authorised representative of the creditors of the respective class. The authorised representative collects voting instructions from the respective class of creditors, attends the meetings of the committee of creditors (CoC) and casts vote in respect of the said class in accordance with the instructions he receives from the creditors.

2. Section 21 (6A) (b) of the Code read with regulation 16A of the Regulations provide for a simplified mechanism of representation of financial creditors through authorised representatives, as detailed in Para 1 above, and are, therefore, matters of procedure. It is necessary that an ongoing corporate insolvency resolution process, where creditors belonging to a class are otherwise not represented in the CoC, uses this simplified mechanism, irrespective of the stage of the process. The resolution professional, who exercises the powers and performs the duties as vested or conferred on the interim resolution professional under section 23 (2) of the Code, shall facilitate representation through authorised representative(s).

3. It is, accordingly, clarified that wherever the approval of resolution plan under regulation 39 (3) of the Regulations is at least 15 days away, the resolution professional shall expeditiously obtain, by electronic means, the choice of the insolvency professional from creditors in a class to act as the authorised representative of the class and proceed further in the manner as specified in regulation 16A of the Regulations.

4. This Circular is issued in exercise of powers under section 196 (1) (aa) of the Insolvency and Bankruptcy Code, 2016, in consultation with the Ministry of Corporate Affairs.

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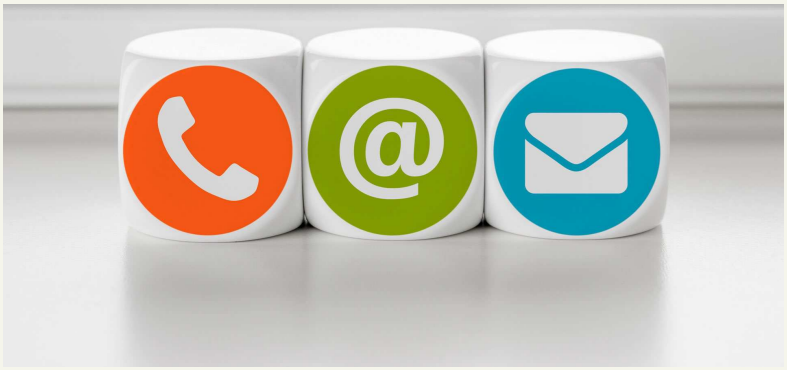

Innovate Create Lead

Unique Document Identification Number (UDIN)

The Council at its 374th meeting decided to implement UDIN, therefore it has been made recommendatory with effect from 1st July, 2018, and later on it would be made mandatory.

The portal offers the facility to various Regulators/Banks/Authorities/Other Stakeholders to check the authenticity of the documents certified by Practicing Chartered Accountants who have registered on the said portal. It would help them in tracing of forged/wrong documents prepared by any third person in the name of Chartered Accountant, as a person other than Chartered Accountant will not be able to upload the documents on this portal.

For Process and related Frequently-Asked Questions, please visit https://udin.icai.org/ .

For any other further assistance/clarification, you may reach at 011–30110440/444 or email