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# POC CONNECT

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## Sebi issues draft paper on REIT to attract investors, realtors

With an aim to make the Real Estate Investment Trusts (Reits) more attractive to investors and real estate players, the Sebi proposed relaxed norms for related party transactions and allowed these Trusts to invest more in under-construction assets. Sebi also proposed removal of restrictions on Reits relating to investment in special purpose vehicle (SPV) structures while norms relating to related party transactions would also be eased.

### **For more detail refer-**

[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1468840545048.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1468840545048.pdf)

## Banks can't use their own FDRs as collateral: Sebi

Strengthening its risk management mechanism, markets regulator Sebi barred banks from using their own FDRs as collateral in their function as trading or clearing members of stock exchanges, directly or through associate entities. In a circular to clearing corporations, Sebi asked them not to accept such FDRs while trading or clearing members having already deposited their own FDRs or that of associate banks would need to replace them with other eligible collaterals within six months.

### **For more detail refer-**

[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1468572776249.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1468572776249.pdf)

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## Sebi simplifies trading account opening process

Making the investor account opening process easier for stock brokers, markets regulator Sebi has allowed them to provide certain standard documents in the electronic format after obtaining the client's consent. These bulky documents, including Rights and Obligations of stock broker, sub-broker and clients, as also that of beneficial owner and depository participant, the Uniform Risk Disclosure Documents and Guidance Note detailing Do's and Don'ts for trading on stock exchanges, need to be mandatory provided in the physical format.

### **For more detail refer-**

[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1468404844078.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1468404844078.pdf)

## SEBI may take Aadhaar route to tap buyers on e-comm platforms

The Nandan Nilekani Committee set up by the securities market regulator has suggested that Aadhaar-based e-KYC be the enabler to achieve the objective of roping in 20 crore investors in the next few years, according to sources. At present, there are about 4.5 crore investors. This would help in easy on-boarding of customers as Aadhaar already has an individual's bank account number.

### **For more detail refer-**

<http://www.thehindubusinessline.com/economy/policy/sebi-may-take-aadhaar-route-to-tap-buyers-on-e-comm-platforms/article8812252.ece>

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## RBI issues bank licence norms, bars conglomerates

The Reserve Bank of India (RBI) released guidelines for 'on tap' licensing of universal private sector banks under which the applicants can apply for a banking licence anytime as opposed to a limited-period window that the central bank previously used to open for applications. The released guidelines states individuals with 10 years senior-level experience are eligible to promote a bank, but large industry houses have been excluded as eligible entities. The large industry houses, however, can invest up to 10 per cent.

### **For more detail refer-**

[https://www.rbi.org.in/Scripts/BS\\_PressReleaseDisplay.aspx?prid=37658](https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=37658)

## RBI slaps Rs 27-crore penalty on 13 banks for FEMA violations

The Reserve Bank of India has come down hard on 13 banks and fined them for Rs 27 crore for violation of FEMA and lapses in know your client (KYC) rules. The matter relates to irregularities in import remittances by several banks which came to light in October 2015. "On the basis of inputs received from a public sector bank, the Reserve Bank undertook a scrutiny on advance import remittances in 21 banks in October/November 2015," the RBI said in a release.

### **For more detail refer-**

[https://www.rbi.org.in/Scripts/BS\\_PressReleaseDisplay.aspx?prid=37618](https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=37618)

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## **MCA notifies Special Court for speedy trial of punishable offences.**

Ministry of Corporate Affairs (MCA) vide Notification dated 27th July, 2016 has notified the Court of Additional Sessions Judge – 03, South West District, Dwarka as Special Court under Section 435 (1) of the Companies Act, 2013 for speedy trial of offences punishable under the Companies Act, 2013 with imprisonment of two years or more under Companies Act, 2013. The Jurisdiction of special court shall be the National Capital Territory of Delhi.

### **For more detail refer-**

[http://www.mca.gov.in/Ministry/pdf/designationofSpecialCourt\\_28072016.pdf](http://www.mca.gov.in/Ministry/pdf/designationofSpecialCourt_28072016.pdf)

## **Companies (Accounts) Amendment Rules, 2016**

Ministry of Corporate Affairs (MCA) vide Notification dated 27th July, 2016 has made amendment to the Companies (Accounts) Rules, 2014, these rules may be called Companies (Accounts) Amendment Rules, 2016.

### **For more detail refer-**

[http://www.mca.gov.in/Ministry/pdf/CompaniesAccountsAmendmentRules\\_28072016.pdf](http://www.mca.gov.in/Ministry/pdf/CompaniesAccountsAmendmentRules_28072016.pdf)

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## **E-filing: ATM-based validation facility enhanced**

The Income Tax department has widened the ATM-based validation system for filing e-ITRs by taxpayers with the inclusion of Axis Bank, after SBI, as part of its measure to enhance the paperless regime of filing the annual I-T returns. "Now, Electronic Verification Code (EVC) can also be generated by pre-validating Automated Teller Machine (ATM) provided by Axis Bank. SBI had activated the facility last month.

**For more detail refer-**

<http://incometaxindiaefiling.gov.in>

## **Issue up to Rs 5,000 refunds fast and quick: CBDT to I-T dept**

CBDT has directed the Income Tax department to "expeditiously" issue refunds worth Rs 5,000 for last three assessment years in order to provide immediate relief to taxpayers. The Central Board of Direct taxes today issued directions in this regard and said pending refunds of Rs 5,000 in cases that have not been selected for scrutiny for assessment years 2013-14, 2014-15 and 2015-16 should be issued fast and within this fiscal.



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## Govt extends payment date under black money scheme

The finance ministry extended the deadline for payment of tax and penalty under the scheme to disclose previously unreported money, allowing this to be done in three instalments by September 30 next year. The ministry also clarified that black money declarants using the window cannot pay tax from undisclosed income.

### **For more detail refer-**

[http://www.business-standard.com/article/economy-policy/govt-extends-payment-date-under-black-money-scheme-116071500031\\_1.html](http://www.business-standard.com/article/economy-policy/govt-extends-payment-date-under-black-money-scheme-116071500031_1.html)

## Parliament passes Benami Transactions (Prohibition) Amendment Bill, 2016

The Parliament has passed the Benami Transactions (Prohibition) Amendment Bill after it was unanimously approved by Rajya Sabha. The comprehensive amendment bill seeks to amend and strengthen Benami Transaction (Prohibition) Act, 1988 in terms of legal and administrative procedure to curb domestic black money.

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## Govt. notifies revised format for issuing scrutiny notice

The CBDT has decided to modify the format of scrutiny notice under section 143(2) of the Income –tax Act. Henceforth, there shall be three formats of the said notice, namely (i) Limited Scrutiny (ii) Complete Scrutiny (iii) Manual Scrutiny. Thus, all scrutiny notices all henceforth be issued in these revised formats. The Systems Directorate is effecting necessary changes in the ITD module in this regards.

### **For more detail refer-**

<http://www.itatonline.org/info/wp-content/uploads/2016/07/CBDT-143-2-Notice-Format.pdf>

## ICDS implementation deferred by one year; Govt. to apply ICDS from AY 2017-18

Bringing relief to Corporate India, the Finance Ministry has deferred by one year the implementation of the income computation and disclosure standards (ICDS), which are commonly referred to as tax standards.

The ICDS-which had earlier come into effect from April 1, 2015 - will now be applicable from April 1, 2016, an official release said on 6<sup>th</sup> July 2016. This would mean that financial year 2016-17 would be the first year of ICDS implementation.

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# Notifications, Circulars & Press Releases

## TAX AUDIT THRESHOLD LIMIT IN PRESUMPTIVE TAXATION U/S 44AD IS RS. 2 CRORE

CBDT vide press release dated 20-06-2016 clarified that if an eligible person opts for presumptive taxation scheme as per section 44AD(1) of the Act, he shall not be required to get his accounts audited if the total turnover or gross receipts of the relevant previous year does not exceed two crore rupees. The higher Tax Audit Threshold Limit for non-audit of accounts has been given only to assesseees opting for presumptive taxation scheme under section 44AD.

### **For more detail refer-**

<http://www.incometaxindia.gov.in/Lists/Press%20Releases/Attachments/483/Press-Release-on-Presumptive-Taxation-21-06-2016.pdf>

# Notifications, Circulars & Press Releases

## CBDT lays down criteria for manual selection of scrutiny cases for FY 2016-17

CBDT vide Instruction no.4/2016 dated 13-07-2016 has issued instruction for manual selection of scrutiny cases for the F.Y. 2016-17.

As per the old instruction (issued for FY 15-16) cases were selected for manual scrutiny if it involved addition in earlier year in excess of Rs.10lakhs on substantial and recurring question of law or fact and which is either confirmed in appeal or is pending before appellate authority.

However, as per the new instruction such limit of additions has been raised from Rs. 10 lakhs to Rs. 25lakhs for Ahmedabad, Bengaluru, Chennai, Delhi, Hyderabad, Kolkata, Mumbai, and Pune. While for others, quantum of such addition should exceed Rs. 10lakhs (for transfer pricing cases, quantum of such addition should exceed Rs. 10 crores). Such addition will be subject to prescribed conditions.

**For more detail refer-**

<https://www.taxmann.com/topstories/104010000000048639/cbdt-lays-down-criteria-for-manual-selection-of-scrutiny-cases-for-fy-2016-17.aspx>

# Notifications, Circulars & Press Releases

## Clarification on Attaining Age of 60/80 Years

CBDT vide circular no. 28 dated 27<sup>th</sup> July 2016 has issued clarification regarding attaining prescribed Age of 60 years/80 years on 31st March, in case of Senior/Very Senior Citizens whose date of birth falls on 1st April, for the purposes of Income-Tax Act, 1961.

CBDT clarifies that if a person born on 1st April would be considered to have attained a particular age on 31st March, the day preceding the anniversary of his birthday.

**For more detail refer-**

<http://www.incometaxindia.gov.in/communications/circular/circularno282016.pdf>

# Notifications, Circulars & Press Releases

## Instructions regarding provisional attachment of property under Section 73C of the Finance Act, 1994

CBEC issued a circular no.196/06/2016-ST dated 27<sup>th</sup> July 2016 to clarify the position regarding provisional attachment of property under Sec 73C of the Finance Act, 1994 wherein recently in case of an assessee whose bank accounts were ordered to be attached without giving any opportunity to them. The Hon'ble High Court observed that the order directing attachment of the property without waiting for a reply to the SCN and without giving any opportunity and without giving any notice, was in gross violation of Rule 3 of the rules of 2008 read with para 2(iii) of the circular dated 1.07.08. It was mandatory for the authority to issue a notice giving 15 days time to reply before attaching a property.

**For more detail refer-**

<http://www.cbec.gov.in/resources//htdocs-servicetax/st-circulars/st-circulars-2016/st-circ-196-2016.pdf>

# Notifications, Circulars & Press Releases

## Rajya Sabha clears GST; releases Constitutional Amendment Bill, 2016

On Aug 3, 2016, Rajya Sabha discussed amendments to Constitution Bill for Goods and Service Tax i.e. Constitutional (One Hundred and First Amendment) Bill, 2016 and finally the most crucial bill passed in Rajya Sabha. GST will be introduced in the country after a long journey of 13 years as it was first discussed in the Kelkar Task Force report on indirect taxes in 2003.

This amendment bill was cleared since Government agreed to drop 1% additional tax and gave assurance that it will compensate States for any revenue loss incurred due to GST rollout.

### **For more detail refer-**

[http://www.finmin.nic.in/reports/ModelGSTLaw\\_draft.pdf](http://www.finmin.nic.in/reports/ModelGSTLaw_draft.pdf)



# Notifications, Circulars & Press Releases

## Amendment in the Incorporation Rules

MCA through Notification dated 27/07/2016 Amended the Companies (Incorporation) Rules, 2014 which now be called as Companies (Incorporation) Third Amendment Rules, 2016. It brought quite a number of changes in the incorporation provisions viz. relating to name, change of registered office and preparation of the subscriber list of the charter documents of a company. Also, details rules and e-forms have been laid down for conversion of an unlimited company to a limited company (limited by guarantee or limited by shares).

**For more detail refer-**

[http://www.mca.gov.in/Ministry/pdf/CompaniesThridAmendmentRules\\_28072016.pdf](http://www.mca.gov.in/Ministry/pdf/CompaniesThridAmendmentRules_28072016.pdf)

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Bhagwati Sponge (P.) Ltd v. Deputy Commissioner of Income-tax, Circle-1, Asansol  
[2016] 72 taxmann.com 40 (Kolkata - Trib.), Dated- JULY 8, 2016

Depreciation would be allowable on actual cost of asset before reducing subsidy received from State under incentive scheme.

**Facts:**

- Assessee received industrial, interest and electricity subsidies under Incentive Scheme, 2000 of West Bengal State Government.
- Assessing Officer deducted capital subsidy from cost of plant and machinery for working out depreciation.

**Held that:**

- Incentive in form of subsidy cannot be considered as a payment directly or indirectly to meet any portion of actual cost and, thus, it would fall outside of Explanation 10 to section 43(1).
- Hence, capital investment subsidy received from State Government could not be reduced from cost of capital asset for allowing depreciation [In favour of assessee].

**For more detail refer-**

<http://www.incometaxindia.gov.in/communications/circular/circular212016.pdf>

Section 54F relief cannot be denied to assessee when he has invested entire sales consideration in purchase of residential house but he is unable to get possession of flat, which is under construction, due to fault of builder

**Issue:**

Whether Section 54F relief could be denied when assessee is not able to get the title of the flat or unable to get possession of the flat, which is under construction, due to fault of the Builder?

**ITAT Held that:**

- It is a fact that the assessee has invested amount in purchase of residential house within the stipulated period prescribed u/s 54F of the Act. But, it is not in the assessee's hand to get the flat completed or to get the flat registered in his name, because it was incomplete.
- The intention of the assessee is very clear that he has invested almost the entire sale consideration of land in purchase of this residential flat. It is another issue that the flat could not be completed and the matter is pending before the Hon'ble Bombay High Court seeking relief by the assessee by filing suit for direction to the Builder to complete the flat.
- It is impossible for the assessee to complete other formalities, i.e., taking over possession for getting the flat registered in his name and this cannot be the reason for denying the claim of the assessee for deduction u/s 54 of the Act. Thus, assessee is entitled for deduction under Section 54F.

Ucal Machine Tools (P.) Ltd. v. Income-tax Officer, Company Ward-III (1), Chennai  
[2016] 71 taxmann.com 230 (Chennai - Trib.), Dated- JULY 15, 2016

Where assessee had been maintaining a mercantile system of accounting, treatment of emergency spares in accordance with revised Accounting Standard (AS) 2 and (AS) 10 would be in consonance with mercantile system of accounting, thus, expenditure incurred by assessee on replacement of tools was to be allowed as revenue expenditure.

**Facts:**

- Assessee-company engaged in manufacture of automobile component incurred expenditure on replacement of tools.
- The Assessing Officer treated expenditure on tools as capital expenditure, according to assessee it was revenue expenditure.

**ITAT Held that:**

- Accounting Standards are mandatory in nature and applied to accounts prepared after 1-4-1999 hence submissions of assessee that it had to capitalise entire cost of spares in consonance with mandatory provisions of Accounting Standards (AS) 2 and (AS) 10 were to be accepted.
- Thus where assessee had been maintaining a mercantile system of accounting, treatment of emergency spares in accordance with revised Accounting Standard (AS) 2 and (AS) 10 would be in consonance with mercantile system of accounting which under Act, revenue was required to look at for computing income of assessee chargeable under head 'Profits and gains' from business.
- Thus, expenditure incurred by assessee on replacement of tools was to be allowed as revenue expenditure

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# Biju Daniel v. Commissioner of Central Excise (Appeals)

[2016] 71 taxmann.com 294 (Kerala), Dated- JULY 5, 2016

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If challenge is made based on adjudication order being passed in violation of principles of natural justice, then, writ is maintainable despite appeal-remedy becoming time-barred

## **Facts:**

- Assessee was engaged in erection, commissioning and installation of electrification works of PWD Department. Department demanded service tax levying penalties under sections 76 and 78.
- Assessee filed appeal before Commissioner (Appeals) beyond his condonation power. Pending appeal, assessee filed writ against adjudication order arguing that : (a) services to government department were exempt under Notification 25/2012-ST for 2012-13 and 2013-14; (b) despite specific request, no hearing was granted; and (c) penalty cannot be levied under both sections 76 and 78.

## **High Court held that:**

- Assessee's appeal before Commissioner (Appeals) was not maintainable being beyond condonation power. Normally, writ is not available if alternate remedy is not exercised within specified time; however, if challenge is made based on violation of principles of natural justice, then, writ is maintainable.
- Since assessee raised valid contentions on exemption and penalty, but, was not given an opportunity for hearing; hence, impugned order was set aside and matter was remanded for fresh disposal. [In favour of assessee/Matter remanded]

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Unitech Ltd., In re NATIONAL COMPANY LAW TRIBUNAL  
[2016] 71 taxmann.com 156 (NCLT-New Delhi), Dated- JULY 4, 2016

Where petitioner-company failed to make repayment of Rs. 30 crores to its depositors as ordered by NCLT, petition for extension of time for repayment of deposit of Rs. 550 crores was to be quashed leaving it open to depositors to pursue their remedies as per law

**Facts:**

- NCLT passed order against petitioner for repayment of Rs. 30 crores to depositors on or before 30-6-2016.
- Petitioner's MD gave an undertaking to make payment but failed to do so.
- Petitioner sought further extension of time for repayment.

**NCLT Held that:**

- Since petitioner company could not repay Rs. 30 crores of money in time given by Bench as asked by company, it could not be possible for company to clear Rs. 550 crores dues payable to depositors in near future.
- Company would not be in a position to repay depositors even if further time was extended and, therefore, petition for extension of time was dismissed leaving it open to depositors to pursue their remedies as per law and ROC was to be directed to take appropriate action against company under section 74(3)

Rupak Gupta v. U.P. Hotels Ltd.

[2016] 71 taxmann.com 158 (NCLT-New Delhi), Dated- JUNE 22, 2016

Directors are entitled to attend board meeting via video conferencing.

**Issue:**

- Whether directors are entitled to attend board meeting via video conferencing even if intimation as provided under rule 3 of Companies (Meetings of Board and its Powers) Rules, 2014 at beginning of calendar year is not given.

**NCLT Held that:**

- As regards participation in board meeting by video conferencing rule 3(3)(e) only says that if intimation is given at beginning of calendar year that will remain valid for entire calendar year, it is not said anywhere that if it is not given at beginning of year, video conference is not to be provided in that calendar year and, therefore, it does not mean that directors are not entitled for video conferencing if intimation is not given at beginning of calendar year.
- Whether where respondent assured applicant and his mother that he would provide video conferencing facility to participate in Board meeting to be held when they would be overseas but later backed out from that assurance on ground that no intimation was given at beginning of calendar year, holding board meeting and passing resolutions by preventing applicant and his mother to participate in Board meeting was not fair and, therefore, operation of resolutions passed at that board meeting was to be stayed.



*Thank You*

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