Connection

Volume IV | Issue 3 | September 2015

If you are not willing to risk the usual you will have to settle for the ordinary. ~ Jim Rohn

Lalit Bajaj & Associates
Chartered Accountants

INNOVATE CREATE LEAD

LALIT BAJAJ & ASSOCIATES

Volume IV, Issue 5 September 2015

Communiqué

Dear Seniors, Friends & Colleagues,

||Happy Ganesh Chaturthi||

The turbulent stock market has raised eyebrows of all optimistic economists and capitalists, but the fact remains that the strong factor moving the market is sentiment. I firmly believe the weak sentiment towards China will push multiple industrialist and investors towards a more confident and able economy to withstand and that's India.

At a time when we are asking for extension of due dates, department is proving itself more efficient and disciplined by processing the returns within less than 15 days of filing returns. But the fact remains that the compliance considerations of Companies Act and Income Tax Act with increased responsibility of chartered accountants towards government reporting needs much more time then what is available.

Dynamic financials and business models supporting the vision of our economy require specialized and dedicated team of professionals to authenticate and work in tandem with economic objectives. We are a family of 0.02% out of the total population when applied only to our country and the fact remains many of us are giving our services to world economy. We are perceived as most hardworking, result oriented, self-esteemed professionals. We drive implementation of enacted regulations, effective functioning of industry, creating analytical data for various purposes, representing various organizations and bodies etc. We are competent but the question is, are we properly placed? Considering the larger role that we play and responsibility we share, it becomes very sensitive and objective to place a proper candidate for a suitable job. As very well said that Sachin Tendulkar could never have been a better singer other than a cricketer, the same way our colleagues have to be at a position where they can outperform. We can perform better when the responsibilities bestowed on us are of our self -interest. I suggest some effective changes in Campus placement procedures to be implemented to ensure our resources are most effectively deployed.

"Choose a job you love, and you will never have to work a day in your life."

.....Confucius

Best Wishes

CA Lalit Bajaj

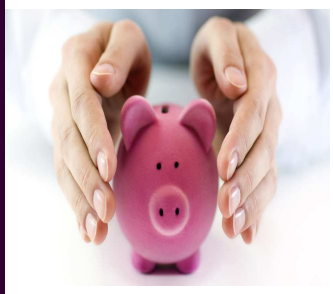
Special points of interest:

- Sept 15 - Payment of Advance Income Tax
- Sept 15 - E-Payment of PF for August
- Sept 21 - Payment of MVAT and WCT TDS for August
- Sept 30 - Filing of I.T. Return (Audit Applicable)
- Sept 30 - Filing of Wealth Tax Returns (Audit Applicable)

Inside this issue:

Nidhi Company	3
Gold Monetization Scheme	6
Income Tax—Update	8
SEBI - Revised Listing Regulation	11
SEBI Update on Insider Trading	12
OROP	14
Professional Update - ICAI	15

Nidhi Company - Companies Act 2013



Nidhi" means a company which has been incorporated as a Nidhi with the object of

- Cultivating the habit of thrift and savings amongst its members,
- Receiving deposits from, and lending to, its members only, for their mutual benefit, and which complies with rules of Chapter XXVI of Companies Rules, 2014.

Nidhi in the Indian context / language means "TREASURE". However, in the Indian financial sector it refers to any mutual benefit society notified by the Central / Union Government as a Nidhi Company. They are created mainly for cultivating the habit of thrift and savings amongst its members.

The companies doing Nidhi business, viz. borrowing from members and lending to members only, are known under different names such as Nidhi, Permanent Fund, Benefit Funds, Mutual Benefit Funds and Mutual Benefit Company.

Nidhi's are more popular in South India and are highly localized single office institutions. They are mutual benefit societies, because their dealings are restricted only to the members; and membership is limited to individuals. The principal source of funds is the contribution from the members. The loans are given to the members at relatively reasonable rates for purposes such as house construction or repairs and are generally secured. The deposits mobilized by Nidhi's are not much when compared to the organized banking sector.

Since Nidhi's come under one class of NBFCs, RBI is empowered to issue directions to them in matters relating to their deposit acceptance activities. However, in recognition of the fact that these Nidhi's deal with their shareholder-members only, RBI has exempted the notified Nidhi's from the core provisions of the RBI Act and other directions applicable to NBFCs. As on date (February 2013) RBI does not have any specified regulatory framework for Nidhi's.

Applicability

The Central Government made 'Nidhi Rules, 2014' for the purpose of carrying out the objectives of 'Nidhi' companies. These rules shall be applicable to-

- Every company which had been declared as a Nidhi or Mutual Benefits under Section 620A(1) of Companies Act, 1956;
- Every company functioning on the lines of a Nidhi company or Mutual benefit society but has either not applied for or has applied for and is awaiting notification to be a Nidhi or Mutual Benefit Society under Section 620A(1)of Companies Act, 1956;
- Every company incorporated as a Nidhi pursuant to the provisions of Section 406of the Companies Act, 2013.

Requirements for Nidhi Company

- A Nidhi company to be incorporated under this Act shall be a Public Company;
- It shall have a minimum paid up equity share capital of Rs.5,00,000/-;
- No preference shares shall be issued.
- If preference shares had already been issued by a Nidhi Company before commencement of this Act, such preference shares are to be redeemed in accordance with the terms of issue of such shares;
- The object of the company shall be cultivating the habit of thrift and savings amongst its members, receiving deposits from and lending to its members only for their mutual benefits;
- It shall have the words 'Nidhi Limited' as part of its name;

Requirement after Incorporation

Every Nidhi shall, within a period of one year from the commencement of these rules, ensure that it has—

- Minimum number of members should be 200;
- Net owned funds shall be Rs.10,00,000/- or more ('Net owned funds' means the aggregate of paid up equity share capital and free reserved as reduced by the accumulated and intangible assets appearing in the last audited balance sheet);
- Ratio of net owned funds to deposit shall be not more than 1:20;
- Unencumbered term deposits of not less than 10% of the outstanding deposits as specified

in Rule 14;

General restrictions

Rule 6 provides general restrictions. According to this Rule no Nidhi shall-

Carry on the business of

- Chit Fund,
- Hire Purchase Finance,
- Leasing Finance,
- Insurance or Acquisition of Securities issued by anybody corporate;

Issue

- Preference Shares,
- Debentures or
- Any Other Debt Instrument by any name or in any form whatsoever;

Open any Current Account with its members;

Acquire another company by;

- Purchase of securities or
- Control the composition of the Board of Directors of any other company in any manner whatsoever or

Enter into any arrangement for the change of its management, unless it has passed a special resolution in its general meeting and also obtained the previous approval of the Regional Director having jurisdiction over Nidhi;

Carry on any business other than the business of borrowing or lending in its own name;

Accept Deposits from or lend to any person, other than its members;

Pledge any of the assets lodged by its members as security;

Take Deposits from or lend money to anybody corporate;

Enter into any Partnership Arrangement in its borrowing or lending activities;

Issue or cause to be issued any advertisement in any form for soliciting deposit;

Pay any brokerage or incentive for mobilizing deposits from members or for deployment of funds or the granting loans.

Note

Nidhi's which have adhered to all the provisions of these rules may provide locker facilities on rent to its members subject to the rental income from such facilities not exceeding 20% twenty per cent of the gross income of the Nidhi at any point of time during a financial year.

Share capital and allotment

Rule 7 provides that every Nidhi shall issue equity shares of the nominal value of not less than Rs.10/- each. This requirement shall not apply to a company which has been declared as a Nidhi company.

Provided that this requirement shall not apply to a company referred below:

- Every company which had been declared as a Nidhi or Mutual Benefits under Section 620A(1) of Companies Act, 1956;
- Every company functioning on the lines of a Nidhi company or Mutual benefit society but has either not applied for or has applied for and is awaiting notification to be a Nidhi or Mutual Benefit Society under Section 620A(1)of Companies Act, 1956;

Acceptance of deposits:

- A Nidhi shall not accept deposits exceeding 20 times of its Net Owned Assets as per last audited financial statements.
- The fixed deposits shall be accepted for a minimum period of 6 months and a maximum period of 60 months.
- Recurring deposits shall be accepted for a minimum period of 12 months and a maximum period of 60 months.
- In case of recurring deposits relating to mortgage loans, the maximum period of recurring deposits shall correspond to the repayment period of such loans granted by Nidhi.
- The maximum balance in a savings deposit account at any given time qualifying for interest shall not exceed Rs.1,00,000/- and the interest shall not exceed 2% above the rate of interest payable to savings bank account by nationalized banks.
- Interest for fixed and recurring deposits shall be at a rate not exceeding the maximum rate of interest prescribed by RBI which the NBFC can pay on their public deposits.

Every Nidhi shall invest and continue to keep invested, in unencumbered term deposits with a scheduled commercial bank or post office deposits in its own name an amount which shall not be less than 10% of the deposits outstanding at the close of the business on the last working day of the second preceding month.

In case of unforeseen commitments, temporary withdrawal may be permitted with the prior approval of the Regional Director for the purpose of repayment to depositors, subject to such conditions and time limit which may be speci-

fied by the Regional Director to ensure restoration of the prescribed limit of 10%

Loan

A Nidhi shall provide loans only to its members. The loans given to a member shall be subject to the following limits:

- Rs.2,00,000/- where the total amount of deposits from members is less than Rs.2 crores;
- Rs.7,50,000/- where the total amount of deposits from its members more than Rs.2 crores but less than Rs.20 crores;
- Rs.12,00,000/- where the total amount of deposits from its members is more than Rs.25 crores but less than Rs.50 crores;
- Rs.15, 00,000/- where the total amount of deposits from its members is more than Rs.50 crores.

Dividend

- A Nidhi shall not declare dividend exceeding 25% or
- Such higher amount as may be specifically approved by the Regional Director for reasons to be recorded in writing and further subject to the following conditions-

  An equal amount is transferred to General Reserve;

  There has been no default in repayment of matured deposits and interest; and

  It has completed with all the rules as applicable to Nidhis.

Returns

- Within 90 days from the closure of the first financial year after its incorporation and where applicable, the second financial year, Nidhi shall file a return of statutory compliances in Form NDH – 1 along with such fee as prescribed with the Registrar duly certified by a Company Secretary in practice or a Chartered Accountant in practice or a Cost Accountant in practice.
- If the company is not complying with the above it shall within 90 days from the close of the first financial year, apply to the Regional Director in Form NDH -2 along with fee for extension of time and
- The Regional Director may consider the application and pass orders within 30 days of the receipt of the application.
- If there is failure the Nidhi shall not accept any further deposits from the commencement of the second financial year till it complies with the provisions besides being liable for penal consequences provided in the Act.

Every company covered under rule 2 shall file half yearly return with the registrar:

In Form NDH-3 along with such fee as provided in Companies (Registration Offices and Fees) Rules, 2014 within thirty days from the conclusion of each half year duly certified by a company secretary in practice or chartered accountant in practice or cost accountant in practice.

Companies Covered under Rule -2 are following:

- Every company which had been declared as a Nidhi or Mutual Benefits under Section 620A(1) of Companies Act, 1956;
- Every company functioning on the lines of a Nidhi company or Mutual benefit society but has either not applied for or has applied for and is awaiting notification to be a Nidhi or Mutual Benefit Society under Section 620A(1)of Companies Act, 1956;
- Every company incorporated as a Nidhi pursuant to the provisions of Section 406of the Companies Act, 2013.

Power to enforce compliance

- The Registrar of Companies may call for such information or returns from Nidhi as he deems necessary and may engage in the services of Chartered Accountants, Company Secretaries in practice, Cost Accountants or any firm thereof from time to time for assisting him in the discharge of his duties.
- The Regional Director may appoint a Special Officer to take over the management of Nidhi in case the Nidhi has violated these rules or has failed to function in terms of the Memorandum and Articles of Association.
- The Special Officer shall function as per the guidelines given by such Regional Director. An opportunity of being heard shall be given to the concerned Nidhi by the Regional Director before appointing any Special Officer.

Penalty

If a company contravenes any of the provisions of the rules the company and every officer of the company who is in default shall be punishable with fine which may extend to Rs.5, 000/- and where the contravention is a continuing one, with a further fine which may extend to Rs.500/- for every day after the first during which the contravention continues.

Gold Monetization Scheme

Objective: The objectives of the Gold Monetization scheme are:

- To mobilize the gold held by households and institutions in the country.
- To provide a fillip to the gems and jewellery sector in the country by making gold available as raw material on loan from the banks.
- To be able to reduce reliance on import of gold over time to meet the domestic demand.

Scope: The scheme requires a vast set-up of infrastructure for facilitating easy and secure handling of gold. For this reason, it may be possible to launch it initially only in selected cities. Over time, as the infrastructure for assaying and refining of gold develops, the scheme can be extended to other cities.

Scheme: The draft outline of the scheme detailed in this section, has been prepared after due deliberations and consultations with various stakeholders which includes banks, refineries, hallmarking centres, jewellers' associations; RBI; and various government departments. A schematic representation of the scheme is at Annexure-I.

Purity Verification and Deposit of Gold

Purity Testing Centres: There are at present 350 Hallmarking Centres that are Bureau of Indian Standards (BIS) certified spread across various parts of the country (List of the number of centres in each states is at Annexure-II). These centres may not necessarily be jewellers. They are engaged in certifying the purity of the gold that the jewellers manufacture on a daily basis and for which they charge a fee from the jewellers. These Hallmarking Centres will act as 'Purity Testing Centres' for the GMS as they are well equipped to conduct a test of purity of the jewellery in a short span of time.

Preliminary Test: In a Purity Testing Centre, a preliminary XRF machine-test will be conducted to tell the customer the approximate amount of pure gold. If the customer agrees, he will have to fill-up a Bank/KYC form and give his consent for melting the gold. If the customer does not agree to the XRF machine test, he can take his jewellery back at this stage. The time spent by the customer will be about 45 minutes in the centre up till this stage.

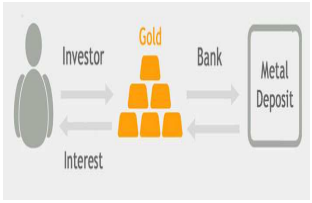
Fire Assay Test: After receiving the customer's consent for melting the gold for conducting a further test of purity, at the same collection centre, the gold ornament will then be cleaned of its dirt, studs, meena etc. The studs will be handed-over to the customer there itself. Net weight of the jewellery will be taken after such removals and told to the customer.Then, right in front of the customer the jewellery will be melted and through a fire assay, its purity will be ascertained. These centres have viewing galleries from where the customer can see the entire process. The time taken is expected not to exceed 3-4 hours.

Deposit of Gold: When the results of the fire assay are told to the customer, he has a choice of either refusing to accept, in which case he can take back the melted gold in the form of gold bars, after paying a nominal fee to that centre; or he may agree to deposit his gold (in which case the fee will be paid by the bank). If the customer agrees to deposit the gold, then he will be given a certificate by the collection centre certifying the amount and purity of the deposited gold.

Conditions: The minimum quantity of gold that a customer can bring is proposed to be set at 30 grams, so that even small depositors are encouraged. Gold can be in any form (bullion or jewellery).

Opening of Gold Savings Account with the banks.

Gold Savings Account: When the customer produces the certificate of gold deposited at the Purity Testing Centre, the bank will in turn open a 'Gold Savings Account' for the customer and credit the 'quantity' of gold into the customer's account. Simultaneously, the Purity Verification Centre will



also inform the bank about the deposit made.

Interest payment by banks: The bank will commit to paying an interest to the customer which will be payable after 30/60 days of opening of the Gold Savings Account. The amount of interest rate to be given is proposed to be left to the banks to decide. Both principal and interest to be paid to the depositors of gold, will be 'valued' in gold. For example if a customer deposits 100 gms of gold and gets 1 per cent interest, then, on maturity he has a credit of 101 gms.

Redemption: The customer will have the option of redemption either in cash or in gold, which will have to be exercised in the beginning itself (that is, at the time of making the deposit).

Tenure: The tenure of the deposit will be minimum 1 year and with a roll out in multiples of one year. Like a fixed deposit, breaking of lockin period will be allowed.

Tax Exemption: In the Gold Deposit Scheme (1999), the customers received exemption from Capital Gains Tax, Wealth tax and Income Tax. Similar tax exemptions are likely to be made available to the customers in the GMS after due examination

Transfer of Gold to the Refiners

Refineries: At present there are about 32 refineries in the country. The laboratories of some of these refineries are NABL accredited which means that the process that they adopt is certified.BIS has been asked by this Department to ascertain if it can conduct accreditation of the products being produced in these refineries also.

Transfer of gold to refineries: Purity Testing Centres will send the gold to the refiners. The refiners will keep the gold in their ware-houses, unless the banks prefer to hold it themselves.

Payment: For the services provided by the refiners, they will be paid a fee by the banks, as decided by them, mutually.

Utilization of Deposited Gold

CRR/SLR: To incentivize banks, it is proposed that they may be permitted to deposit the mobilized gold as part of their CRR/SLR requirements with RBI. This aspect is still under examination.

Foreign Currency: Banks may sell the gold to generate foreign currency. The foreign currency thus generated can then be used for onward lending to exporters / importers.

Coins: Bank may convert mobilized gold into coins for onward sale to their customers.

Exchanges: Banks to buy and sell on domestic commodity exchanges, where mobilized gold can be delivered.

Lending to jewellers: For lending to jewellers.

Lending the Gold to the Jewellers

Gold Loan Account: The jewellers, on the basis of the terms and conditions of the banks, will get a Gold Loan Account opened at the bank.

Delivery of gold to jewellers: When a gold loan is sanctioned, the jewellers will receive physical delivery of gold from the refiners. The banks will in turn make the requisite entry in the jewellers' Gold Loan Account.

Interest received by banks: The interest rate charged by the banks will have to cover the following:

Interest rate paid to the depositors of gold

Fee paid to the refiners and Purity Verification Centres.

Profit margin of the banks

The banks can directly get gold from the international market on a consignment basis and lend it to the jewellers. If this route is more lucrative, then the entire purpose will get defeated. Thus, this aspect will also have to be kept in mind, while deciding the interest rate.

MoU between Banks, Refiners and Purity Testing Centres

The banks will enter into a tripartite MoU with refiners and purity testing centres, that are selected by them to be their partners in the scheme.

The MoU will clearly lay down the details regarding payment of fee, services to be provided, standards of service and the details of the arrangements between the banks, refiners and purity testing centres.

Submission of Report of Reporting Financial Institution

Procedure for registration and submission of report as per clause (k) of sub section (1) of section MBA of Income-tax Act, 1961 read with Sub rule (7) of Rule 114G of Income-tax Rules, 1962:

As per Sub rule (9)(a) of Rule 114G of the Income Tax Rules, 1962 (hereunder referred as the Rules), the statement referred to in sub-rule (7) of Rule 114G shall be furnished through online transmission of electronic data to a server designated for this purpose under the digital signature in accordance with the data structure specified in this regard by the Principal Director General of Income-tax (Systems). Further as per sub rule (9)(b) of Rule 114G Principal Director General of Income Tax (Systems) shall specify the procedures, data structures and standards for ensuring secure capture and transmission of data, evolving and implementing appropriate security, archival and retrieval policies.

2. In exercise of the powers delegated by Central Board of Direct Taxes (Board') under Sub rule (9)(a) and 9(b) of Rule 114G of the Income tax Rules 1962, the Principal Director General of Income-tax (Systems) hereby lays down the procedures, data structure and standards for ensuring secure capture and transmission of data, evolving and implementing appropriate security, archival and retrieval policies as under:

- **Registration of the reporting financial institution:** The reporting financial institution is required to get registered with the Income Tax Department by logging in to the e-filing website with the log in ID used for the purpose of filing the Income Tax Return of the reporting financial institution. A link to register reporting financial institution has been provided under "My Account". The reporting financial institution is required to submit registration details on the screen. A reporting financial institution may submit different registration information under different reporting financial institution categories. Once registered, the reporting entity will have an option to deregister.

- **Submission of Form 61B:** Once the reporting financial institution gets registered successfully, it is required to submit the Form 61 B or Nil statement. The designated director is then required to login to the e-filing website with the log in ID used for the purpose of filing his/her own Income Tax Return. The prescribed schema for the report under form 618 can be downloaded from the e-filing website. Under "e-File" menu, an option "Submit 61B/nil statement" will be available to the designated director. The designated director will be required to submit the PAN of the reporting financial institution, calendar year for which report is to be submitted and the reporting entity category for which the report is to be submitted. The designated director will then be provided the options to upload the Form 61B/Nil statement. If the designated director chooses the option "Form 61B" then form shall be submitted using a Digital Signature Certificate of the designated director.

- **Submission of Nil statement:** In case nil statement is to be submitted, the option to submit Nil statement is required to be selected. The designated director will then be required to submit a declaration with respect to pre-existing accounts (As defined in Rule 114H (2)(h) of Income Tax Rules, 1962) and new accounts (As defined in Rule 114H(2)(d) of Income Tax Rules, 1962). The declaration is required to be submitted using a Digital Signature Certificate.

3. In view of the changes mentioned above, the procedures prescribed in Notification 3 dated 25th August, 2015 stands withdrawn forthwith. The registration and submission of Nil statement already completed under the procedures prescribed in Notification 3 dated 25th August, 2015 shall continue to be valid.

FAQs on Statements of Financial Transactions & Reportable Accounts

What is statement of financial transaction or reportable account (previously called as 'Annual Information Return (AIR)'?

As per section 285BA of the Income-tax Act, 1961 (as substituted by Finance Act, 2014 w.e.f. 01-04-2015), specified entities (Filers) are required to furnish a statement of financial transaction or reportable account (hereinafter referred to as 'statement') in respect of specified financial transactions or any reportable account registered/recorded/ maintained by them during the financial year to the income-tax authority or such other prescribed authority.

* The rules for filing of Statement of Financial Transactions and Reportable Accounts are yet to be notified

Who is required to furnish statement of financial transactions and reportable accounts?

Following persons shall be required to furnish statement of financial transactions or reportable accounts registered or recorded or maintained by them during a financial year to the prescribed authority:

- an assessee;
- the prescribed person in the case of an office of Government;
- a local authority or other public body or association;
- the Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908 (16 of 1908);
- the registering authority empowered to register motor vehicles under Chapter IV of the Motor Vehicles Act, 1988 (59 of 1988);
- the Post Master General as referred to in clause (j) of section 2 of the Indian Post Office Act, 1898 (6 of 1898);
- the Collector referred to in clause (g) of section 3 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013);
- the recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);
- an officer of the Reserve Bank of India, constituted under section 3 of the Reserve Bank of India Act, 1934 (2 of 1934);
- a depository referred to in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 (22 of 1996); or
- a prescribed reporting financial institutions

Note: The Board may prescribe different values for different transactions in respect of different persons having regard to the nature of such transactions. However, the aggregate value of such transactions during a financial year shall not be less than Rs. 50,000

* The rules prescribing the nature of transactions and their value for filing of Statement of Financial Transactions and Reportable Accounts are yet to be notified

What is the due date for filing of statement of financial transaction or reportable account?

Statement of financial transaction or reportable accounts shall be furnished for such period, within such time and in the form as may be prescribed.

* The rules for filing of Statement of Financial Transactions and Reportable Accounts are yet to be notified

Is there any remedy available under the act, if a person does not file the statement within the prescribed time?

Section 285BA(5) empower the tax authorities to issue a notice to the person who had not filed the statement within prescribed time. In such a case, the tax authorities may serve upon such person a notice requiring him to furnish the statement within a period not exceeding 30 days from the date of service of such notice and in such a case the person shall furnish the statement within the time as specified in the notice.

What are the consequences of not filing statement of financial transaction or reportable account?

Non-furnishing of statement of financial transaction or reportable account will attract penalty under section 271FA. Penalty can be levied of Rs. 100 per day of default.

However, section 285BA(5) (as discussed earlier) empower the tax authorities to issue a notice to the person directing him to file the statement within a period not exceeding 30 days from the date of service of such notice and

in such a case person shall furnish the statement within the time specified in the notice. If person fails to file the statement within the specified time, then a penalty of Rs. 500 per day will be levied from the day immediately following the day on which the time specified in such notice for furnishing the statement expires.

Is there any remedy available under the act, if a person filed inaccurate or defective statement?

If any person, after filing the statement, comes to know or discovers any inaccuracy in the information provided in the statement, he shall inform such inaccuracy to the prescribed income-tax authority within a period of ten days and furnish the correct information in such manner as may be prescribed.

On the other hand, the prescribed income-tax authority may also intimate the defect to the person and give him an opportunity of rectifying the defect within a period of thirty days from the date of such intimation or within such extended period as may be allowed by prescribed income-tax authority.

However, if a person fails to rectify the defect within the said period than such statement shall be treated as an invalid statement and the provisions of this Act shall apply as if such person had failed to furnish the statement.

What are the consequences for furnishing inaccurate statement of financial transaction or reportable account?

If a prescribed reporting financial institution referred to in Section 285BA(1)(k) who is required to furnish statement of financial transaction or reportable account, provides inaccurate information in the statement, and where:

- the inaccuracy is due to a failure to comply with the due diligence requirement prescribed* under section 285BA(7) or is deliberate on the part of that person;
- the person knows of the inaccuracy at the time of furnishing the statement but does not inform the prescribed income-tax authority or such other authority or agency;
- the person discovers the inaccuracy after the statement is furnished and fails to inform and furnish correct information within a period of 10 days as specified under section 285BA(6),

then, the prescribed income-tax authority may direct that such person shall pay, by way of penalty, a sum of fifty thousand rupees.

No extension for Tax Audit due date for AY 2015-16

Income-tax returns for Assessment Year 2015-16 for certain categories of assessees viz companies, firms and individuals engaged in proprietary business/profession etc whose accounts are required to be audited, are to be filed by 30th September, 2015. The audit report is also required to be filed by the said date.

The Government has received representations from various stakeholders seeking extension of date for filing of returns and tax audit reports beyond 30th September 2015. The reasons cited are delay in notifying the returns and related delay in availability of forms on the e-filing website.

The matter has been considered. Income-Tax Returns Forms 3,4,5,6 and 7 which are used by the above mentioned categories of assessees were notified for Assessment Year 2015-16 on 29.07.2015. The forms were e-enabled and were available on the e-filing website of the Department from 7th August 2015 giving enough time for compliance. The changes made to these forms are not extensive as compared to the earlier years. Further taxpayers entering into either international transactions or specified domestic transactions are required to file their returns by 30th November 2015 only.

After consideration of all facts, it has been decided that the last date for filing of returns due by 30th September 2015 will not be extended. Taxpayers are advised to file their returns well in time to avoid last minute rush.

CBDT advises not to pursue Recovery of Outstanding Demand in MAT Cases of FIIs

A Committee on Direct Tax Matters chaired by Justice A.P. Shah, was constituted to examine the issue of applicability of Minimum Alternate Tax ('MAT') on FIIs/FPIs for the period prior to 01.04.2015. The Committee has submitted its final report to the Government on 25.08.2015. The Committee has recommended that section 115JB of the Income-tax Act, 1961('Act') may be amended to clarify the inapplicability of the provisions of section 115JB to FIIs/FPIs having no permanent establishment (PE)/place of business in India. The Government has accepted the said recommendation and it has been decided to carry out appropriate amendment in the Act so as to prescribe that MAT provisions will not be applicable to FIIs/FPIs not having a place of business/permanent establishment In India for the period prior to 01.04.2015.

The field authorities are accordingly advised to take into consideration the above position and keep in abeyance, for the time-being the pending assessment proceedings in cases of FIIs/PIs involving the above issue. They are further advised not to pursue the recovery of outstanding demands, if any, in such cases.

SEBI notifies revised Listing Regulations & Disclosure Requirements

SEBI has notified SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations) on September 2, 2015 vide Notification *No. SEBI/LAD-NRO/GN/2015-16/013*, after following the consultation process. A time period of ninety days has been given for implementing the Regulations. However, two provisions of the regulations, which are facilitating in nature, are applicable with immediate effect. These pertain to (i) passing of ordinary resolution instead of special resolution in case of all material related party transactions subject to related parties abstaining from voting on such resolutions, in line with the provisions of the companies Act, 2013, and (ii) re-classification of promoters as public shareholders under various circumstances.

The Listing regulations would consolidate and streamline the provisions of existing listing agreements for different segments of the capital market viz. Equity (including convertibles) issued by entities listed on the Main Board of the Stock Exchanges, Small and Medium Enterprises listed on SME Exchange and Institutional Trading Platform, Non-Convertible Debt Securities, Non Convertible Redeemable Preference Shares, Indian Depository Receipts, Securitized Debt Instruments and Units issued by Mutual Fund Schemes. The Regulations have thus been structured to provide ease of reference by consolidating into one single document across various types of securities listed on the Stock exchanges.

The Listing Regulations have been sub-divided into two parts viz.,(a) substantive provisions incorporated in the main body of Regulations; (b) procedural requirements in the form of Schedules to the Regulations.

The main features of these regulations are as follows:

- **Guiding Principles (Chapter II):** The regulations start by providing broad principles (in line with IOSCO Principles) for periodic disclosures by listed entities and also have incorporated the principles for corporate governance (in line with OECD principles). These principles underlie specific requirements prescribed in different chapters of the Regulations. In the event of the absence of specific requirements or ambiguity, these principles would serve to guide the listed entities.
- **Common obligations applicable to all listed entities (Chapter III):** Obligations which are common to all listed entities have been enumerated. These include general obligation of compliance of listed entity, appointment of common compliance officer, filings on electronic platform, manda-

tory registration on SCORES, etc.

- **Obligations which are applicable to specific types of securities (Chapter III to IX):** Obligations which are applicable to specific types of securities have been incorporated in separate chapters
- **Obligations of stock exchanges and provisions in case of default (Chapter X & XI):** Stock Exchanges have been given responsibility to monitor compliance or adequacy / accuracy of compliance with provisions of these regulations and to take action for non -compliance.
- **Ease of Reference:**: The related provisions have been aligned and provided at a common place for ease of reference. For example, all clauses dealing with disclosure of events or information which may be material or price sensitive spread across the Listing Agreement have been provided as a schedule to the regulations. All disclosures required to be made on the website of the listed entity have been enumerated at a single place for ease of reference and all requirements pertaining to disclosures in annual report have been combined.
- **Streamlining and segregation of initial issuance/ listing obligations:** In order to ensure that there is no overlapping or confusion on the applicability of these regulations, pre-listing requirements have been incorporated in respective regulations viz. ICDR Regulations, ILDS Regulations, etc These provisions pertain to allotment of securities, refund and payment of interest, 1% Security Deposit (in case of public issuance), etc. Post-listing requirements have been incorporated in Listing Regulations.
- **Alignment with provisions of Companies Act, 2013:** Wherever necessary, the provisions in Listing Regulations have been aligned with those of the Companies Act, 2013.
- **Listing Agreement**– A shortened version of the Listing Agreement (2 page approximately) will be prescribed which will be required to be signed by a company getting its securities listed on Stock Exchanges. Existing listed entities will be required to sign the shortened version within six months of the notification of the regulations.

Guidance note on SEBI (Prohibition of Insider Trading) Regulations, 2015

SEBI (Prohibition of Insider Trading) Regulations, 2015 ("the Regulations") were notified vide notification dated 15th January, 2015. The regulations came into effect from May 15th , 2015. Subsequently SEBI received certain queries from the market participants seeking guidance on the interpretation of some provisions of the Regulations. Under regulation 11 of the Regulations, SEBI may provide guidance to the market to remove any difficulties in the interpretation or application of the provisions of these regulations. The queries received and the guidance sought is detailed below for the guidance of market participants:-

ESOPS:

1. Does the contra trade restriction (for a period not less than six months) under clause 10 of Schedule B of the Regulations also apply to the exercise of ESOPs and the sale of shares so acquired?

Guidance: Exercise of ESOPs shall not be considered to be "trading" except for the purposes of Chapter III of the Regulations. However, other provisions of the Regulations shall apply to the sale of shares so acquired.

For Example:

- If a designated person has sold/ purchased shares, he can subscribe and exercise ESOPs at any time after such sale/ purchase, without attracting contra trade
- Where a designated person acquires shares under an ESOP and subsequently sells/pledges those shares, such sale shall not be considered as contra trade, with respect to exercise of ESOPs.
- Where a designated per-

son purchases some shares (say on August 01, 2015), acquires shares later under an ESOP (say on September 01, 2015) and subsequently sells/ pledges (say on October 01, 2015) shares so acquired under ESOP, the sale will not be a contra trade but will be subject other provisions of the Regulations, however, he will not be able to sell the shares purchased on August 01, 2015 during the period of six months from August 01, 2015.

- Where a designated person sells shares (say on August 01, 2015), acquires shares later under an ESOP (say on September 01, 2015) the acquisition under ESOP shall not be a contra trade. Further, he can sell/ pledge shares so acquired at anytime thereafter without attracting contra trade restrictions. He, however, will not be able to purchase further shares during the period of six months from August 01, 2015 when he had sold shares.

CONTRA TRADE:

2. In case an employee or a director enters into Future & Option contract of Near/Mid/ Far month contract, on expiry will it tantamount to contra trade? If the scrip of the company is part of any Index, does the exposure to that index of the employee or director also needs to be reported?

Guidance: Any derivative contract that is cash settled on expiry shall be considered to be a contra trade. Trading in index futures or such other derivatives where the scrip is part of such derivatives, need not be reported.

3. Whether contra trade is allowed within the duration of the trading plan?

Guidance: Any trading opted by a person under Trading Plan can be done only to the extent and in the manner disclosed in the plan, save and except for pledging of securities (Refer question 6).

4. Whether the restriction on execution of contra trade in securities is applicable in case of buy back offers, open offers, rights issues FPOs etc by listed companies?

Guidance: Buy back offers, open offers, rights issues, FPOs, bonus, etc. of a listed company are available to designated persons also, and restriction of 'contra-trade' shall not apply in respect of such matters.

5. Whether restriction on execution of contra trade is applicable only to designated persons of a listed company or whether it would also apply to the designated employees of market intermediaries and other persons who are required to handle UPSI in the course of business operations?

Guidance: The code prescribed by the Regulations is same for listed companies, market intermediaries and other persons who are required to handle UPSI in the course of business operations. Therefore, restrictions with regard to contra trade forming part of clause 10 of code of conduct shall apply to all according to the Regulations.

PLEDGE:

6. (a) Whether SEBI's intent is to prohibit creation of pledge or invocation of pledge for enforcement of security while in possession of UPSI?

(b)Whether creation of pledge or invocation of pledge is allowed when trading window is closed?

Guidance: Yes. However, the pledgor or pledgee may demonstrate that the creation of pledge or invocation of pledge was bona fide and prove their innocence under proviso to sub-regulation (1) of regulation 4 of the Regulations.

7. What should be the value of the pledge / revoke transaction for the purpose of disclosure? Is it the market value on date of the pledge / revoke transaction or is it the value at which the transaction has been carried out between the pledgor and pledgee? For instance, if the pledgor has availed a loan of Rs 10 Lacs against which he has pledged shares worth Rs 15 Lacs, would the transaction value be Rs 10 Lacs or Rs 15 Lacs.

Guidance: For the purpose of calculation of threshold for disclosures relating to pledge under Chapter III of the Regulations, the market value on the date of pledge/revoke transaction should be considered. In the above illustration, the value of transaction would be considered as fifteen lakh rupees.

MISCELLANEOUS:

8. Who will be approving authority for trades done by the Compliance Officer or his immediate relatives, as Insiders?

Guidance: The board of directors of the company shall be the approving authority in such cases and may stipulate such procedures as are deemed necessary to ensure compliance with these regulations.

9. Whether separate code of conduct can be adopted for listed company and each of intermediaries in a group?

Guidance: In case of a group, separate code may be adopted for listed company and each of intermediaries, as applicable to the concerned entity.

10. Whether Chief investor relations officer will also be responsible along with compliance officer for not disseminating information or non-disclosure of UPSI?

Guidance: Regulation 2 (c) clearly provides the functions and responsibilities of the compliance officer. Specific responsibilities to deal with dissemination of information and disclosure of unpublished price sensitive information are given to Chief Investor Relations Officer (CIRO) under clause 3 of Schedule A.

It is company's discretion to designate two separate persons as CIRO and Compliance Officer, respectively for fulfilling specified responsibilities. In cases where both CIRO and CO have been designated for overlapping functions, they shall be jointly and severally responsible.

11. If a spouse is financially independent and does not consult an insider while taking trading decisions, is that spouse exempted from the definition of 'immediate relative'?

Guidance: A spouse is presumed to be an 'immediate relative', unless rebutted so.

One Rank One Pension (OROP)

The Government has announced the One Rank One Pension scheme for the Ex-Servicemen. This was announced by the Defence Minister Shri Manohar Parrikar here today. The following is the statement of the Defence Minister:

"Government of India respects its Defence Forces and Ex-Servicemen for their valour, patriotism and sacrifices. The Government is proud of their devotion to duty and bravery. Our forces, besides vigilantly and gallantly defending the nation, have displayed exemplary standards of courage and bravery in natural calamities, law and order situations and other difficult circumstances.

The issue of "One Rank One Pension" (OROP) has been pending for nearly four decades. It is a matter of deep anguish that the various governments remained ambivalent on the issue of OROP. In February 2014, the then Government stated that OROP would be implemented in 2014-15, but did not specify what OROP would be, how it would be implemented or how much it would cost. An estimated Rs. 500 crore provided for OROP in the budget presented in February 2014 by the then government was not based on any thorough analysis. It is pertinent to mention that the then Minister of State for Defence in 2009 had, in reply to a question, informed Parliament that there are administrative, technical and financial difficulties in implementing OROP. It is for these reasons that the present government took some time to fulfil its promise.

Prime Minister Shri Narendra Modi has, on various occasions, reiterated the Government's commitment to implement OROP for Ex-Servicemen under military pension. As stated above, the previous government has estimated that OROP would be implemented with a budget provision of a mere Rs. 500 crore. The reality, however, is that to implement OROP, the estimated cost to the exchequer would be Rs. 8,000 to 10,000 crore at present, and will increase further in future.

The Government held extensive consultations with experts and Ex-Servicemen. The main argument for OROP is that the Defence personnel retire early and thus are not able to get the benefits of serving till normal retirement age. Despite the huge fiscal burden, given its commitment to the welfare of Ex-Servicemen, the Government has taken a decision to implement the OROP.

In simple terms, OROP implies that uniform pension be paid to the Armed Forces personnel retiring in the same rank with the same length of service, regardless of their date of retirement. Future enhancements in the rates of pension would be automatically passed on to the past pensioners. This implies bridging the gap between the rate of pension of current and past pensioners at periodic intervals.

Under this definition, it has been decided that the gap between rate of pension of current pensioners and past pensioners will be bridged every 5 years.

Under the OROP Scheme:

The benefit will be given with effect from 1st July, 2014. The present government assumed office on 26th May, 2014 and therefore, it has been decided to make the scheme effective from a date immediately after.

Arrears will be paid in four half -yearly instalments. All widows, including war widows, will be paid arrears in one instal-

ment.

To begin with, OROP would be fixed on the basis of calendar year 2013.

Pension will be re-fixed for all pensioners retiring in the same rank and with the same length of service as the average of minimum and maximum pension in 2013. Those drawing pensions above the average will be protected.

Personnel who voluntarily retire will not be covered under the OROP scheme.

In future, the pension would be re-fixed every 5 years.

It is estimated that the expenditure on arrears alone would be ten to twelve thousand crores of rupees. Apart from the fact that the previous government had provided for only Rs. 500 crore in the budget, it is noteworthy that the Koshiyari Committee had accepted the estimate of Rs. 235 crore as additional financial burden to implement OROP. The present government has accepted OROP in true spirit without being constrained by these inaccurate estimates.

OROP is a complex issue. A thorough examination of interests of retirees of different periods and different ranks is needed. The inter-service issues of the three Forces also require consideration. This is not an administrative matter alone. Therefore, it has also been decided that a One Member Judicial Committee would be constituted which will give its report in six months.

ITAT tone down its Remarks against Chartered Accountants and ICAI

Vijay V. Meghani vs. ACIT (ITAT Mumbai) on Miscellaneous **Application made by Institute of** Chartered Accountants of India (ICAI),

Brief of the case:

The ITAT Mumbai disposing off miscellaneous application of ICAI held that the observations made by ITAT were not offensive, thus, cannot be deleted in totality. The same has been misunderstood by ICAI and ,therefore, modified suitably to ensure that the clear message that there is a need of improvement in the overall design of CA course , which ITAT wants to convey reach to ICAI after modification.

Facts of the case:

The appeal is being heard on an application made by the Institute of Chartered Accountants of India (ICAI) wherein ICAI has appealed the tribunal to delete para 9.6 of its order dated 20th August , 2014 made disposing IT Appeal No. 5418/2014.

According to ICAI in para 9.6 of the aforesaid order tribunal has made some observations which are prejudicial to the reputation of Chartered Accountancy Profession , thus, the same has resulted in a mistake apparent from record requiring deletion of the para by exercising its power to rectify the order u/s 254(2) of the Act.

ICAI to support its application placed reliance on some of the decisions of Hon'ble Supreme Court wherein the court has held that tribunals should avoid making observations while disposing the appeals if the same is not relevant to ground of appeals.

In the present case, the observations made by tribunal about the Chartered Accountancy profession, the conduct of some of the students pursuing the C.A courses and also about ICAI. which being controversial may affect the reputation of the profession. ICAI, thus, prayed to delete the aforesaid para from order as the same is not only in any way relevant to grounds of appeal but also prejudicial to the interest of profession and nation.

Held by ITAT Mumbai:

The miscellaneous application was heard by two member bench headed by the Vice President of ITAT Mumbai.

The para 9.6 which has been issue under consideration and considered by ICAI to be offensive starts with the expression **"However, if it is considered for a moment....."**. Thus, tribunal has infact made observations on a hypothetical situation and the observations were nothing but the possible consequences , if the said hypothetical situations turns into reality.

But tribunal also agreed that message conveyed by it has been misunderstood. The tribunal had no intention to defame the profession, it only highlighted the importance of the articled clerk training and the self-study model conceived by the ICAI and the same was intended only to give a wake-up call to the students pursuing C.A profession.

The tribunal accordingly , to make the matter neutral suitably modified para 9.6 and restricted the hypothetical situation to that particular CA firm who advised the client instead of putting all Chartered Accountant professional into that hypothetical situation.

However , the tribunal did not delete the concerns expressed regarding the self-study module with article training as the same was not offensive remarks and were made only as a wakeup call to ICAI which is in well interest of profession as well as nation.

LALIT BAJAJ & ASSOCIATES

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

Phone: +91 - 22 - 28180400
+91 - 22 - 28040048

E-mail: admin@bajajitcom

Innovate Create Lead

No extension of Tax Audit Due date for AY 2015-16

The Reserve Bank on Thursday said the concurrent audit at bank branches shouldcover at least half of their advances and deposits.

The concurrent audit system is regarded as part of a bank's early warning system to ensure timely detection of irregularities and lapses.

"Concurrent audit at branches should cover at least 50 per cent of the advances and 50 per cent of deposits of a bank," RBI said in a notification.

It said branches rated as high risk or above in the last risk-based internal audit (RBIA) or serious deficiencies found in internal audit are subject to concurrent audit.

The audit will also be applicable on all specialized branches like large corporate, mid corporate, exceptionally large/very large branches, SMEs and all centralised processing units like loan processing units (LPUs).

Besides, it would include service branches, centralized account opening divisions, wealth and portfolio management services, card products divisions, data centres and treasury/ foreign exchange business, investment banking, among others.

The concurrent audit also helps in preventing fraudulent transactions at branches.

The main role of concurrent audit is to supplement the efforts of the bank in carrying out simultaneous internal check of the transactions and other verifications and compliance with the procedures laid down, the RBI said.

The scope of concurrent audit should be wide enough or focused to cover certain fraud-prone areas such as handling of cash, deposits, advances, foreign exchange business, off-balance sheet items, credit-card business, Internet banking, it added.

The regulator said appointment of an external audit firm for concurrent audit may be initially for one year and extended up to three years, after which an auditor could be shifted to another branch, subject to satisfactory performance.