

Missive - July 2018

S.P.NAGRATH & Co. LLP
CHARTERED ACCOUNTANTS



Dear Patron,

Greetings!

It is a great pleasure to present our next edition of “Missive”. We trust you will enjoy reading our publication.

We solemnly request you to kindly share your feedback for improvement.

Regards, SPN



Table of Contents

Section	Description	Page Number
1	Indirect Taxes	4 - 8
2	Direct Taxes	9 -12
3	Audit & Assurance	13 - 15
4	Snippets	16

Indirect Tax

Goods and Services Tax

Notifications

Notification No. 12/2018 - Central Tax (Rate) dated 29th June, 2018

Exemption of payment of tax under Reverse Charge Mechanism on supplies received from unregistered dealers till 30th September, 2018.

Applicability of Reverse Charge Mechanism on purchase of goods/services from unregistered person stands deferred till 30th September, 2018.

Notification No. 27/2018 - Central Tax dated 13th June, 2018

Certain goods have been notified which may be disposed off by the proper officer after its seizure.

CBIC has notified goods or class of goods which shall as soon as may be after its seizure under section 67(2) be disposed off by the proper office *having regard to the perishable or hazardous nature*, depreciation in value with the passage of time, constraints of storage space or any other relevant considerations of the said goods.

Schedule

- (1) Salt and hygroscopic substances
- (2) Raw (wet and salted) hides and skins
- (3) Newspapers and periodicals
- (4) Menthol, Camphor, Saffron

- (5) Re-fills for ball-point pens
- (6) Lighter fuel, including lighters with gas, not having arrangement for refilling
- (7) Cells, batteries and rechargeable batteries
- (8) Petroleum Products
- (9) Dangerous drugs and psychotropic substances
- (10) Bulk drugs and chemicals falling under Section VI of the First Schedule to the Customs Tariff Act, 1975
- (11) Pharmaceutical products falling within Chapter 30 of the First Schedule to the Customs Tariff Act, 1975
- (12) Fireworks
- (13) Red Sander
- (14) Sandalwood
- (15) All taxable goods falling within Chapters 1 to 24 of the First Schedule to the Customs Tariff Act, 1975
- (16) All unclaimed/abandoned goods which are liable to rapid depreciation in value on account of fast change in technology or new models etc.
- (17) Any goods seized by the proper officer under section 67 of the said Act, which are to be provisionally released under sub-section (6) of section 67 of the said Act, but provisional release has not been taken by the concerned person within a period of one month from the date of execution of the bond for provisional release.

SPN Comment: *It should be noted that the intent of the authorities is clear from the usage of word "shall" meaning that the officer who has seized the goods is obligated to dispose the goods specified under the notification without giving reasons in writing. This can cause considerable loss to assessee given the indispensable time consuming exercise required to be undertaken by the assessee to get the goods released.*

Notification No. 28/2018 - Central Tax dated 19th June, 2018

Amendment in the CGST Rules, 2017

CBIC has notified that a transporter who is registered under GST in more than one State or Union Territory and having same PAN may apply for a unique common enrolment number by submitting the details in FORM GST ENR-02 using any of the GSTIN registration.

Post allotment of the unique common enrolment number, transporter shall not be eligible to use any of the GSTIN.

Details required for enrolment:

- 1- Legal name
- 2- PAN
- 3- GSTIN wise details of all GST registrations to be covered under unique common enrolment number.

Circulars/Orders

Circular No.47/21/2018-GST dated 8th June, 2018

Clarifications of certain issues under GST

Whether moulds and dies owned by Original Equipment Manufacturers (OEM) that are sent free of cost (FOC) to a component manufacturer is leviable to tax and whether OEMs are required to reverse input tax credit in this case?

Moulds and dies owned by the OEM which are provided to a component manufacturer (the two not being related persons or distinct persons) on FOC basis does not constitute a supply as there is no consideration involved.

Further, since the moulds and dies are provided on FOC basis by the OEM to the component manufacturer in the course or furtherance of his business, there is no requirement for reversal of ITC availed on such moulds and dies by the OEM.

While calculating the value of the supply made by the component manufacturer, the value of moulds and dies provided by the OEM to the component manufacturer on FOC basis shall not be added to the value of such supply because the cost of moulds/dies was not to be incurred by the component manufacturer.

1. How is servicing of cars involving both supply of goods (spare parts) and services (Labour), where the value of goods and services are shown separately, to be treated under GST?

Where a supply involves supply of both goods and services and the value of such goods and services supplied are shown separately, the goods and services would be liable to tax at the rates as applicable to such goods and services separately.

2. In case of transportation of goods by railways, whether goods can be delivered even if the e-way bill is not produced at the time of delivery?

As per proviso to rule 138(2A) of the CGST Rules, Railways shall not deliver the goods unless e-way bill is produced at the time of delivery.

4. Whether e-way bill is required in the following cases-
(i) Where goods transit through another State while moving from one area in a State to another area in the same State.

E-way bill generation is not dependent on whether a supply is inter State or not, but on whether the movement of goods is inter-State or not. Therefore, if the goods transit through a second State while moving from one place in a State to another place in the same State, an e-way bill is required to be generated.

(ii) Where goods move from a DTA unit to a SEZ unit or vice versa located in the same State.

Where goods move from a DTA unit to a SEZ unit or vice versa located in the same State, there is no requirement to generate an e-way bill, if the same has been exempted under rule 138(14)(d) of the CGST Rules.

Circular No.48/22/2018-GST dated 14th June, 2018

Clarification on miscellaneous issues related to SEZ and refund of unutilized ITC for job workers

1. *Whether services of short-term accommodation, conferencing, banqueting etc. provided to a Special Economic Zone (SEZ) developer or a SEZ unit should be treated as an inter-State supply (under section 7(5)(b) of the IGST Act, 2017) or an intra-State supply (under section 12(3)(c) of the IGST Act, 2017)?*

As per section 7(5)(b) of IGST Act, the supply of goods or services or both to SEZ shall be treated to be a supply in the course of inter-State trade or commerce. Whereas, as per section 12(3)(c) of the IGST Act, the place of supply of services by way of accommodation in any immovable property for organising any functions shall be the location at which the immovable property is located. Thus, in such cases, if the location of the supplier and the place of supply is in the same State/ Union territory, it would be treated as an intra-State supply.

It is an established principle of interpretation of statutes that in case of an apparent conflict between two provisions, the specific provision shall prevail over the general provision.

In the instant case, section 7(5)(b) of the IGST Act is a specific provision relating to supplies to SEZ developer or a SEZ unit, which states that such supplies shall be treated as inter-State supplies.

2. *Whether the benefit of zero rated supply can be allowed to all procurements by a SEZ developer or a SEZ unit such as event management services, hotel and accommodation services, consumables etc.?*

The supplies to a SEZ developer or a SEZ unit shall be zero rated and the supplier shall be eligible for refund of unutilized ITC or IGST paid, as the case may be, only if such supplies have been received by SEZ for authorized operations. An endorsement to this effect shall have to be issued by the specified officer of the Zone.

Therefore, subject to the provisions of section 17(5) of the CGST Act, if event management services, hotel, accommodation services, consumables etc. are received by a SEZ developer or a SEZ unit for authorised operations, as endorsed by the specified officer of the Zone, the benefit of zero rated supply shall be available in such cases to the supplier.

3. *Whether independent fabric processors (job workers) in the textile sector supplying job work services are eligible for refund of unutilized input tax credit on account of inverted duty structure under section 54(3) of the CGST Act, 2017, even if the goods (fabrics) supplied are covered under notification No. 5/2017-Central Tax (Rate) dated 28.06.2017?.*

Notification No. 5/2017-Central Tax (Rate) dated 28.06.2017 specifies the goods in respect of which refund of unutilized input tax credit (ITC) on account of inverted duty structure under section 54(3) of the CGST Act shall not be allowed where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies of such goods. However, in case of fabric processors, the output supply is the supply of job work services and not of goods (fabrics).

Hence, it is clarified that the fabric processors shall be eligible for refund of unutilized ITC on account of inverted duty structure under section 54(3) of the CGST Act even if the goods (fabrics) supplied to them are covered under notification No. 5/2017-Central Tax (Rate) dated 28.06.2017.

Circular No. 49/23/2018-GST dated 21st June, 2018

Modifications to the procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances, as clarified in Circular No. 41/15/2018-GST dated 13th April, 2018

As per rule 138(C)(2) of the CGST Rules, 2017, where the physical verification of goods being transported on any conveyance has been done during transit at one place within a State or Union territory or in any other State or Union territory, no further physical verification of the said conveyance shall be carried out again in the State or Union territory, unless a specific information relating to evasion of tax is made available subsequently. Since the requisite forms are not available on the common portal currently, any action initiated by the State tax officers is not being intimated to the central tax officers and vice-versa; doubts were raised as to the procedure to be followed in such situations.

In this regard, it has been clarified that the hard copies of the notices/orders issued in the specified forms by a tax authority may be shown as proof of initiation of action by a tax authority by the transporter/registered person to another tax authority as and when required.

Further, only such goods and/or conveyances shall be detained/ confiscated in respect of which there is a violation of the provisions of the GST Acts or the Rules made thereunder.

CUSTOMS LAW

Notification No. 47/2018-Customs dated 14th June 2018

Increase in basic customs duty (BCD) to 35% on crude edible vegetable oils and to 45% on refined edible vegetable oils.

Notification No. 48/2018-Customs dated 20th June, 2018

Increase in the tariff rate on goods in chapters 7, 8, 28, 38, 72 and 73 in the First Schedule to the Customs tariff Act, 1975.

Notification No. 49/2018-Customs dated 20th June 2018

Seeks to further amend notification No. 50/2017-customs dated 30th June 2017, to prescribe effective rate of duty on specified goods

Customs Law: Non-Tariff

Notification No. 48/2018-Customs (N.T.) dated 4th June 2018

Exports by Post Regulations, 2018

CBIC has prescribed Exports by Post Regulations, 2018 effective from 21st June 2018

These Regulations shall apply to export of goods by any person, holding a valid Import Export Code issued by the DGFT, in furtherance of business from any foreign post office notified under sub-section (e) of section 7 of the Customs Act, 1962.

In case of goods to be exported through a foreign post office, an entry shall be required to be presented to the proper officer at the foreign post office of clearance, in the prescribed forms.

Notification No. 50/2018-Customs (N.T.) dated 8th June, 2018

Powers of adjudication of the officers of Customs

CBIC has conferred power, for the purposes of adjudging confiscation or penalty, on the Customs Officer as mentioned below, in terms of specified value limit, in relation to goods which are liable to confiscation under Chapter XIV of the said Act:

S. No.	Customs Officer	Value of goods liable for confiscation
1.	Assistant Commissioner of Customs or Deputy Commissioner of Customs	Above rupees one lakh but not exceeding rupees ten lakhs
2.	A Gazetted Officer of Customs lower in rank than an Assistant Commissioner of Customs or Deputy Commissioner of Customs	Not exceeding rupees one lakh

Notification No. 55/2018-Customs (N.T.) dated 21st June, 2018

Exchange Rate Notification

S.No.	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
		(For Imported Goods)	(For Export Goods)
1.	Australian Dollar	51.65	49.20

2.	Bahrain Dinar	186.60	174.80
3.	Canadian Dollar	52.25	50.40
4.	Chinese Yuan	10.70	10.35
5.	Danish Kroner	10.80	10.40
6.	EURO	80.30	77.35
7.	Hong Kong Dollar	8.85	8.55
8.	Kuwait Dinar	233.05	218.10
9.	New Zealand Dollar	48	45.85
10.	Norwegian Kroner	8.50	8.15
11.	Pound Sterling	91.35	88.15
12.	Qatari Riyal	19.30	18.25
13.	Saudi Arabian Riyal	18.80	17.60
14.	Singapore Dollar	51.10	49.20
15.	South African Rand	5.15	4.85
16.	Swedish Kroner	7.80	7.55
17.	Swiss Franc	69.80	67.05
18.	UAE Dirham	19.20	18.00
19.	US Dollar	69.10	67.40

DIRECT TAX

Important News

Due date of filing of Income Tax return is 31st July, 2018.

All Individuals, HUFs, non-corporate assessee who are not liable for audit under Income Tax Act, 1961 or any other law are required to file their Income Tax return by 31st July, 2018. As per Finance Act, 2017, where the assessee failed to furnish return of income within due date i.e. 31st July, 2018, the assessee shall be liable to pay a mandatory fees as follows:

Particular	Fees (Rs.)
If return is furnished on or before 31st December 2018	Rs. 5,000
If return is furnished after 31st December 2018	Rs. 10,000

I-T refunds Worth Rs 70,000 Crore Issued, 99% Claims Processed: CBDT

New Delhi: Income Tax refunds worth over Rs. 70,000 crores have been issued to the taxpayers and nearly all refund claims pending as on June-end has been processed, the Central Board of Direct Taxes (CBDT) said on Wednesday (4th July, 2018).

The Income Tax Department had observed a dedicated fortnight from June 1-15, which was later extended to June 30 in certain regions, to expeditiously clear pending matters of appeal effect and rectification.

More than 20,000 such matters were disposed of and refunds were issued to the taxpayers, wherever due.

Move Court Only on Question of Law in Transfer Pricing Cases: HC

The Karnataka High Court ruled that courts should be approached in such cases only if there is a substantial question of law. Companies and revenue officials are approaching high courts when they don't agree with facts observed by the income tax tribunal, the court observed. Issues like a dispute over the methodology used for arriving at the tax amount or the facts observed by the tribunal should not be the reason for approaching the high court.

The appeal (related to transfer pricing cases) cannot be entertained at the instance by either the revenue or the assessee (companies) and the exercise of fact finding or 'Arm's Length Price' determination or 'Transfer Pricing Adjustments' should be allowed to become final at the hands of the Tribunal.

Getting PAN is faster now with e-facility

The government has launched the allotment of e-PAN. The facility will be available free of cost. This facility, open for a limited period of time, is available only for resident individuals holding a valid Aadhar. No physical document is required to be submitted and you simply need to fill your name as contained in your Aadhar and upload the signature, said a note from the income tax department.

Withdrawal 75% of PF, One Month after quitting Job

Subscribers of Employees Provident Fund Organisation (EPFO) who resign from their service can now withdraw 75% of their total provident fund kitty after one month from the date of cessation of service.

Income Tax Circulars & Notifications

Notification No. 27/2018- dated 18th June, 2018

Section 193, read with section 54EC, of the Income-Tax Act, 1961 - Deduction of tax at source - interest on securities - specified capital gains bond issued by Indian railway finance corporation limited.

In exercise of the powers conferred by clause (iib) of the proviso to section 193 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby specifies the "Indian Railway Finance Corporation Limited 54EC Capital Gains Bond" issued by Indian Railway Finance Corporation Limited for the purpose of the said clause.

Provided that the benefit under the said proviso

shall be admissible in the case of transfer of such bonds by endorsement or delivery, only if the transferee informs Indian Railway Finance Corporation Limited by registered post within a period of sixty days of such transfer.

**Notification No. 26/2018- dated 13th June, 2018
Section 48 of the Income-Tax Act, 1961 -
Computation of Capital gains - Notified cost
inflation index under section 48**

The Central Government notifies “280” as the cost inflation index for financial year 2018-19.

**Section 139AA, read with sections 139A & 139,
of the Income-Tax Act, 1961 - Quoting of Aadhar
Number- Extension of time for linking PAN with
Aadhar number.**

CBDT further extends the time for linking PAN with Aadhaar Number till 31st March, 2019.

Case Laws - Income Tax

**[SUPREME COURT OF INDIA] Commissioner of
Income-tax, (Exemption), Kochi v. Mata
Amrithanandamayi Math Amritapuri / [2018] 94
taxmann.com 82 (SC)**

Issue Involved

Whether interest earned by a trust on corpus donations received by it with the specific direction of donors would form part of corpus. Can assessee claim exemption under section 11 in respect of such interest?

Fact of the case

The assessee is a charitable institution and entitled to claim exemption under section 11. During the Assessment Year 2007-08 to 2009-10 and 2012-13, on the voluntary contributions that were received by the assessee, interest was earned and the income so earned on the contributions was added by the assessee to its corpus, acting upon the instructions in that behalf issued by the donors themselves.

The Assessing Officer rejected the claim of the assessee for exemption under section 11(1)(d) in respect of interest earned on contributions. The Tribunal, however, allowed assessee's claim. Further, the Revenue appealed against the order of the Tribunal.

Hon'ble High Court held that

As per Section 11 subject to the provisions of sections 62 and 63, the incomes enumerated therein shall not be included in the total income of the previous year of the person in receipt of the income. One of the income that is enumerated in clause (d) of sub-section (1) of the section is the income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution.

The fact that the donors had instructed that the interest earned shall be added to the corpus of the trust is undisputed. If that be so, the interest earned on the contributions already made by the donors would also partake the character of income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust

On appeal to the High Court it was held that, the interest earned would qualify for exemption under section 11(1) (d).

Hon'ble Supreme Court held that

SLP filed by the Revenue against the High Court's order was dismissed and disposed off in favour of the assessee.

**[SUPREME COURT OF INDIA], Director, Prasar
Bharti v. Commissioner of Income Tax,
Thiruvananthapuram/ [2018] 92 taxmann.com 11
(SC)**

1. Issue Involved

Whether provisions of section 194H would be applicable to payments made by assessee to agencies?

Facts of the case

Assesse, a Government of India organization in the course of their business activities, which included the running of the TV channel called 'Doordarshan', had been regularly telecasting advertisements of several consumer companies. The assessee entered into an agreement with several advertising agencies in terms of which the advertising agency was required to make an application to the assessee to get the 'accredited status' for their agency so as to enable them to do business with the assessee.

The agreement, inter alia, provided that the assessee would pay 15 per cent by way of commission to the agency. The agreement also provided the manner, mode and the time within which the payment was to be made by the agency to the assessee.

During assessment proceedings, the Assessing Officer was of the view that the provisions of section 194H were applicable to the payments made by the assessee to the agencies because the payments were made in the nature of 'commission' as defined in Explanation appended to section 194H.

Hon'ble Supreme Court held that

The Explanation appended to Section 194H defines the expression "commission or brokerage". It is an inclusive definition and includes therein any payment received or receivable, directly or indirectly by a person acting on behalf of another person for services rendered (not being professional services) or for any services in the course of buying or selling of goods or in relation to any transaction relating to assets, valuable article or thing not being securities.

In this case, no one can doubt that 15% commission paid to advertising agencies by the Doordarshan is for canvassing advertisements on behalf of the respondent. So much so, the payment of 15%, by whatever name called, whether discount or commission, falls within the definition of "commission" as defined under Explanation (i) to Section 194H of the Act.

Therefore the provisions of Section 194H are applicable as the payment in question was in the nature of "commission" paid by the appellant to the advertisement agencies to secure more business for the appellant.

2. Issue Involved

Whether since assessee failed to deduct tax at source while making these payments to agencies in terms of agreement in question, they committed default of non-compliance of section 194H resulting in attracting provisions of section 201(1)?

Hon'ble Supreme Court of India held that

The provisions of Section 201 were rightly invoked in this case against the appellant by the assessing authority once having held that the appellant failed to comply with the provisions of Section 194H of the Act.

Once it is held that the provisions of Section 194H apply to the transactions, it is obligatory upon the appellant to have deducted the income tax while making payment to the advertisement agencies. The non-compliance of Section 194H by the assessee attracts Section 201 which provides for consequences of failure to deduct or pay the tax as provided under Section 194H of the Act.

[HIGH COURT OF MADRAS] Evolve Clothing Co. (P.) Ltd. v. Assistant Commissioner of Income-tax [2018] 94 taxmann.com 449 (Madras)

Issue Involved

If service of market survey is only incidental to the function of commission agent, can it be regarded as fees for technical service and therefore in absence of PE in India, commission charges shall be liable to tax in India?

Facts of the case

The appellant assessee carries on business of export of garments. During the year under consideration, the appellant paid a sum of Rs.3,74,09,773/- as commission to the foreign agent. The appellant assessee did not deduct tax at source (TDS) before payment of commission to the foreign agent.

The Assessing Officer (AO) found that income could be deemed to accrue or arise in India even if the non-resident did not have residence or place of business in India or business connection in India and even if the non-resident Indian had not rendered services in India.

The AO was of the view that the appellant assessee was liable to comply with the provisions of TDS. Therefore, the entire commission of Rs.3,74,09,773/- paid to the non-residents was disallowed under Section 40(a)(i) of the IT Act and added to the income of the appellant.

Hon'ble High Court of Madras held that

As per Explanation (2) to section 9(1)(vii), fees for technical services means consideration, including lump sum consideration for rendering any managerial, technical or consultancy services and it does not contemplate commission which is order specific and computable at a small percentage of the order value.

Service of market survey only to ascertain the demand for the product in the market is incidental to the function of a commission agent of procuring orders and is, in any case, not managerial, technical or consultancy service and would not tantamount to rendering of technical service so as to attract taxes in India.

[ITAT BENGALURU BENCH 'C'] [National Dairy Research Institute v. Assistant Commissioner of Income-tax (TDS), Circle 18 (1), Bengaluru [2018] 94 taxmann.com 19 (Tribunal)

Issue Involved

Whether an assessee (an autonomous research institute in dairy development) would be treated as an assessee in default under section 201(1), if it failed to deduct tax at source on perquisite value of rent free residential accommodation provided to its employees, in terms of rule 3 of Income Tax Rules, 1962, where accommodation is provided by any employer other than Central Government or State Government?

Facts of the Case

The assessee is a research institute in the dairy development and it is accorded status of deemed university. It is under administrative control of the Indian Council of Agricultural Research and Education, Ministry of Agriculture and Food Processing Industry. It is established as a society under the Societies Registration Act 1860.

The TDS officer issued show cause notice to the assessee as to why it should not be treated as 'an assessee in default' under section 201(1) of the Income-tax Act ('the Act') as it failed to deduct tax at source on the perquisite value of rent free residential accommodation provided to its employees, in terms of rule 3 as applicable, where the accommodation is provided by any employer other than Central Government or State Government.

In response, the assessee contended that the assessee-society falls under the definition of 'State' as defined under article 12 of the Constitution and the employees of the assessee-society are the employees of the Central Government.

However the TDS officer had not accepted the contention and held that the employees of the assessee society cannot be treated as employees of the Central Government and therefore held that the assessee is under obligation to deduct tax on the perquisite value of the accommodation provided to its employees as applicable under clause (ii) of rule 3 of IT Rules. Accordingly TDS officer held the assessee society as 'assessee in default' and demanded tax of Rs. 2,62,740/- under section 201(1) and interest of Rs.1,03,782/- under section 201 (1A) of the Act for the assessment year 2010-11 vide order dated 20/11/2013.

Hon'ble Bench held that

The employees of society cannot be equated with employees of Central Government and, therefore, clause (ii) of sub rule (1) of rule 3 of Income Tax Rules was rightly applied and no relief could be granted for non-deduction of tax at source.

Audit & Assurance

The Companies (Accounting Standards) Amendments Rules 2018

The Ministry of Corporate Affairs vide notification dated 18th June, 2018 has issued the Companies (Accounting Standards) Amendments Rules, 2018. It has substituted Para 32 of AS 11, the effects of changes in foreign exchange rates. The amendment states that remittance from a non- integral foreign operation by way of repatriation of accumulated profits does not form part of a disposal unless it constitutes return of investment. The amendment is effective from 1st April 2018.

Companies (Amendment) Act, 2017

The Ministry of Corporate Affairs notified five sections of the Companies (Amendment) Act, 2017 vide its notification dated 13th June 2018.

The major sections notified are as follows:

Substitution of new section for section 90 (Register of significant beneficial owners in a company)

For section 90 of the principle Act, the following section shall be substituted, namely:-

Every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds beneficial interests, of not less than twenty-five per cent. or such other percentage as may be prescribed, in shares of a company or the right to exercise, or the actual exercising of significant influence or control as defined in clause (27) of section 2, over the company (herein referred to as "significant beneficial owner"), shall make a declaration to the company in Form BEN-1, specifying the nature of his interest and other particulars, in such manner and within such period of acquisition of the beneficial interest or rights and any change thereof, as may be prescribed:

Provided that the Central Government may prescribe a class or classes of persons who shall not be required to make declaration under this sub-section.

Every company shall maintain a register of significant beneficial owner in Form No. **BEN-3**.

The register maintained under sub-section (2) shall be open to inspection by any member of the company on payment of such fees as may be prescribed.

Every company shall file a return of significant beneficial owners in Form No. **BEN-2** within **30 days from the date of receipt of declaration in BEN-1** and changes therein with the Registrar containing names, addresses and other details.

A company shall give notice, in the prescribed manner, to any person (whether or not a member of the company) whom the company knows or has reasonable cause to believe—

- (a) To be a significant beneficial owner of the company;
- (b) To be having knowledge of the identity of a significant beneficial owner or another person likely to have such knowledge; or
- (c) To have been a significant beneficial owner of the company at any time during the **three years immediately preceding the date on which the notice is issued**,

And who is not registered as a significant beneficial owner with the company as required under this section.

The information required by the notice under sub-section (5) shall be given by the concerned person within a period not exceeding thirty days of the date of the notice.

The violation of this section would attract penalties as prescribed.

Omission of Section 93 (return to be filed with registrar in case promoter's stake changes)

Earlier, every listed company shall have to file a return with the Registrar with respect to change in the number of shares held by promoters and top ten shareholders of such company, within fifteen days of such change.

The Companies (Amendment) Act, 2017 has omitted Section 93.

Amendment in Section 94 (place of keeping and inspection of registers, returns, etc.)

The Companies (Amendment) Act, 2017 amends section 94 of the Companies Act, 2013.

Provisions to Section 94(1) requires that a company can keep registers or returns as required under the Act other than registered office at any place in India where more than one-tenth of the total number of members entered in the register reside, if approved by a special resolution passed at the general meeting of the company and the Registrar has been given a copy of the proposed special resolution in advance.

The Companies (Amendment) Act, 2017 in the above-mentioned provision omitted, the words "and the Registrar has been given a copy of the proposed special resolution in advance".

Section 94(3) provides that any such member, debenture-holder, other security holder or beneficial owner or any other person may—

- (a) take extracts from any register, or index or return without payment of any fee; or
- (b) require a copy of any such register or entries therein or return on payment of such fees as may be prescribed.

The Companies (Amendment) Act, 2017 the following proviso after sub-section (3), namely:—
"Provided that such particulars of the register or index or return as may be prescribed shall not be available for inspection under sub-section (2) or for

taking extracts or copies under this sub-section."

Amendment in section 96 (Annual general Meeting)

The Companies (Amendment) Act, 2017 inserts the following provisions after sub-section (2) of section 96, namely:—

"Provided that annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance".

Companies (Amendment) Rules

The Ministry of Corporate Affairs has notified the following rules on 13th June, 2018:

Companies (Management and Administration) 2nd Amendment Rules, 2018

The Ministry of Corporate Affairs amended Companies (Management and Administration) Rules, 2014 by Companies (Management and Administration) Second Amendment Rules, 2018.

The Rule (13) of Rules, 2014 provides that "every listed company shall file with the Registrar, a return in form no. MGT 10 along with the fee with respect to changes relating to either increase or decrease of two percent, or more in the shareholding position of promoters and top ten shareholders of the company in each case, either value or volume of the shares, within fifteen days of such change".

This rule is now omitted by Companies (Management and Administration) Second Amendment Rules, 2018.

Preservation of register of members etc. and annual return

The Rule 15(6) of the Rules, 2014 provides that "a copy of the proposed special resolution in advance to be filed with the registrar as required in accordance with first proviso of sub-section (1) of section 94, shall be filed with the Registrar, at

least one day before the date of general meeting of the company in form no. MGT 14.”

This sub-rule is now omitted by Companies (Management and Administration) Second Amendment Rules, 2018.

Notice of the meeting

The explanation to the rule 18 of the Companies (Management and Administration) Rules, 2014 states that for the purpose of this rule, it is hereby declared that the extra ordinary general meeting shall be held at a place within India.

This explanation is omitted by the Companies (Management and Administration) Second Amendment Rules, 2018.

Procedure to be followed for conducting business through postal ballot

The Companies (Management and Administration) Second Amendment Rules, 2018 has substituted the provision in sub-rule 16 of rule 22, namely:-

“Provided that any aforesaid items of business under this sub-rule, required to be transacted by means of postal ballot, may be transacted at a general meeting by a company which is required to provide the facility to members to vote by electronic means under section 108, in the manner provided in that section:x

Provided further that One Person Companies and other companies having members up to two hundred are not required to transact any business through postal ballot”.

Auditors may soon have to compulsorily get registered with National Financial Reporting Authority

Mandatory registration of auditors, powers to probe irregularities as well as recommend accounting and auditing standards are among the functions likely to be vested with the National Financial Reporting Authority (NFRA), according to sources.

According to the proposed rules, auditors have to mandatorily get registered with the NFRA. This would be applicable for auditors of listed firms and other prescribed categories of companies.

The body would have power to review financial statement of companies, can seek explanations and probe irregularities with respect to accounting and auditing issues.

In case, entities, including individuals, contravene the rules then they could face a fine of up to ₹ 10,000. If the entities concerned remain non-compliant, then the penalty would be ₹ 1,000 for every day after the first when the violation happened.

Miscellaneous Matters

Manappuram Finance to acquire 85% stake in ISFC for ₹ 212 crore

Non-banking financial company Manappuram Finance has entered into an agreement to acquire 85.39 percent stake in Indian School Finance Company (ISFC) for over ₹212 crore.

ISFC, which lends to educational institutions, including private schools, vocational colleges, and institutes, coaching centers to build infrastructure, had assets under management (AUM) of ₹522.59 crore in FY 2018.

Tata Steel will be able to nearly double capacity in India after ThyssenKrupp deal, reduce debt: N Chandra

Tata Steel Ltd will be able to nearly double its capacity in India as a deal between its British entity and Germany's ThyssenKrupp will reduce the Indian parent's debt, the chairman of the company said on Monday.

Central Bank of India to raise ₹ 8,000 crore to strengthen core capital to comply with Basel III norms

Public sector Central Bank of India will raise up to ₹ 8,000 crore equity capital through various means, including a follow-on public offer, rights issue or a qualified institutional placement, to shore up its capital base.

The proposal was approved by shareholders at the bank's annual general meeting held on 30th June 2018.

ICICI-Securities IPO: SEBI asks ICICI Prudential MF to return ₹ 240-cr of investors' money to schemes

Regulator SEBI is believed to have found ICICI Prudential MF in violation of rules during the last day bidding for IPO of the group firm ICICI Securities and has asked the fund house to pay back ₹ 240 crore, with 15 percent interest, to its five schemes from which the money was taken for the shares.

Honda reports 28 percent growth in volume in June at 5, 71,020 units; market share increased by 0.8 percent

The second largest two-wheeler maker Honda Motorcycle & Scooter India on Monday reported a 28 percent growth in volume in June at 5,71,020 units, which helped it corner 1 percent more of the total market.

Thank You

Head Office

A-380,
Defence Colony, New Delhi - 110024
+91 11 49800000
spn@spnagrath.com

Branches

511,139, Oxford Towers, Airport
Road, Kodihalli, Bangalore -
560008
+91 8041516664
spnblr@spnagrath.com

17, SubhashMarg,
New Delhi - 110002
+91 11 23272024
spndg@spnagrath.com

A-371,
Defence Colony,
New Delhi - 10024
+91 11 49800000
spn@spnagrath.com