

Gratitude is the attitude
which gives us the fortitude
to face challenges in our
life.
~ Gaur Gopal Das

Connection

Voluntary Winding up under Insolvency and Bankruptcy Code, 2016

IBBI has notified the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017. The same has been published in the official gazette. As a result of the same w.e.f. 1st April, 2017 voluntary winding up shall be conducted under Insolvency and Bankruptcy Code, 2016 (hereafter referred as "IBC").

In this Flash editorial, the auditor begins by referring notifications for applicability of provisions of Voluntary Liquidation/winding up under Insolvency and Bankruptcy Code, 2016. The main thrust of the article, however, is upon the provisions / regulations, of IBC concerning liquidation of a corporate person – companies, limited liability partnerships and any other persons incorporated with limited liability and process of liquidation under these regulations.

Members' Voluntary Liquidation is the option for solvent companies when it comes to liquidation. If you are a director of a company that you feel no longer has a purpose and the company has enough funds to pay back creditors in full then this process would be the option for you. A Members' Voluntary Liquidation is a tax efficient method for distributing or restructuring the assets and/or trade of a company

Introduction:

Liquidation (or "winding up") is a process by which a company's existence is brought to an end.

The provisions concerning to Voluntary Winding up of Company was specified in section 304-325 of Companies Act, 2013 although these provisions not at all notified. As the IBC got the president assent on 28/05/2016 as per section 255 and schedule XI of IBC the sections of Voluntary winding up "Omitted" from Companies

Act, 2013. Prior to 1st April, 2017 voluntary Winding up was ongoing in Companies Act, 1956.

IBBI has notified the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017. The same has been published in the official gazette. As a result of the same w.e.f. 1st April, 2017 voluntary winding up shall be conducted under Insolvency and Bankruptcy Code, 2016 (hereafter referred as "IBC").

These Regulations shall apply to the voluntary liquidation of corporate persons under Chapter V of Part II of the Insolvency and Bankruptcy Code, 2016.

Highlights:

- > Insolvency Professionals shall act as liquidator.
- > The corporate person shall from the liquidation commencement date cease to carry on its business except as far as required for the beneficial winding up of its business
- > The liquidator shall endeavor to complete the liquidation process of the corporate person *within twelve months* from the liquidation commencement date.
- > The liquidator shall preserve a physical or an electronic copy of the reports, registers and books of account referred to in Regulations 8 and 10 for at least eight years after the dissolution of the corporate person, either with himself or with an information utility.

Process of Voluntary Winding up:-

The Winding up of a Company can also be done voluntarily by the members of the Company, if:

If the Company passes a Special Resolution in the General Meeting for winding up of the



Company.

The Company in general meeting passes a resolution requiring the Company to be wound up voluntarily as a result of the expiry of the period of its duration, if any, fixed by its articles of association or on the occurrence of any event in respect of which the articles of association provide that the company should be dissolved.

The Voluntary winding up process applies where the directors and shareholders decide to cease trading their solvent limited company.

STEP-1

CONVENE A BOARD MEETING with two Directors or by a majority of Directors.

1.1. Pass a resolution for proposal of Voluntary Liquidation of the Company.

1.2. Prepare a declaration from majority of the directors of the company verified by an affidavit stating that—

i. they have made a full inquiry into the affairs of the company and they have formed an opinion that either the company has no debt or that it will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation; and

ii. The company is not being liquidated to defraud any person – section 59(3) (a) of Insolvency Code, 2016.

1.3. File the declaration with ROC in e-form GNL-2

1.4. Attachment to Declaration:

Just to Remind You:

- May 21 - Payment of MVAT & WCT TDS for April
- May 31 - TDS Return for March Quarter by All Deductors
- May 31 - Payment & Monthly Return of Maharashtra PT
- May 31 - AIR by all assesses liable o Tax Audit

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NCLT

National Company Law Tribunal



audited financial statements and record of business operations of the corporate person for the previous two years or for the period since its incorporation, whichever is later;

a report of the valuation of the assets of the corporate person, if any, prepared by a registered valuer;

STEP-2

CONVENE A GENERAL MEETING: Within 4 weeks of passing of above said declaration hold the meeting of Shareholders for the following purposes:

2.1. Pass a Special Resolution for approving the proposal of Voluntary Liquidation of the Company.

2.2. Appoint an insolvency professional to act as the liquidator. Resolution should contain the terms and conditions of the appointment of the insolvency professional, including the remuneration due to him.

2.3. File the special resolution with ROC in e-form MGT-14

STEP-3

APPROVAL OF CREDITORS IF COMPANY OWES DEBT:

3.1. If the company owes any debt to any person, creditors representing two-thirds in value of the debt of the company shall approve the resolution passed above by the shareholders within seven days of passing of such special resolution.

3.2. Approval can be by holding of Meeting, by Consent of 2/3 of creditors in writing etc. Company will place the copy of resolutions before the creditors for their approval.

Commencement of voluntary liquidation

A voluntary liquidation for a corporate person shall be deemed to have commenced

from the date of passing of the resolution (after approval from the creditors of the Company).

STEP-4

PUBLIC ANNOUNCEMENT BY THE LIQUIDATOR:

The liquidator shall make a public announcement in Form A of Schedule I within five

days from his appointment (i.e. 5 days from the date of General Meeting).

4.1. The public announcement shall-

Call upon stakeholders to submit their claims as on the liquidation commencement date; and

Provide the last date for submission of claim, which shall be thirty days from the liquidation commencement date.

4.2. The announcement shall be published-

i. In one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate person and any other location where in the opinion of the liquidator, the corporate person conducts material business operations;

ii. On the website, if any, of the corporate person; and

iii. On the website, if any, designated by the Board for this purpose.

STEP-5

PROCEEDINGS BY LIQUIDATOR:

5.1. The liquidator shall submit a Preliminary Report to the Company within 45 days from the liquidation commencement date, detailing as given below. The liquidator shall preserve a physical as well as an electronic copy of the reports for eight years after the

dissolution of the corporate person.

- the capital structure of the Company

- the estimates of its assets and liabilities as on the liquidation commencement date based on the books of the Company

- Whether he intends to make any further inquiry in to any matter relating to the promotion, formation or failure of the Company or the conduct of the business thereof; and

- The proposed plan of action for carrying out the liquidation, including the timeline within which he proposes to carry it out and the estimated liquidation costs.

5.2. Maintenance of Registers and Books of Account:

5.2.1. The liquidator shall maintain the registers and books (as mentioned in regulation 10), as may be applicable, in relation to the voluntary liquidation of the corporate person, and shall preserve them for a period of eight years after the dissolution of the corporate person.

5.2.2. Where the books of account of the corporate person are incomplete on the liquidation commencement date, the liquidator shall have them completed and brought up-to date, with all convenient speed.

5.2.3. The liquidator shall keep receipts for all payments made or expenses incurred by him

5.3. Liquidator has following duties & Rights:

5.3.1. The liquidator may call for such other evidence or clarification as he deems fit from a Claimant for substantiating the whole or part of its claim.

5.3.2 Verification of claims:

5.3.2.1. The liquidator shall verify the claims submitted within thirty days from the last date for receipt of claims and may either admit or reject the claim, in whole or in part, as the case may be, as per section 40 of the Code.

5.3.2.2. A creditor may appeal to the Adjudicating Authority against the decision of the liquidator as per section 42 of the Code.

5.3.3. List of stakeholders:

5.3.3.1. The liquidator shall prepare the list of stakeholders within forty-five days from the last date for receipt of claims.

5.3.3.2. The liquidator shall prepare a list of stakeholders on the basis of proofs of claims

submitted and accepted under these Regulations, with- the amounts of claim admitted, if applicable,

the extent to which the debts or dues are secured or unsecured, if applicable,

the details of the stakeholders, and

The proofs admitted or rejected in part, and the proofs wholly rejected.

5.3.4. Paid Money into Bank Account:

5.3.4.1. The liquidator shall open a bank account in the name of the corporate person followed by the words 'in voluntary liquidation', in a scheduled bank, for the receipt of all moneys due to the corporate person.

5.3.4.2. All payments out of the account by the liquidator above five thousand rupees shall be made by cheques drawn or online banking transactions against the bank account.

5.3.5. Distribution.

5.3.5.1. The liquidator shall distribute the proceeds from realization within six months from the receipt of the amount to the stakeholders.

5.3.5.2. The liquidation costs shall be deducted before such distribution is made.

STEP-6

COMPLETION OF LIQUIDATOR:

6.1. The liquidator shall endeavor to wind up the affairs of the corporate person within one year from the voluntary liquidation commencement date.

6.2. In the event of the voluntary liquidation continuing for more than one year, the liquidator shall.

6.2.1. call a meeting of the contributories of the corporate person within fifteen days from the end of the year in which he is appointed, and at the end of each succeeding year; and

6.2.2. Shall present a Status Report indicating progress in liquidation, including-

Settlement of list of stakeholders,

Details of any property that remain to be sold and realized,

Distribution made to the stakeholders, and

Distribution of unsold property made to the stakeholders;

Developments in any material litigation, by or against the corporate person; and

Filing of, and developments in applications for avoidance of transactions in accordance with Chapter III of Part II of the Code.

6.2.3. The Status Report shall enclose an audited account of the voluntary liquidation showing the receipts and payments pertaining to liquidation since

the liquidation commencement date.

STEP-7

PREPARATION OF FINAL REPORT:

7.1. Final Report: On completion of the liquidation process, the liquidator shall prepare the Final Report consisting of:

7.1.1. An audited account of the voluntary liquidation, showing the receipts and payments pertaining to liquidation since the liquidation commencement date; and

7.1.2. A statement demonstrating that-

the assets of the Company has been disposed of;

the debt of the Company has been discharged to the satisfaction of the creditors;

No litigation is pending against the Company or sufficient provision has been made to meet the obligations arising from any pending litigation.

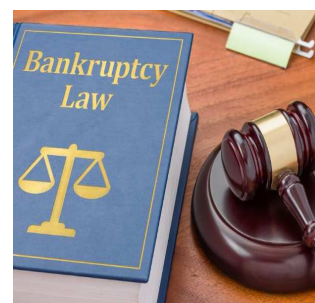
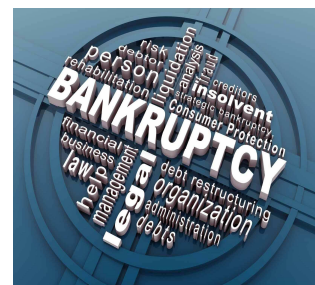
7.1.3. sale statement in respect of all assets containing: i) the realized value; (ii) cost of realization, if any; (iii) the manner and mode of sale; (iv) an explanation for the shortfall, if the value realized is less than the value assigned by the registered valuer in the report of the valuation of assets (v) the person to whom the sale is made; and (vi) any other relevant details of the sale.

STEP-8

SUBMISSION OF FINAL REPORT/ APPLICATION WITH NCLT:

8.1. The liquidator shall send the Final Report to by registered post at their registered address and by electronic means –

The contributories of the corporate person;



The registrar; and

The board,

8.2. Submission with NCLT:

Where the affairs of the Company have been completely wound up, and its assets completely liquidated, the liquidator shall make an application to the NCLT in form NCLT-1 for the dissolution of such Company

STEP-8

ORDER BY NCLT:

The Tribunal shall fix a date for the hearing of the petition. Where the Tribunal satisfied with the application, NCLT to pass an order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall

be dissolved accordingly

STEP-9

FILING OF ORDER WITH ROC:

The order of the Tribunal shall be filed with the Registrar by the company within a period of 14 days of the receipt of the copy of order, or such other time as may be fixed by the Tribunal.

CONCLUSION:

Suspension of Process of Liquidation: If liquidator is of the opinion that the voluntary liquidation is being done to, defraud a person, he shall make an application to the Adjudicatory Authority to suspend the process of voluntary liquidation. Where the liquidator is of the opinion that the corporate person will not be

able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation, he shall make an application to the Adjudicating Authority to suspend the process of voluntary liquidation.



Income Tax Department made linking of PAN with Aadhaar easy

The Income Tax Department has made it easy for taxpayers to link their PAN with Aadhaar.

It was reported that taxpayers were finding it difficult as their names did not match in both systems (Eg. Names with initials in one and expanded initials in another). Responding to such grievances, the Dept has come out with a simple solution now.

Just click on the link on the left pane-> Link Aadhaar on the website <https://incometaxindiaefiling.gov.in/> or visit the following link :-

<https://incometaxindiaefiling.gov.in/e-Filing/Services/LinkAadhaarHome.html>

Provide PAN, Aadhaar no. and ENTER NAME EXACTLY AS GIVEN

IN AADHAAR CARD (avoid spelling mistakes) and submit. After verification from UIDAI, the linking will be confirmed.

In case of any minor mismatch in Aadhaar name provided by you when compared to the actual data in Aadhaar, One Time Password (Aadhaar OTP) will be sent to the mobile registered with Aadhaar which has to be provided. Please ensure that the date of birth and gender in PAN and Aadhaar are exactly same. There is no need to login or be registered on E-filing website. This facility can be used by anyone to link their Aadhaar with PAN.

In a rare case where Aadhaar name is completely different from name in PAN, then the linking will fail and taxpayer will be prompted to change the name in either Aadhaar or in PAN database.

To update your PAN details please contact NSDL <https://www.onlineservices.nsd.com/>

endUserRegisterContact.html or To update your Aadhaar card details please contact UIDAI at <https://ssup.uidai.gov.in/web/guest/update>

There is no need to login or be registered on E-filing website. This facility can be used by anyone to link their Aadhaar with PAN.

This facility is also available after login. Go to Profile settings and choose Aadhaar linking. The details as per PAN are pre-populated. Enter Aadhaar no. and ENTER NAME EXACTLY AS GIVEN IN AADHAAR CARD (avoid spelling mistakes) and submit.

Please use the simplified process to complete the linking of Aadhaar with PAN asap. This will be useful for E-Verification of Income Tax returns using Aadhaar OTP.

Aadhar Linking/Seeding To PAN Card



Lease rent from letting out buildings/developed space

The issue whether income arising from letting out of premises /developed space along with other amenities in an Industrial Park/SEZ is to be charged under head '**Profits and Gains of Business**' or under the head 'Income from House Property' has been subject matter of litigation in recent years. Assessee claim the letting out as business activity, the income arising from which to be charged to tax under the head 'Profits and Gains of Business', whereas the Assessing Officers hold it to be chargeable under the head '**Income from House Property**'.

The matter has been considered by the Board. Income from the Industrial Parks/ SEZ established under various schemes framed and notified under section 80IA(4)(iii) of the Income-tax Act, 1961 ('Act') is liable to be treated as income from business provided the conditions prescribed under the schemes are met.

In the case of Velankani Information Systems Pvt Ltd., NJRS Citation (2013-LL-0402-44) the Hon'ble Karnataka High Court observed that any other

interpretation would defeat the object of section 80IA of the Act and government schemes for development of Industrial Parks in the country. SLPs filed in this case by the Department have been dismissed by the Hon'ble Supreme Court.

In a subsequent judgment dated 30.04.2014 in ITA No 76 & 78/2012 in the case of CIT vs. Information Technology Park Ltd. NJRS Citation (2014-LL-0430-141), the Karnataka High Court has reaffirmed its earlier views. It has held that, since the assessee-company was engaged in the business of developing, operating and maintaining an Industrial Park and providing infrastructure facilities to different companies as its business, the lease rent received by the assessee from letting out buildings along with other amenities in a software technology park would be chargeable to tax under the head "Income from Business" and not under the head "Income from House Property". The judgement has been accepted by the Board.

In view of the above, it is now a settled position that in the

case of an undertaking which develops, develops and operates or maintains and operates an industrial park/SEZ notified in accordance with the scheme framed and notified by the Government, the income from letting out of premises/ developed space along with other facilities in an industrial park/SEZ is to be charged to tax under the head 'Profits and Gains of Business'.

Accordingly, henceforth, appeals may not be filed by the Department on the above settled issue and those already filed may be withdrawn/ not pressed upon.



Quoting of Aadhaar on PAN Application / ITR

The Central Government vide notification dated 11th May, 2017 has notified that the requirement of quoting of Aadhaar / Enrolment ID shall not apply to the following individuals if they do not possess the Aadhaar / Enrolment ID:

- An individual who is residing in the state of Assam, Jammu and Kashmir and Meghalaya.

- An individual who is a non-resident as per the **Income-tax Act, 1961**.
- An individual of the age of eighty years or more at any time during the previous year.
- An individual who is not a citizen of India.

Section 139AA of the Income-tax Act, 1961, as inserted by the **Finance Act, 2017** provides for mandatory

quoting of Aadhaar / Enrolment ID of Aadhaar application form for filing of return of income and for making an application for allotment of Permanent Account Number with effect from 1st July, 2017. Section 139AA (3) of the Act empowers the Central Government to notify the person(s) or State(s) to which the requirement of quoting of Aadhaar / Enrolment ID shall not apply.



FAQs on MahaRERA



1. Is it mandatory for the promoter to obtain permissions for the real estate project before applying for registration to MahaRERA?

Ans: Yes, the layout of the real estate project has to be approved. However, the promoter may include some buildings in his application of registration where apartments are proposed and the Building approvals are pending. Building Approval for the apartment must be obtained before the agreement for sale is signed between the promoter and buyer, regarding the said apartment.

2. What is the penalty prescribed for non-registration of a project under the Act?

Ans: If any promoter fails to register as per Act, he shall be liable to a penalty which may extend up to ten per cent of the estimated cost of the real estate project. On continued violation, he shall be punishable with imprisonment for a term which may extend up to three years or with fine which may extend up to a further ten per cent of the estimated cost of the real estate project, or with both.

3. How will a flat buyer know, if the real estate project is duly registered under MahaRERA?

Ans: The MahaRERA website would display all the registered projects. It is mandatory that the advertisement for marketing of apartments in the real estate project must carry the MahaRERA registration number.

4. Whether registration of real estate agents would be project specific, location specific or individual specific?

Ans: Real estate agents have to get registered with MahaRERA either as an individual or as "other than individ-

ual". Promoters while applying for registration of any real estate project will have to indicate the names of registered real estate agents who will be working as agents in the said project. Names of such agents will be displayed along with other project specifications on the MahaRERA website, upon registration of the project.

5. What are the penalties that a Real Estate Agent would face if he fails to adhere to the mandates prescribed by MahaRERA?

Ans: If any real estate agent fails to register and contravenes the provisions of section 9 or section 10 of the Act, he shall be liable to a penalty of ten thousand rupees for every day during which such default continues, which may cumulatively extend up to five per cent of the cost of plot, apartment or buildings, as the case may be, of the real estate project, for which the sale or purchase has been facilitated as determined by MahaRERA.

6. Is the promoter required to give any undertaking to MahaRERA for completing his project within a specified period?

Ans: Yes, in accordance with the provisions of the Act, the promoter, while applying for registration to MahaRERA, has to give a declaration, supported by an affidavit, indicating the time period within which he undertakes to complete the project or phase thereof, as the case may be.

7. If the registration of a real estate project is revoked for any reason, how will the interest of the buyer, in such project, be protected by MahaRERA?

Ans: MahaRERA will take action in accordance with sec-

tion 8 of the Act.

8. In case of delay in getting possession from the promoter, will the buyer be entitled to get interest on the amount paid by him, for such delayed period?

Ans: Yes. In accordance with the model form of agreement, if the Promoter fails to abide by the time schedule for completing the project and handing over the [Apartment/Plot] to the Allottee, the Promoter agrees to pay to the Allottee, who does not intend to withdraw from the project, interest as specified in the Rule, on all the amounts paid by the Allottee, for every month of delay, till the handing over of the possession.

9. Will such interest payment by the promoter to the buyer be automatic or the buyer will have to approach MahaRERA?

Ans: The interest payment is in accordance with the model form of agreement and hence should be automatically paid. The buyer may have to file a complaint to MahaRERA if there is a grievance.

10. Is there a ceiling on the interest to be levied by the promoter in case of default in payment of any installments by the allottee/buyer?

Ans: In accordance with the model form of agreement, the Allottee has to pay to the Promoter, a rate of interest equal to the State Bank of India highest Marginal Cost of Lending Rate plus two percent, on all the amounts which become due and payable by the Allottee to the Promoter under the terms of the Agreement from the date the said amount is payable by the allottee(s) to the Promoter.

11. What are the provisions for an aggrieved person to lodge a complaint?



Section 31 of the Act and Rule 6 of Maharashtra Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine payable, Forms of Complaints and Appeal, etc.) Rules, 2017 provide for filing of complaint with MahaRERA, by an aggrieved person who has any interest in the registered project. The aggrieved person can file an application online as per format provided by MahaRERA. It shall include the following details:

- Registration number of the project to which the complaint pertains
- Particulars of the complainant and respondent
- Facts of the case
- Relief Sought
- List of Enclosures and so on

12. Can a promoter or a real estate agent also file complaint against a buyer?

Ans: Yes. An aggrieved person having any interest in the registered real estate project can file complaint.

13. Is there any provision for interim relief to be granted, pending the final adjudication of the complaint?

Ans: The procedure to be followed by MahaRERA while adjudicating a complaint is detailed in section 36 of the Act read with Rule 6(2) of Maharashtra Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine payable, Forms of Complaints and Appeal, etc.) Rules, 2017.

14. Where will the aggrieved home buyer be required to file his complaint?

Ans: The aggrieved person can file an application online as per format provided by MahaRERA website.

15. On what grounds can the home buyer file a complaint?

Ans: An aggrieved person may file a complaint with MahaRERA for any violation or contravention of the provisions of the Act or the Rules or Regulations made there under.

16. Who would decide the complaints?

Ans: As per Regulation 24 of Maharashtra Real Estate Regulatory Authority (General) Regulations 2017, for adjudication proceedings with respect to complaints filed, MahaRERA may, by order, direct that specific matters or issues be heard and decided by a single bench of either the Chairperson or any Member of the Authority.

17. Is there any pecuniary jurisdiction for complaint handling Authorities?

Ans: No. However, geographical jurisdiction may be specified for Chairperson or members of MahaRERA.

18. Is there any time limit prescribed for disposal of complaints?

Ans: Section 29 of the Act provides that complaints should be disposed off as expeditiously as possible but not later than sixty days from the date of filing the same. However, where it cannot be disposed of during the said period, the Real Estate Regulatory Authority is required to record its reasons for the same.

19. If the buyer wants to file a complaint in Consumer Court, is there any bar under the Act?

Ans: No. As per section 79 of the Act, civil courts are barred from entertaining disputes (suits or proceedings) in respect of matters which Real Estate Regulatory Authority or the adjudicating officer or the Appellate Tribunal is empowered under the Act to deter-

mine. However, the consumer forums (National, State or District) have not been barred from the ambit of the Act. Section 71 proviso permits the complainant to withdraw his complaint as regards matters under section 12, 14, 18 and section 19, from the consumer forum and file it with the adjudicating officer appointed under the Act.

20. Is there appeal provided against the orders given by MahaRERA? Is there a time limit? What are the fees?

Ans: Any person aggrieved by any direction or decision or order made by MahaRERA or by an adjudicating officer may file an appeal before the Appellate Tribunal within a period of sixty days, in accordance with Rule 9 of Maharashtra Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine payable, Forms of Complaints and Appeal, etc.) Rules, 2017.

21. Is there any time limit prescribed for the promoter for formation of society or any other legal entity of home buyers?

Ans: Promoter has to enable formation of Legal Entity like Cooperative Society, Company, Association, Federation etc. within three months from the date on which fifty one per cent of the total number of Purchasers, in such a building or a wing, have booked their apartment.

22. Is there a time limit prescribed for the promoter to execute conveyance in favour of the association of buyers?

Ans: Promoter shall execute a registered conveyance deed in favour of the allottee within three months from date of issue of occupancy certificate or fifty one per cent of the total number of Purchasers, in such a building or a wing, has paid the full consideration to the promoter, whichever is earlier.



Cross Verification of ITC—MVAT



In respect of the periods 2008-09 and onwards, electronic cross verification of Input Tax Credit (ITC) from Sales and Purchases disclosed in Audit Report in Form 701 i.e. J2 x J1 match, mismatch and un-match ITC report was considered for allowance or disallowance of ITC. However, it was noticed that many dealers had either not filed their sales annexures J1 or had incorrectly filed them, due to which the ITC claims of other dealers were being disallowed. On that background, it was decided to allow ledger Confirmation for Mismatched or unmatched ITC by internal Circular 13A of 2010 date 25th October 2010.

Further these guidelines were revised by IA of 2013, whereby top 10 suppliers or more than 50% of ITC (whichever is more) were to be verified by electronic matching and ledger confirmations. It was also decided in that circular that if the above condition is satisfied then the balance ITC may be as assumed to be matched.

Further internal circular 1A of 2013 was made applicable to the periods 2009-10, 2010-11, 2011-12 and 2012-13 by internal circulars 10A of 2013 and 9A of 2014.

For FY 2013-14, 2014-15 and 2015-16 the problems encountered by the assessing officers while allowing ITC remains more or less the same, with marginally more matching of ITC compared to previous years. Also, the department's current automation (Mahavikas) is not in a position to allow filing supplementary Ann. J1 for Mismatches.

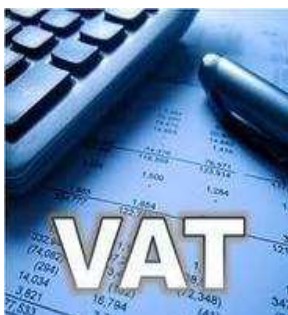
Hence in the present context of ensuing GST era and as discussed in foregoing paras,

it is imperative and logical to continue existing methodology with added security features. This will help the department to cope up with the limitations of existing matching exercise and at the same time will also ensure that facility is not misused.

If there are mismatched/un-matches in the ITC claim of the claimant dealer, then the following procedure shall be followed for allowance/disallowance of ITC for FY 2013-14, 2014-15 and 2015-16:

- Unmatched ITC means ITC not matched due to due to one of the TIN not being uploaded in their annexure J1 or Annexure J2. Whereas mismatched ITC is due to the difference in amount of transaction disclosed by the respective buyer and supplier in their annexure J2 and J1, respectively.
- Out of the total purchase on which ITC is claimed, ITC claimed on purchase from non-genuine dealers, RC cancelled dealers and Return Non-filers shall be disallowed after due verification. For this purpose, J2 x J1 utility available on Mahavikas and CDA utility provided by EIU shall be used. If CDA utility is not made available by the EIU for 2014-15 and 2015-16, then ITC verification utility shall be used for such period. From the remaining supplier, top 10 suppliers or the suppliers covering at least 50% of the ITC claim (whichever is more) shall be considered by the assessing officer.
- If there is un-matched ITC in top 10 suppliers or the suppliers covering at least 50% of the ITC (whichever is more) then such unmatched ITC can be allowed only after filing of supplementary annexure J-1 or J-2.
- If there is un-matched ITC in top 10 suppliers or the suppliers covering at least 50% of the ITC (whichever is more) then such ITC can be verified through the confirmation of the ledgers of the suppliers, provided that such supplier encloses copy of return acknowledgement for the month of March of that F.Y. or acknowledgement of form 704 of that F.Y., duly signed & stamped by the dealer or his authorized signatory along with such ledger confirmations.
- If ITC claim per dealer per year is Rs 5 lakhs or more under unmatched/mismatch category or in top 10 suppliers or 50% ITC (whichever is more) than it shall be verified through SAS report number REP_704_16 or REP_704_19.
- Notwithstanding anything contained in this circular, ledger confirmation shall not be asked if claim of ITC is Rs 5000/- or below per supplier per year.
- If all the above conditions is satisfied, then officer may assume that the balance ITC has also matched. If any of the conditions are not satisfied, then only matched ITC, credit will be granted.

IBA cases: ITC claimed on



purchases from non-genuine dealers, RC cancelled dealers, Return Non-filers shall be disallowed after due verification. The instructions given in this circular shall be applicable for the parameters of unmatch and mismatch in ITC i.e. the dealer has to produce the ledger confirmation along

with relevant acknowledgment for allocated cases of mismatch, and in case of unmatch, such ITC can be allowed only after filing of supplementary Annexure J-1 or J-2. In other words, facility of top 10 or 50% ITC (whichever is more) is not available for IBA Cases.

All the departmental officers are directed to follow the above instructions scrupulously.



Ransomware Attack

What is a Ransomware Attack?

Attacks involve malware delivered through spear phishing emails that lock up valuable data assets and demand a ransom to release them.

Hackers now check a victim's social media accounts, and create a fake email address pretending to be a friend or contact in order to get them to click on an infected link or attachment.

"It's much more targeted, and will exploit a particular vulnerability in a device, application, server or software,

The Health / Education / social sector is highly targeted by hacker attacks, due to antiquated or mis-configured computer security systems and the amount of sensitive data they hold.

How to Prevent Ransomware Attacks

1. Do not click hyper links from un-known sources, and without establishing authenticity of link even from known sources.

2. Prepare a up-to-date inventory of all the "Digital Assets" at various locations/facilities being used by the various functionaries of the

3. Make a trustworthy knowledgeable functionary (permanent Government employee) Administrator of the Digital Assets (ADA) of the

organization at each

4. Let ADA keep all software (especially the system software) up to date, including operating systems and applications.

5. ADA has to ensure back-up of all digital content located in the digital assets under ADA jurisdiction every day, including information on employee devices, so ADA can restore encrypted data if attacked by ransomware.

6. Back up all digital content to a secure, offsite secret location(s) within

7. Distribute Back-up : Divide the digital assets and distribute the back-up locations. Don't place all data on one back-up file and share it.

8. ADA in collaboration with NIC officials, to train all the staff using the digital assets including mobile devices connected to network, on cyber security practices, emphasizing not opening attachments or links from unknown sources.

9. Develop a communication channel and strategy to quickly inform all employees if a virus reaches the company network.

10. If every bit of data of the organization is safeguarded and back-up is kept secretly, even if hackers attack and demand ransom, Govt can launch an investigation rather than making payment.

11. Mandate security auditing by ICERT empanelled auditors for all the digital assets as per Gol policy.

12. ADAs in collaboration with information security teams of ITE&C Dept and NIC to perform penetration testing to detect the vulnerabilities.

13. Register all the devices and digital assets. Strictly avoid usage of un-registered and unmonitored devices.

14. Adopt and use standard security and data privacy policies as per advisories from ITE&C Dept, NIC/ Govt of India.

15. Ensure all devices and systems are protected well with latest firewalls and anti-virus systems.

Mitigating an attack

1. Remove the infected machines from the network, so the ransomware does not use the machine to spread throughout your network.

2. Report the attack and register all information related to

3. Facilitate investigation of the

4. Let one authorized spokesperson of the entire department only communicate with media the information related to attack.

5. A inventory of attacks and decryption kits / mitigation kits to be maintained.



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Salary of NR seafarer not taxable

Representations have been received in the Board that income by way of salary, received by non-resident seafarers, for services rendered outside India on-board foreign ships, are being subjected to tax in India for the reason that the salary has been received by the seafarer into the NRE bank account maintained in India by the seafarer.

The matter has been examined in the Board. Section 5(2) (a) of the **Income-tax Act** provides that only such income of a non-resident shall be subjected to tax in India

that is either received or is deemed to be received in India. It is hereby clarified that salary accrued to a non-resident seafarer for services rendered outside India on a **foreign ship** shall not be included in the total income merely because the said salary has been credited in the NRE account maintained with an Indian bank by the seafarer.



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