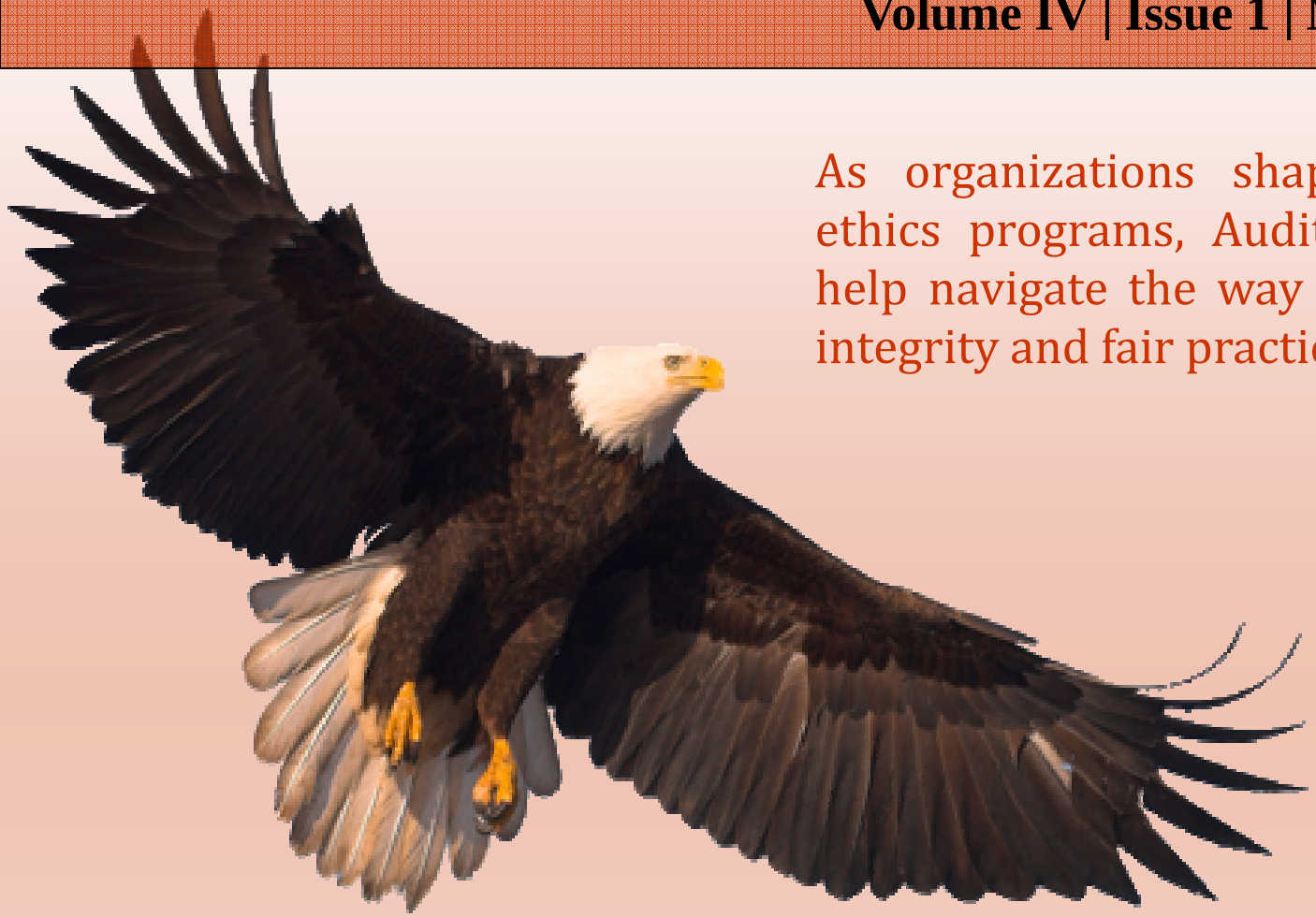
Connection

Volume IV | Issue 1 | May 2015



As organizations shape their ethics programs, Auditors can help navigate the way towards integrity and fair practice.

Lalit Bajaj & Associates
Chartered Accountants

INNOVATE CREATE LEAD

LALIT BAJAJ & ASSOCIATES

JUST TO REMIND YOU:

- **May 21 - Payment of MVAT, ESIC for April**
- **May 30 - Issue of TDS Certificates for March Quarter**
- **May 31 - Payment and monthly Return of Maharashtra PT**

INSIDE THIS ISSUE:

Internal Financial Control

Global Scenario

In June 2003, the Securities and Exchange Commission (SEC) of the United States of America adopted Rules for the implementation of Sarbanes –Oxley Act (SOX) that required certification of the Internal Controls over Financial Reporting (ICFR) by the management and by the auditors.

The Public Company Accounting Oversight Board (PCAOB) has issued its Auditing Standard (AS) 5 on: "An Audit of Internal Control Over Financial Reporting that is integrated with An Audit of Financial Statements". This standard establishes requirements and provides direction that applies when an auditor is engaged to also perform an audit of the internal controls over financial reporting in addition to the audit of the financial statements.

In June 2006, the Financial Instruments and Exchange act (J-SOX) was passed by the Diet ,the National Legislature of Japan. The requirements of this legislation are similar to the requirements of internal controls over financial reporting under SOX.

In the United Kingdom, the UK Corporate Governance Code specifies the corporate governance requirements for the board of directors of listed companies, which, inter alia, includes matters relating to oversight and review of internal controls in the company.

Scenario in India

As per sub-clause IV.D of Clause 49 of the Equity Listing Agreement (the "ELA"), the role of the Audit Committee (the "AC") of companies whose equity shares are listed includes evaluation of internal financial controls and risk management systems.

Further, sub-clause IX. C of Clause 49 requires the CEO and CFO of such companies, to certify to the board of directors (the "board") that they accept responsibility for establishing and maintaining internal controls for financial reporting and that they have evaluated the effectiveness of internal control systems of the company pertaining to financial reporting.

The Companies Act, 2013 (the "2013 Act") has stated specific responsibilities on the board of listed companies towards the company's internal financial controls and, inter alia, requires the board to state that they have laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively. These changes are effective from the financial years beginning on or after 1 April 2014. Currently, many companies are assessing the impact on these new requirements will have on the operations and processes of the company, including the financial reporting process.

Statutory auditors are also required to report on the adequacy and operating effectiveness of the company's internal financial control system. The reporting by the auditors is voluntary for the year ending 31 March 2015 and mandatory for financial years beginning on or after 1 April 2015.

In this issue, we shall discuss the following with respect to internal financial control

- Responsibility on the board reporting requirements relating to internal financial controls as introduced by the 2013 Act and the Companies (Accounts) Rules, 2014.
- Some considerations to be factored in by the board and the AC in fulfilling their duties.
- Implication to companies on auditor's reporting under section 143(3)(i)of the 2013 Act on the adequacy and operating effectiveness of controls.

Responsibility on the board and its reporting requirements

Section 134(5)(e) of the 2013 Act requires the board of listed companies to assume responsibility of laying down "internal financial controls" and ensuring that such controls are not only adequate but are also operating effectively.

As per the explanation provided to this clause, the "internal financial controls" means the policies and procedures

adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records and the timely preparation of reliable financial information.

The Code for Independent Directors provided in Schedule IV to the 2013 Act also emphasizes that the independent directors have to satisfy themselves on the strength of financial controls, thereby placing specific responsibility on independent directors.

As per section 177 of the 2013 Act, the AC is required to evaluate the internal financial controls and risk management systems in the company.

Rule 8(1) of the Companies (Accounts) Rules, 2014 states the matters to be included in the board's report. This Rule states that the board's report shall be prepared based on the stand alone financial statements of the company. It further states that with respect to the subsidiaries, associates and joint ventures, the board report shall contain a separate section reporting the performance and the financial position for each such entity.

Rule 8(5)(viii) of the Companies (Accounts) Rules, 2014 require the board report of all companies to state the details in respect of adequacy of internal financial controls with reference to the financial statements.

What constitutes internal financial controls? The explanation of the term 'internal financial controls' has been provided only in the context of section 134(5)(e).It includes policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, thereby covering not only the controls pertaining to financial statements ,but also include strategic and operational controls pervasive across the entire business. For example, controls relating to strategic and operational controls could relate to those that may not have a significant impact on financial reporting objectives such as those relating to productivity, quality, environmental practices, innovation, customer and employee satisfaction, etc. The controls pertaining to information technology (IT) also fall within the definition of internal financial controls. IT includes both the IT applications used as well s IT infrastructure (e.g. network, operating system) used in supporting the applications. Accordingly, management is expected to consider the use of IT in the company's operational and financial transactions.

The aforesaid explanation provided in sector 134(5)(e) may not be applicable to the auditors reporting on internal financial controls under section 143(3)(i). For example, orderly and efficient conduct of its business is proprietary in nature and auditors may not be able to comment on it.

Applicability to entities where only debt securities are listed: The responsibility of the board of listed companies to establish and maintain adequate internal financial control system that is operating effectively will be applicable even if only the debt securities of the company are listed.

Applicability to unlisted companies: Whilst section 134(5)(e) requires directors to state their responsibility on internal financial controls only in case of listed companies, auditors are required to report on the adequacy and operating effectiveness of such controls in case of all companies. Further, Rule 8(5) (viii) of the Companies (Accounts) Rules, 2014 requires the board report of all companies to state the details in respect of adequacy of internal financial controls with reference to the financial statements, though said Rule appears to limit the board's statement to Internal controls over Financial Reporting ("ICFR") and also does not require the board to state the operating effectiveness of such controls. In view of the above, and since the primary responsibility for safeguarding the assets of the company, preventing and detecting fraud or other irregularities and maintaining proper books of account continues to be with the board, laying down adequate ICFR and ensuring that such ICFR operates effectively will be the responsibility of the board even in case of unlisted companies.

Board responsibility in case of consolidated financial statements: Whilst Rule 8(1) of the Companies (Accounts) Rules, 2014 does not specify the reporting by the board of the parent company on internal financial controls in the subsidiaries and joint ven-

tures considered in the consolidated financial statements, it would still be relevant for the board of the parent company to consider internal controls limited to the preparation of the consolidated financial statements are required to be prepared and presented by the parent company.

Controls to be effective throughout the year: Given the spirit of the 2013 Act and taking cues from the similar such requirements under other acts (e.g. SOX), it appears that the board and AC of the company should ensure that the controls are adequate and operating effectively throughout the year. Controls could be tested for the year with increased emphasis as at the year end and ensuring that adequate time is available prior to the year end for remediating and retesting control which failed in earlier testing cycles.

Matters for consideration by the board and Audit Committee

Framework:

The 2013 Act does not specify or recommend any framework that may be considered by companies when they establish their internal financial control system.

To state whether a set of finical statements presents a true and fair view, it is essential to benchmark and check the financial statements for compliance with a framework and the generally accepted accounting principles under which it is prepared. For example, the accounting standards specified under the 2013 Act is the framework on which companies prepare and present their financial statements and is the framework on which auditors evaluate if financial statements present a true and fair view of the state of affairs and operations of the company in an audit of the financial statements carried out under the Companies Act. Different financial results would be obtained if different accounting frameworks were used, such as IFRS, US GAAP, etc. It is, therefore, important for users of financial statements to understand the framework used in the preparation of financial statements, and this is typically identified in both the financial statements prepared by the management and in the report of auditors. Similarly, to assess and report on adequacy and compliance of the system of internal control, it is essential that the management adopts any one or a combination of frameworks of internal controls. Both the assessing and reporting cannot be in a vacuum without identifying a reporting framework.

In order to effectively and efficiently develop systems of internal control that also adapt to changing business and operating environments, mitigate risks to acceptable levels, and support sound decision-making and governance of the organisation, it is essential to adopt an appropriate internal control frameworks.

There are many frameworks that provide guidance to entities for developing and establishing their internal control systems. Some of the commonly applied internal control frameworks are as follows.

- Internal Control – Integrated frameworks issued by Committee of the Sponsoring Organisations of the Tradeway Commissions (COSO Frameworks). The original COSO Frameworks issued in 1992 was available for use until 14 December 2014. Thereafter this has been susperseded by the 2013 COSO Framework. The 2013 COSO Framework, *inter alia*, has been issued to enable Organisations to also achieve operational control objectives rather than just the financial reporting objectives.

- Guidance on Assessing Control published by the Canadian Institute of Chartered Accountants (CICA).
- Report published by the Institute of Institute of Chartered Accountants in England & Wales "Internal Control: Guidance for Directors on the Combined Code" (known as the Turnbull Report).
- In India, a "Guide to Internal Controls over Financial Reporting" was issued by the Committee on Internal Audit of the ICAI (now the Internal Audit Standards Board) in the context of the requirements of Clause 49 of the ELA. This Guide, along with any amendments thereto could also provide the necessary frameworks for companies.

Accordingly, a company may adopt any of the above Frameworks or establish a framework of its own. Pending issuance or recommendation of a framework by the Ministry of Corporate Affairs (MCA), in case a company chooses to establish an internal control framework addresses the following essential components of internal control.

- Control environment: The Control conscience of an organisation- the "tone at the top"
- Risk assessment: The evaluation of internal and external factors that impact an organi-

zation's performance.

- Control activities: The policies and procedures that help ensure that action identified to manage risk are executed and timely.
- Information and communication: The process that ensures relevant information is identified and communicated in a timely manner.
- Monitoring activities: The process to determine whether internal control is adequately designed, executed, effective and adaptive.

Role of the Audit Committee

Section 177 of the Act requires the Audit Committee to evaluate the internal financial control systems while performing its duties. This can be achieved by the Audit Committee through increased involvement in the company's internal controls assessment process. For e.g., the Audit Committee may:

- Actively Participate in the risk assessment process.
- Understand major risks faced by the company and key controls
- Define the role of internal audit and actively participate in the annual internal audit planning.
- Meet with the internal audit head on a regular basis.
- Seek test results and other relevant information on internal financial control on a more real time basis.
- Understand how management addresses the risks highlighted by test of internal controls

For the AC to demonstrate that it has taken necessary steps to evaluate the internal financial control systems, it may call for the comments of the internal auditors and the statutory auditors about the company's internal control systems, scope of audits, etc., as this would give them additional insights on the assessment of such controls. The AC may, if required, also seek external advice and guidance for the evaluation of internal financial controls.

Controls Assurance: In the Three Lines of Defenses model, management control is the first line of defenses in risk management, the various risk control and compliance oversight function established by management are the second line of defense, and independent assurance (i.e. Internal audit) is the third. The AC would need to introduce a robust control assurance program to be collectively performed by the first and second lines of defense to assess and ensure that:

- Identified controls adequately mitigate potential risks that need to be managed
- The controls are appropriately designed to mitigate the risk
- The controls are operating as designed
- The controls are periodically tested and monitored for design and operating effectiveness
- Control gaps where identified are remediated in a timely manner
- Adequate oversight processes exist.

Controls assurance enables continuous improvement of the exiting control environment, through the identification of inefficient practices and a renewed assessment of current and changed practices.

Auditor's Reporting on Internal Financial Controls

Responsibility of Statutory Auditors

The Companies Act 2013 requires the statutory auditors to state in their reports whatever the company has adequate internal financial controls system in place and the operating effectiveness of such controls. The reporting by the auditors is voluntary for the year ending 31 March 2015 and mandatory for financial years beginning on or after 1 April 2015.

However, unlike in section 134(5)(e), where internal financial controls have been specifically explained for purposes of that section, there is no such explanation provided ins ection 143(3)(i).

For example, the explanation of the term 'internal financial control' provided in the context of section 134(5)(e) includes policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business. Orderly and efficient conduct of its business is proprietary in nature and auditors may not be able to comment on the same. SA 200 specifically excludes this

as an objective of the auditor. Paragraph A1 of SA 200, "Overall Objectives of the Independent Auditor and the Conduct of an Audit in accordance with the standards on Auditing" states "The Auditor's opinion on the financial statements deals with whether the financial statements are prepared, in all material respects, in accordance with the applicable financial reporting framework. Such an opinion is common to all audits of financial statements. The auditor's opinion thereof does not assure, for example, the future viability of the entity nor the efficiency or effectiveness with which management has conducted the affairs of the entity."

Considering the overall objectives of an audit and the Companies (Accounts) Rules, 2014, it appears that the auditors responsibility with respect to reporting on the adequacy and operating effectiveness of internal financial controls is only limited to those pertaining to financial statements i.e. ICFR.

Impact of modified opinion by the auditors on internal financial controls over financial reporting in subsequent interim period financial reporting: Whilst the auditors apply both test of controls and substantive testing to gain assurance on the financial statements, the management relies solely on its internal financial controls when preparing financial statements. The ability of a company to accurately describe its own financial condition when it discloses unaudited financial information, as in quarterly results filed with the Stock Exchanges, is significantly dependent on the adequacy and operating effectiveness of ICFR.

Thus, while the audit opinion on the company's financial statements may be "clean", this would provide little information on the adequacy and operating effectiveness of ICFR, unless separately reported upon. Specifically, the audit report on internal financial controls would provide the users of the financial statements with one of the criteria against which to evaluate the reliability of a company's disclosed financial information even when they are not audited.

Role of internal auditors

Section 138 of the 2013 Act read with Rule 13 of the Companies (Accounts) Rules, 2014 requires every listed company and other specified class of companies to appoint an internal auditor.

Internal Audit can be made part of the Audit Committee's oversight mechanism on internal financial controls, inter alia, by engaging them in evaluating the adequacy and operating effectiveness of internal financial controls.

Review of FDI Policy - Insurance Sector

Attention of Authorised Dealer Category – I (AD Category-I) banks is invited to Annex B of Schedule 1 to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 notified vide Notification No. FEMA 20/2000-RB dated May 3, 2000, as amended from time to time. In terms of Schedule 1 to the Notification ibid, 26% Foreign Direct Investment (FDI) is permitted under Automatic route in Insurance sector subject to conditions.

2. The extant FDI policy for Insurance sector has since been reviewed and further liberalized. Accordingly, with immediate effect, FDI in Insurance sector shall be permitted up to 49% subject to the revised conditions specified in the Press Note 3 (2015 Series) dated March 2, 2015. Also, a new activity viz. "Other Insurance Intermediaries appointed under the provisions of Insurance Regulatory and Development Authority Act, 1999 (41 of 1999)" has been included within the definition of 'Insurance'.

3. Besides, the salient changes over the existing regime include:

Foreign investment in Indian insurance company shall be limited up to forty-nine percent of the paid up equity capital;

Foreign direct investment up to 26 percent shall be under automatic route and beyond 26 percent and up to 49 percent shall be with Government approval;

Foreign investment in the sector is subject to compliance of the provisions of the Insurance Act, 1938 and the condition that companies bringing in FDI shall obtain necessary license from the Insurance Regulatory & Development Authority of India for undertaking insurance activities.

An Indian insurance company shall ensure that its ownership and control remains at all times in the hands of resident Indian entities;

CARO 2015

"CARO 2015 has only 12 points as against 21 points in CARO 2003"

MCA has notified the **Companies (Auditor's Report) Order, 2015 (CARO, 2015)** on 10th April, 2015. There was a lot of debate amongst professionals as to whether CARO will be applicable for the audit of the financial year 2014-15. MCA has finally ended the debates by notifying CARO.

It has been notified under section 143(11) of the Companies Act, 2013 which provides that auditor's report shall include a statement on such matters as may be specified therein by the Central government in consultation with National Financial Reporting Authority. Earlier, it was to be provided as per section 227(4A) of the Companies Act, 1956.

CARO-2015 will be applicable for the financial year commencing on or after 1st April, 2014

Applicability CARO, 2015 shall apply to every company including a foreign company as defined u/s 2(42)[3] of Act, 2013.

Exceptions

- banking company
- an insurance company
- Section 8 Company
- One Person Company
- Small company
- Private limited company- with a paid up capital and reserves not more than Rs 50 lakh; and- which does not have loan outstanding exceeding Rs. 25 lakh from any bank or financial institution; and does not have a turnover exceeding Rs 5 crore at any point of time during the FY.

Matters to be reported

1. Reporting on maintaining, verifying and disposing off the fixed assets

- whether the company is maintaining proper records showing full particulars, including quantitative details and situation of fixed assets;
- whether these fixed assets have been physically verified by the management at reasonable intervals; whether any material discrepancies were noticed on such verification and if so, whether the same have been properly dealt with in the books of account;

2. Physical Verification and maintenance of records of Inventories

- whether physical verification of inventory has been conducted at reasonable intervals by the management;
- are the procedures of physical verification of inventory followed by the management reasonable and adequate in relation to the size of the company and the nature of its business. If not, the inadequacies in such procedures should be reported;
- whether the company is maintaining proper records of inventory and whether any material discrepancies were noticed on physical verification and if so, whether the same have been properly dealt with in the books of account;

3. Reporting on repayment of loans granted by the Company

Whether the company has granted any loans, secured or unsecured to companies, firms or other parties covered in the register maintained under section 189 of the Companies Act. If so,

- whether receipt of the principal amount and interest are also regular; and
- if overdue amount is more than rupees one lakh, whether reasonable steps have been taken by the company for recovery of the principal and interest;

4. Internal control System

Is there an adequate internal control system commensurate with the size of the company and the nature of its business, for the purchase of inventory and fixed assets and for the sale of goods and services. Whether there is a continuing failure to correct major weaknesses in internal control system.

5. Acceptance of deposits

In case the company has accepted deposits, whether the directives issued by the Reserve Bank of India and the provisions of sections 73 to 76 or any other relevant provisions of the Companies Act and the rules framed there under, where applicable, have been complied with? If not, the nature of contraventions should be stated; If an order has been passed by Company Law Board or National Company Law Tribunal or Reserve Bank of India or any court or any other tribunal, whether the same has been complied with or not?

6. Cost Records

Where maintenance of cost records has been specified by central Government under subsection (l) of section 148 of the Companies Act, whether such accounts and records have been made and maintained.

7. Payment of applicable taxes

- is the company regular in depositing undisputed statutory dues including provident fund, employees' state insurance, income-tax, sales-tax, wealth tax, service tax, duty of customs, duty of excise, value added tax cess and any other statutory dues with the appropriate authorities and ii not, the extent of the arrears of outstanding statutory dues as at the last day of the financial year concerned for a period of more than six months from the date they became payable, shall be indicated by the auditor.
- in case dues of income tax or sales tax or wealth tax or service tax or duty of customs or duty of excise or value added tax or cess have not been deposited on account of any dispute, then the amounts involved and the forum where dispute is pending shall be mentioned. (A mere representation to the concerned Department shall not constitute a dispute)
- whether the amount required to be transferred to investor education and protection fund in accordance with the relevant provisions of the Companies Act, 1956 (1 of 1956) and rules made there-under has been transferred to such fund within time.

8. Accumulated losses

Whether in case of a company which has been registered for a period not less than five years, its accumulated losses at the end of the financial year are not less than fifty per cent of its net worth and whether it has incurred cash losses in such financial year and in the immediately preceding financial year;

9. Default in repayment of dues

Whether the company has defaulted in repayment of dues to a financial institution or bank or debenture holders? If yes, the period and amount of default to be reported.

10. Guarantee for loan taken

Whether the company has given any guarantee for loans taken by others from bank or financial institutions, the terms and conditions whereof are prejudicial to the interest of the company.

11. Applicability of term loan

Whether term loans were applied for the purpose for which the loans were obtained.

12. Reporting of fraud

Whether any fraud on or by the company has been noticed or reported during the year; If yes, the nature and the amount involved is to be indicated.

Where, in the auditor's report, the answer to any of the questions referred above is unfavorable or qualified, the auditor's report shall also state the reasons for such unfavorable or qualified answer, as the case may be.

Where the auditor is unable to express any opinion in answer to a particular question, his report shall indicate such fact together with the reasons why it is not possible for him to give an answer to such question.

"The auditor shall also state the reasons for such unfavorable or qualified answer."

Companies (Amendment) Bill, 2014 passed by Rajya Sabha

Main features and relaxations are as under:

- No minimum capital requirement of Rs.1 lakh (in case of private company) or Rs. 5 lakh (in case of public company)
- Approval of shareholders under Section 188 (related party transactions) can be ordinary
- Transaction between holding and wholly owned subsidiaries whose accounts are consolidated and laid before general meeting are exempt from shareholders' approval requirement is exempt from requirement of obtaining shareholders' approval
- No requirement of common seal. If the company does not have common seal, authority in favour of any person by two directors or one director and company secretary, if any, will bind the Company
- If deposit is accepted in violation of deposit rules or the company fails to repay deposit or interest thereon the company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall not be less than one crore rupees but which may extend to ten crore rupees; and every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years or with fine which shall not be less than twenty-five lakh rupees but which may extend to two crore rupees, or with both. If it is proved that the officer of the company who is in default, has contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, he shall be liable for action under section 447.
- Exemption for loan given to wholly owned subsidiary and security or guarantee provide on behalf of subsidiary is given 185 itself (earlier exemption was through rules, subordinated regulations)
- Board resolutions under Section 179 which are filed with RoC, will not be public document
- Previous losses and depreciation will need to set off out of current year profit before declaring dividend
- If dividend is claimed and paid, shares in respect thereof should not be transferred to IEPF
- Fraud exceeding certain percentage need to be reported to Central Government. Other fraud of lesser amount need to be reported to audit committee/ board and details of frauds which are reported to audit committee/ board also need to be disclosed in directors report
- Audit Committee can give omnibus approval (this will be on the lines of listing agreement; but threshold and other conditions will be prescribed by Rules)

Black Money Bill Passed by Rajya Sabha

The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Bill, 2015 is passed in Lok Sabha on 11th of May 2015 and in Rajya Sabha on 13th May 2015. It states that Undisclosed Foreign Income and Assets shall be taxed separately under this Act and therefore, such income shall not become part of the income under Income Tax Act, 1961.

The clear intention of the Government behind this is to curb the menace of black money.

Some Key Highlights of this Bill:

1. It will be applicable on Ordinary Resident (and every person who will deemed to be assessee in default under the said act) from 1st April 2016.

2. Flat Rate of Tax @ 30% (along with penalty which is 3 times of tax) shall be charged on the total of Undisclosed Foreign Income and Value of Undisclosed Foreign Assets.

3. Undisclosed Foreign Income shall be amount of income from a source abroad, which is required to but has not been disclosed by the assessee as per the provisions of the Income Tax Act.

4. Undisclosed Foreign Asset shall be the FAIR MARKET VALUE of the undisclosed asset located abroad. Whose year value shall be considered, it depends when Assessing Officer comes to know about the undisclosed asset. In which he comes to know, that year value will be considered. However, if assessee proves that the undisclosed asset was purchased FULLY/PARTIALLY out of income which has been taxed under the Income Tax Act or this Act, then such amount shall be deducted while calculating the Value of Undisclosed Foreign Asset.

5. No deduction of any expenses, no exemption and no set off of any loss shall be allowed.

6. One Time Chance shall be given to all assesses on 01 April 2016, to make a declaration, upto a date to be notified, about any undisclosed foreign income and assets. In such case, only 1 time of tax penalty shall be levied. Tax and Penalty must be paid before making declaration.

E-Form INC 29 notified by MCA

The Ministry of Corporate Affairs has introduced a new integrated e-form INC-29 w.e.t 1st May. 2015. INC-29 will provide applicants a facility to avail of the following services through a single e-form:

(i) Allotment of Director Identification Number;

(ii) Name of a company; and

(iii) Incorporation of a company.

INC-29 will be available for incorporating of companies other than section 8 companies and will accommodate applications for up to three new DIN applicants who will be Directors of the company being incorporated.

In addition e-Forms INC-30 and INC-31 are also being made available for the purposes of Memorandum of Association (MoA) and Articles of Association (AoA) to be attached with INC-29.

The Instruction kit for filling the e-forms INC-29. INC-30 and INC 31 may be accessed on the MCA21 portal.

Standalone e-Forms DIR-3. INC-1 and INC-2 or INC-7 for DIN, Name Reservation and Incorporation of a company will continue to be available as before for stakeholders wanting to avail these services separately.

MCA21
Ministry of Company Affairs
Government of India

Revised provision for TDS on Transporters

Under the existing provisions of section 194C of the Act, payment to contractors is subject to Tax Deduction at Source (TDS) at the rate of 1% in case the payee is an individual or Hindu Undivided Family and at the rate of 2% in case of other payees, if such payment exceeds Rs. 30,000 per contract or aggregate of such payments of contracts in a financial year exceeds Rs. 75,000.

Current provision for transporter is non-deduction of tax from payments made to the contractor during the course of plying, hiring and leasing goods carriage if **the contractor furnishes his PAN to the payer.** Intention behind this provision was to exempt only small transport operators from the purview of TDS on furnishing of PAN, but it does not convey the desired intention and as a result all transporters (irrespective of size) are claiming exemption from TDS.

Now the provision of section 194C of the Act has been amended to expressly provide that the relaxation from no-deduction of tax shall **only be applicable to the payment in the nature of transport charges made to a contractor who is engaged in the business of transport i.e. plying, hiring, or leasing goods carriage and a person who is not owing more than 10 goods carrige at any time during the previous year** and who has furnished a declaration to this effect along with his PAN.

Intent of the amendment:

The Memorandum explaining the provisions of Finance (No.2) Bill 2009 indicates that the intention was to exempt only small transport operators (as defined in section 44AE of the Act) from the purview of TDS on furnishing of Permanent Account Number (PAN). Thus the intention was to reduce the compliance burden on the small transporter. However, the current language of sub-section (6) of section 194C of the Act does not convey the desired intention and as a result all transporters, irrespective of their size, are claiming exemption from TDS under the existing provision of sub -section (6) of section 194C of the Acton furnishing of PAN

Summary:

This means if a transporter is owing more than 10 goods carriage at any time during the previous year, then payer is liable to deduct TDS at the time of paying charges to goods transporter at the rate of 1% or 2% as the case may be, and

If transporter is not owing more than 10 goods carriage at any time during the previous year, then payer(Tax deductor) **has to obtain a declaration from transporter along with his copy of PAN before execution of the contract or payment to transporter whichever is earlier.**

This amendment is inserted with effect from the 1st day of June 2015.

Case Law - Bogus Purchases

ITO vs. Deepak Popatlal Gala (ITAT Mumbai)

Addition towards bogus purchases cannot be made solely on the basis of statements of seller before sales-tax authorities. The AO has to conduct own enquiries and give assessee opportunity to cross -examine the seller

Where the AO has made addition merely on the basis of observations made by the Sales tax dept and has not conducted any independent enquiries for making the addition especially in a case where the assessee has discharged its primary onus of showing books of account, payment by way of account payee cheque and producing vouchers for sale of goods, such an addition could not be sustained

Ramesh Kumar & Co vs. ACIT (ITAT Mumbai)

AO is not entitled to treat all purchases as bogus merely because sales-tax department has called the seller a "Hawala dealer". The AO ought to have verified the bank details of the assessee and the seller and other evidence before treating the purchases as bogus

The AO has made the addition as some of the suppliers of the assessee were declared Hawala dealer by the Sales tax Department. This may be a good reason for making further investigation but the AO did not make any further investigation and merely completed the assessment on suspicion. Once the assessee has brought on record the details of payments by account payee cheque, it was incumbent on the AO to have verified the payment details from the bank of the assessee and also from the bank of the suppliers to verify whether there was any immediate cash withdrawal from their account

Case Law

Disallowance U/S 43B doesnt contemplate liability to pay Service Tax before Actual receipt of funds in the account of the assessee.Accordingly when services are rendered the liability to pay service tax in respect of consideration payable will arise only upon receipt of such consideration and not otherwise.Bombay High Court judgement dated 17th April 2015 in the case of C.I.T vs.Ovira Logistics Pvt Ltd ITA no-1023 of 2013.High court confd the decision of ITAT dated 31-10-2012

Income Computation & Disclosure Standard

In exercise of the powers conferred by sub-section (2) of section 145 of the Income-tax Act, 1961 (43 of 1961) and in supersession of the notification of the Government of India in the Ministry of Finance, Department of Revenue, published in the Gazette of India, Part II, Section 3, Sub-section (ii), vide number S.O 69(E) dated the 25th January, 1996, except as respects things done or omitted to be done before such supersession, the Central Government hereby notifies the income computation and disclosure standards as specified in the Annexure to be followed by all assessees, following the mercantile system of accounting, for the purposes of computation of income chargeable to income -tax under the head "Profit and gains of business or

profession" or " Income from other sources". This notification shall come into force with effect from 1st day of April, 2015, and shall accord

ingly apply to the assessment year 2016-17 and subsequent assessment years.

Click here to view the Income comutation and Disclosure standards.

CBDT directives on MAT on Foreign Companies & FIIs

Finance Minister has, while responding to the discussions on the Finance Bill in Rajya Sabha on 7th May, 2015, announced constitution of a Committee headed by Justice A.P. Shah to look into, inter alia, the issue of MAT on FIIs. The Committee is expected to give its report on this issue expeditiously.

In the light of FM's announcement, no coercive action be taken for recovery of demand already raised by invoking provisions of MAT in the cases for foreign companies. Issue of fresh notices for reopening of cases as also completion of assessment should also be put on hold unless the case is getting barred by limitation.

This issues with the approval of Chairperson, CBDT

DTAA with Korea

The Union Cabinet, chaired by the Prime Minister Shri Narendra Modi, has given its approval for revising the Double Taxation Avoidance Convention (DTAC) which was signed in 1985, between India and the Republic of Korea, for the avoidance of double taxation and for the prevention of fiscal evasion with respect to taxes on income.

The revised Double Taxation Avoidance Agreement (DTAA) will provide tax stability to the residents of India and Korea and facilitate mutual economic cooperation as well as stimulate the flow of investment, technology and services between the two countries.

The revised DTAA provides for source based taxation of capital gains, provisions for making adjustments to profits of associated enterprises on the basis of arm's length principle, provides for residence based taxation of shipping income, provisions for service of permanent establishment, rationalizes tax rates in the Articles on Dividends, Interest and Royalties and Fees for Technical Services.

The Agreement further incorporates provisions for effective exchange of information and assistance in collection of taxes between tax authorities and also incorporates limitation of benefits provisions, to ensure that the benefits of the Agreement are availed of by genuine residents of both countries.

Enactment of Finance Bill, 2015 and Changes in Service Tax

The Finance Bill, 2015 has been enacted as Finance Act, 2015 (Act No. 20 of 2015) on 14th May, 2015 after the assent of President of India. The provisions of Finance Act, 2015 shall therefore, become applicable w.e.f. 14.05.2015 save as otherwise provided in the Act. Such provisions shall be notified to be in force only from the notified date for which a notification shall be issued soon.

(A) Effective date 14 May, 2015.

The following provisions in Service Tax become applicable w.e.f. 14th May, 2015 –

- Penalty provisions in section 76
- Penalty provisions in section 78
- New section 78B being transitory provisions for new penal provisions
- Omission of section 80 regarding waiver of penalties
- Scope of consideration u/s 67 to include reimbursement of expenses
- New / amended definitions of Foreman of chit fund, Government, Lottery distributor or selling agent
- Amended definition of service u/s 65B (44)
- Illustration in section 66F
- Amendment in section 73 (1B) for recovery without SCN and other changes in section 73
- Amendment in section 86 relating to appeal for refund / rebate
- Omission of Rule 6(6A) and 6 (7C) of Service Tax Rules, 1994
- Rule 15 of Cenvat Credit Rules in relation to amended penalties

(B) Effective from notified date (expected to be notified soon)

- Change of rate of Service Tax
- Levy of Swachh Bharat Cess
- New / revised definition of amusement facility, entertainment event, processing or production of goods in section 65B
- Omission of definition of support services
- Changes in negative list (section 66D)
- Composite rate of Service Tax in Rule 6(7), 6(7A), (7B) and (7C) of Service Tax Rules, 1994. (pertaining to lottery, air travel etc)
- New exemptions / changes in exemption notification No. 25/2012-ST [Entry Nos 30 (job work); admission to exhibition of films, circus, sporting event etc.
- Change in reverse change (Notification No. 30/2012-ST)

"The provisions of Finance Act 2015 shall become applicable from 14.05.15"

Registration under MVAT Act, 2002 and CST Act, 1956

"The new system will be effective from 07.05.15"

The applications for registration under the MVAT Act, 2002 and the CST Act, 1956 are required to be submitted online. Once the application is uploaded the applicant is required to attend before the registration authority for verification of required documents and photo signature.

Government of Maharashtra has decided to further simplify the process of granting the registration under aforementioned Acts.

In view of the same the Sales Tax Department has developed a system in which the applicant will not be required to attend the Sales Tax Office to obtain the Registration. The new system will be effective from **07/05/2015.**

simplified procedure is as under:-

- The applicant shall fill in the application for Registration as per the procedure laid down in the **Trade Circular No. 4T of 2015 Dt.09/03/2015**. **It may be noted that the applicant should not select the Act under which he is already holding the TIN.**
- After filling the application for new registration, applicant shall upload scanned documents such as PAN CARD, proof of constitution, bank details, address proof, photo of applicant, photo ID etc. which are explained in Annexure "A" of this circular.
- Applicant shall upload the scanned copy of Declaration-cum--Indemnity Form mentioned in Annexure "B", bearing signature and photograph of applicant (signatures of all partners in case of partnership and Limited Liability Firm).
- Applicant shall upload the details of the Introducer in Annexure "C" (in case of voluntary Registration Scheme) with TIN number, signature and Rubber stamp of introducer.)
- Applicant shall submit the correct and complete application form along with required scanned documents, Declaration Form and Annexure "C".
- After submitting the application and scanned documents an acknowledgement will be generated containing the details of the registration authority.
- Applicant shall send a) Demand Draft of required amount of Deposit and Fees as mentioned in Annexure "A" signed by himself at the back side of it along with copy of the acknowledgement generated after submission of application to the Registering Authority mentioned on the acknowledgement. b) Completely filled Declaration-cum-Indemnity Form in Annexure "B" and c) Details of introducer in case of voluntary Registration Scheme in Annexure "C" by Registered Post/ Courier/messenger within seven days after submitting the application.
- The Registration Authority shall call the following class of applicants before him for verification of documents before granting the Registration certificate:-

  The applicant or the person interested in the business is found to have been involved in non-genuine business activities previously.

  The applicant dealing in commodities which are declared as risky by the Sales Tax Department from time to time.

Process of TIN generation:

- After examining the uploaded application, scanned documents and photo of applicant with photo ID as mentioned in "Annexure A" and "Annexure B" and "C", if Registration Authority finds that, application is correct and complete, scanned documents are uploaded properly and payment of Deposit and Fees is received ,will approve the application and TIN will be generated.
- TIN will be communicated to the applicant on

his email provided in the application form.

- Certificate of Registration will be sent by post/courier on the address mentioned in the application form for registration.

If the application and documents uploaded are not found in order and proper, the application shall be rejected and rejection order will be communicated on the email address provided in the application form. Further the copy of rejection order will be sent by Registered post/Courier to applicant on the address mentioned in the application form for registration.

This circular cannot be made use of for legal interpretation of provisions of law, as it is clarificatory in nature. If any member of the trade has any doubt, he may refer the matter to this office for further clarification. You are requested to bring the contents of this circular to the notice of the members of your association.

Highlights of GST Bill passed by Lok Sabha

- Insertion of new Article 246A conferring simultaneous power to the Union and the State legislatures to legislate on GST.
- Insertion of new Article 279A for the creation of a Goods & Services Tax Council, which will be a joint forum of the Centre and the States. This Council would function under the Chairmanship of the Union Finance Minister.
- To do away with the concept of 'declared goods of special importance' under the Constitutional.
- Central Taxes like Central Excise Duty, Additional Excise Duties, Service Tax, Additional Customs Duty (CVD) and Special Additional Duty of Customs (SAD), etc. will be subsumed in GST.
- At the State level, Taxes like VAT/ Sales Tax, Central Sales Tax, Entertainment Tax, Octroi and Entry Tax, Purchase Tax and Luxury Tax, etc. would be subsumed in GST.
- The Centre will compensate States for loss of revenue arising on account of implementation of the GST for a period up to five years (The compensation will be on a tapering basis, i.e., 100% for first three years, 75% in the fourth year and 50% in the fifth year).
- All Goods and services, except alcoholic liquor for human consumption, will be brought under the purview of GST. However, it has also been provided that petroleum and petroleum products shall not be subject to the levy of GST till notified at a future date on the recommendation of the GST Council. The present taxes levied by the States and the Centre on petroleum and petroleum products, i.e., Sales Tax/VAT, CST and Excise duty only, will continue to be levied in the interim period.
- Both Centre and States will simultaneously levy GST across the value chain. The Centre would levy and collect Central Goods and Services Tax (CGST), and States would levy and collect the State Goods and Services Tax (SGST) on all transactions within a State.
- The Centre would levy and collect the Integrated Goods and Services Tax (IGST) on all inter-State supply of Goods and Services. There will be seamless flow of input tax credit from one State to another. Proceeds of IGST will be apportioned among the States.
- GST is a destination-based tax. All SGST on the final product will ordinarily accrue to the consuming State.
- GST rates will be uniform across the Country. However, to give some fiscal autonomy to the Centre and States, there will a provision of a narrow tax band over and above the floor rates of CGST and SGST.
- It is proposed to levy a non-vatable Additional Tax of not more than 1% on supply of goods in the course of inter-State trade or commerce for a period not exceeding 2 years, or further such period as recommended by the GST Council. This Additional Tax on supply of goods shall be assigned to the States from where such supplies originate.
- The term "Services" is proposed to be exhaustively defined as "anything other than goods".

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Judgment of Supreme Court in Disciplinary matter

The Hon'ble Supreme Court of India in a landmark Judgment delivered on 13th May, 2015 in an appeal filed by a member of the Institute [Respondent in a disciplinary matter] and Others has upheld the Judgment given by the Division Bench of the Hon'ble High Court of Delhi at New Delhi whereby the Division Bench of Hon'ble High Court allowed the appeal of the Institute by holding, inter alia, that the procedure prescribed by the un-amended C.A. Act, 1949 would be applicable to pending proceedings in "Information" Cases and not the procedure prescribed after the amendment made by the Chartered Accountants (Amendment) Act, 2006.

The Hon'ble Supreme Court was pleased to dismiss the appeal filed by the member and the Court agreed that the intention of the legislature in incorporating Section 21D (i.e. transitional provisions) was not to differentiate between disciplinary cases initiated on the basis of 'complaint' and 'information' and that for all cases pending before the Chartered Accountants Amendment Act, 2006, the old procedure, as laid down under Sections 21, 22 and 22A of the unamended Act, would continue to be followed.

From the above judgement, it is clear that the Apex Court is in agreement with the procedure having been followed by the Disciplinary Committee whereby all such "information" cases which were pending prior to the amendment made in the Chartered Accountants Act, 1949 were considered and processed in accordance with the provisions of the un-amended Act and in terms of the transitional provisions of Section 21D of the amended Act.