

## SCV & Co. LLP Chartered Accountants

January to March 2019



### Editorial



Reserve Bank of India (RBI) had issued a circular on 12 th February, 2018 whereby the Banks were asked to treat a company as a defaulter even if it misses repayment schedule by a day.

The circular had also mandated to file insolvency application if default persists for 180 days from and after March 1, 2018 for debts with aggregate exposure of more than Rs. 2,000 crores. The circular was a big blow to several companies in power, sugar and fertilizer sectors. Various companies in these sectors had challenged the circular before the Supreme Court of India, as ultra vires on the grounds that it wrongly classified them as willful defaulters. It was argued that they were stressed because of extraneous factors beyond their control and could not be treated as willful defaulters. The Supreme Court has held that RBI cannot make a all-season circular for every defaulter in various sectors.



## Editorial

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The Supreme Court thus held that the February 12 circular has no legal validity. However, the Supreme Court also held that the Government under section 35AA of the Banking Regulation Act 1949 had powers to direct banks to refer specific cases to National Company Law Tribunal (NCLT) when there is a default of repayment by such companies.

The aforesaid ruling of the Supreme Court could affect the phase of Corporate Insolvency Resolution and impact the ongoing pace thereof. The revival plan of Jet Airlines may also be hit on account of this decision. Senior Bankers are of the opinion that ruling may lead to more litigation as the promoters of stressed assets could approach the Apex Court citing the above decision. The Bankers have also opined that they had travelled quite a distance in resolving debt of large borrowers. It would be unfortunate if the time and efforts which have been put in for such resolution do not yield a result.

The Government has clarified that Supreme Court Judgment on RBI circular is a procedural matter and is not a major crisis. The Government may invoke section 35AA of the aforesaid Act asking Central Bank to refer specific cases to NCLT. It seems that the way forward is that the Government would issue the directions on NPA Resolution on a case by case basis and that the decision would have no impact on the cases that are not under ambit of RBI's February circular. The Government of India will have to take a decision in this regard immediately to avoid further litigation on the subject and take steps to resolve the issue in those cases where delay in repayment has occurred on account of circumstances beyond the control of the promoters.



I hope you find the contents of this newsletter useful. We would be happy to receive your comments/ suggestions on this initiative and the contents of this newsletter. You may e-mail your views at [sachin.vasudeva@scvindia.com](mailto:sachin.vasudeva@scvindia.com).

**Happy Reading**

**S.C. Vasudeva**

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## Direct Tax



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## Regulatory Snippets

### (1.) Notification No. 16/2019 - Amount specified by the Central Government under section 10(10)(iii)

Under Section 10(10)(iii) of the Income-tax Act, the Central Government has notified the amount of twenty lakh rupees as the maximum amount of any gratuity payable to employees which can be claimed as exempt under the said section.

### (2.) Notifications summarizing the Angel Taxation

**Background:** As per Section 56(2) (viib) of the Income-tax Act, 1961 (the Act), issuance of shares by a closely held company to a resident for a consideration exceeding face value of shares results in taxability of the amount in excess of fair market value (determined as per Rule 11UA(2) of the Income-tax Rules) as income in the hands of the issuer company. This tax levy is commonly referred to as the 'angel tax'

To give an encouragement to start-ups and not levy tax on excess premium received by them, the CBDT had earlier exempted registered start-ups from the applicability of angel tax. Thereafter, the Department for promotion of Industry and Internal Trade (DPIIT) issued notifications from time to time modifying the eligibility conditions for qualifying as a start-up, which were followed by a corresponding exemption notification by the CBDT.

**Notification No. GSR 127 (E) IF.NO.5 (4)/2018-SII, dated 19-2-2019** was earlier issued prescribing amendments in the definition of "start-up" & procedure for availing exemption from "angel tax". It has superseded **Notification No. G.S.R. 364(E) dated 11.04.2018 as modified vide Notification No. G.S.R. 34 (E) dated January 16, 2019**. The Notification has been explained as under:

#### (1.) An entity shall be considered as start-up:

- ⦿ Upto a period of ten years from the date of incorporation/ registration if it is a private limited company, registered partnership firm, or a limited liability partnership in India.
- ⦿ Turnover of the entity has not exceeded Rs.100Crores since incorporation/registration.
- ⦿ Entity is working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation.

#### (2.) Recognition of Start-up:

- ⦿ A start-up shall make an online application along with a copy of certificate of incorporation/registration, write-up about the nature of the business.
- ⦿ The DPIIT after calling information, documents and enquiries may recognize or reject the application.

### (3.) Certificate under section 80-IAC of the Act:

- ⦿ A start-up fulfilling conditions in sub-clause (i) and sub-clause (ii) of the Explanation to section 80-IAC of the Act may make an application in Form-1 along with documents specified therein to the board.

### (4.) Exemption u/s 56(2) (viib) of the Act subject to the following conditions:

- ⦿ It has been recognized by DPIIT as an eligible start-up as mentioned in point 2 above.
- ⦿ Aggregate amount of paid up share capital and share premium of the startup after issue or proposed issue of share, if any, does not exceed, Rs. 25crore provided it shall not include amount received from non-resident or a venture capital company or a venture capital fund provided further that the amount will not be invested in the assets mentioned in the above-mentioned notification.
- ⦿ A startup fulfilling conditions mentioned above shall file duly signed declaration in Form 2. On receipt of such declaration, the DPIIT shall forward the same to the CBDT..



## Indirect Tax



### **Saurabh Jain**

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#### **(1.) Bringing Security services provided to a registered person under the purview of RCM**

On 31st December 2018, the Central Government vide Notification No. 29/2018-Central Tax(Rate) has notified that services provided by way of supply of security personnel by any person other than a body corporate to a registered person other than Government Agency/Local Authority which is registered only for the purpose of deducting tax under section 51 of CGST Act 2017 and person paying tax under section 10 of the said Act, shall be taxed under Reverse Charge Mechanism from 1st January 2019.

#### **(2.) Extending the due date for filing Annual Return**

On 31st December 2018, the Central Government vide Removal of Difficulty Order No. 03/2018, in case of registered persons having aggregate turnover of more than Rs. 2 crore, has extended the due date for filing Annual Return for the Financial year 2017-18 in Form GSTR-9 along with the copy of audited annual accounts and a reconciliation statement in Form GSTR-9C, upto 30th June 2019. '

In case of persons registered under composition scheme, the due date for filing Annual Return in Form GSTR-9A for the Financial year 2017-18 has also been extended upto 30th June 2019.

#### **(3.) Waiver of late fees for delay in furnishing Return in Form GSTR-1 and Form GSTR-3B**

On 31st December, 2018 the Central Government vide Notification No. 75/2018 and 76/2018-Central Tax has fully waived the amount of late fees leviable under Section 47 of CGST Act on account of delay in furnishing return of outward supplies in Form GSTR-1 and summarised return in Form GSTR-3B by registered persons for the months/quarters from July 2017 to September 2018. The above waiver of late fee shall be given if the registered person furnishes the said returns in Form GSTR-1 and GSTR-3B between the period 22nd December 2018 to 31st March 2019..

#### **(4.) Exemption on services provided by GTA to Government Departments:**

On 31st December, 2018 the Central Government vide Notification No. 28/2018-Central Tax(Rate) has exempted the services provided by a goods transport agency, by way of transport of goods in a goods carriage, to a Department or Establishment of Central Government or State Government or Union territory or local authority or Governmental agencies, which has taken registration under the CGST Act 2017 only for the purpose of deducting tax under Section 51 of the said Act and not for making taxable supply of goods or services or both.



### (5.) Bringing the provisions of CGST (Amendment) Act, 2018 into force

On 29th January, 2019 the Central Government vide Notification No. 2/2019-Central Tax has notified 1st February 2019 as the date on which the provisions of the Central Goods and Services Tax (Amendment) Act, 2018, except Sec8(b), Sec17, Sec18, Sec20(a), Sec28(b)(i) and Sec28(c)(i) of the said CGST Amendment Act, shall come into force.

### (6.) Increase in turnover Limit for Composition Scheme

On 7th March 2019, the Central Government vide Notification No. 14/2019-Central Tax has increased the threshold limit of aggregate turnover for availing composition scheme for supply of goods from Rs. 1 crore to 1.5 crore for states other than special category states.

### (7.) Composition Scheme for Supplier of Services

On 7th March 2019, the Central Government vide Notification No. 2/2019-Central Tax (Rate) has made available the composition scheme for supplier of services having an aggregate turnover upto Rs. 50 lakhs in the preceding financial year and fulfilling other prescribed conditions. The rate of tax shall be 6%.

### (8.) Higher Exemption Threshold Limit for supplier of Goods

On 7<sup>th</sup> March 2019, the Central Government vide Notification No. 10/2019-Central Tax has exempted any person who is engaged exclusively in supply of goods and whose aggregate turnover in the financial year does not exceed Rs. 40 lakh from obtaining registration under the CGST Act, 2017 ('the Act'). The aforesaid exemption shall not apply to following persons:

- ⦿ Persons required to take compulsory registration under section 24 of the Act
- ⦿ Persons engaged in making supplies of the goods viz. (a) ice cream and other edible ice, whether or not containing cocoa (b) pan masala and (c) all goods, i.e. Tobacco and manufactured tobacco substitutes
- ⦿ Persons engaged in making intra-State supplies in the States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura, Uttarakhand



## Corporate Advisory



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#### (1.) Exemption to few companies from complying with Rule 9A of the Companies (Prospectus and Allotment of Securities) Rules, 2014

The Ministry of Corporate Affairs(MCA) vide its notification dated January 22, 2019 has amended rule 9A of the Companies (Prospectus and Allotment of Securities) Rules 2014, wherein the MCA has exempted a Nidhi Company or Government Company or wholly owned subsidiary company which is an unlisted public company from complying with the provisions of Rule 9A of the said Rules pertaining to the issuance of securities only in dematerialized form and for facilitating the dematerialization of all its existing securities. .

#### (2.) Extension of last date of filing of initial return in MSME Form - 1

MCA vide its General Circular No. 1/2019 dated February 21, 2019 has extended the last date of filing of MSME Form - 1 (initial return). As per the said Circular, thirty days period for filing initial return in MSME Form 1 as specified in **Specified Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order, 2019 dated 22.01.2019** shall be reckoned from the date the said e-form is deployed on MCA 21 portal instead of thirty days from the date of publication of the relevant notification i.e. January 22, 2019.

#### (3.) MCA increases the limit of nominal capital for non applicability of incorporation fee on filing of Form SPICE INC - 32

MCA vide its notification dated 6th March, 2019 has increased the limit of nominal capital, where no fees in respect of Spice-32 would require to be paid. As per the said Notification, any company which is incorporated with a nominal capital of less than or **equal to rupees fifteen lakhs (earlier the limit was rupees ten lakh)**, there will be no fees for incorporation of a company on Spice e-form. This will encourage startups to formally register their businesses. However, the new company shall have to pay the necessary stamp duty, which would be applicable at a rate depending upon the State of incorporation of the new company.



## Value Add



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## Demystifying the fate of Sales Promotion Schemes under GST

In this era of globalisation where the entire world has become a global market, businesses resort to several sales promotion schemes to penetrate new markets at first place and to retain them thereafter. Since the inception of the GST Law on 1st July 2017, businesses have been seeking clarification on issues relating to tax treatment of such sales promotion schemes.

With a view to ensure uniformity in tax treatment of various sales promotion schemes, the Central Board of Indirect Taxes and Customs (CBIC) has recently issued Circular No. 92/11/2019-GST dated 7th March 2019. The said circular provides clarification on the aspects of taxability, valuation, availability of input-tax credit in the hands of the supplier in relation to various sales promotion schemes, which have been discussed below:

### **(A.) Free samples and gifts**

It is a common practice among certain sections of trade and industry, such as, pharmaceutical companies which often provide drug samples to their stockists, dealers, medical practitioners, etc. without charging any consideration.

#### **(a) Whether free samples and gifts are liable to tax ?**

As per section 7(1) of the Central Goods and Services Act 2017 (CGST Act), the expression "supply" includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. Therefore, the goods or services or both which are supplied free of cost (without any consideration) shall not be treated as supply under GST (except in case of activities mentioned in Schedule I of the said Act). Accordingly, it has been clarified that samples which are supplied free of cost, without any consideration, do not qualify as supply under GST, except where the activity falls within the ambit of Schedule I of the said Act (for example, supply of goods between related persons or distinct persons) and hence the same is not liable to tax.

#### **(b) Whether input-tax credit thereof may be availed ?**

Section 17(5)(h) of the CGST Act provides that input-tax credit shall not be available in respect of goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples. Thus, it has been clarified that input tax credit shall not be available to the supplier on the inputs, input services and capital goods to the extent they are used in relation to the gifts or free samples distributed without any consideration. However, if the activity of distribution of gifts or free samples falls within the scope of supply by virtue of Schedule I of the Act then the supplier would be eligible to avail input-tax credit.



### (B.) Buy one get one free offer

FMCG Companies often run offers like 'Buy One, Get One free'. Apparently, it seems that in such offers one item is being supplied free of cost (without any consideration) with other items. However, it is not an individual supply of free goods but a case of two individual goods being supplied for a single price. It can at best be treated as supplying two goods for the price of one.

#### (a.) How the applicable tax rate shall be determined?

Taxability of such supply shall be dependent upon as to whether the supply of two individual goods as mentioned above constitutes a composite supply or a mixed supply as per the provisions of CGST Act. In case of composite supply tax rate pertaining to principal supply shall apply and in case of mixed supply the highest rate of tax applicable to any of the goods supplied shall be applicable on the total consideration charged for such supply.

#### (b.) Whether input-tax credit thereof may be availed ?

In view of the foregoing discussion, input-tax credit shall be available to the supplier for the inputs, input services and capital goods used in relation to supply of goods or services or both as part of such offers.

### (C.) Discounts including 'Buy more, save more' offers

- Sometimes, the supplier offers staggered discount to their customers (increase in discount rate with increase in purchase volume). Such discounts are shown on the invoice and taxable value gets reduced thereon. For example,

**Get 10 % discount for purchases above Rs. 5,000/-**

**20% discount for purchases above Rs. 10,000/- and**

**30% discount for purchases above Rs. 20,000/-.**

- Some suppliers also offer periodic / year ending discounts to their stockists, etc. Such discounts are established in terms of an agreement entered into at or before the time of supply though not shown on the invoice as the actual quantum of such discounts gets determined after the supply has been effected and generally at the year end. In commercial parlance, such discounts are colloquially referred to as "volume discounts". Such discounts are passed on by the supplier through credit notes. For example,

**Get additional discount of 1% if you purchase 10000 pieces in a year**

**Get additional discount of 2% if you purchase 15000 pieces in a year**

#### (a.) Tax treatment of various year-end or post-supply discounts?

It has been clarified that discounts offered by the suppliers to customers (including staggered discount under 'Buy more, save more' scheme and post supply / volume discounts established before or at the time of supply) shall be excluded to determine the value of supply provided they satisfy the following conditions laid down in Section 15(3) of the CGST Act..

- (i) Such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices and
- (ii) Input-tax credit attributable to the discount on the basis of document (credit note) issued by the supplier has been reversed by the recipient of the supply

### **(b.) Whether input-tax credit thereof may be availed ?**

It has been further clarified that the supplier shall be entitled to avail the input-tax credit for such inputs, input services and capital goods used in relation to the supply of goods or services or both on such discounts.

### **(D.) Secondary Discounts**

There are the discounts which are not known at the time of supply or are offered after the supply is already over.

Based on representations received with regard to aforesaid secondary discounts, the CBIC has clarified various aspects of such discounts as follows:

#### **(a.) Whether GST credit note can be issued if conditions prescribed under Section 15(3) of the CGST Act supra are not fulfilled in case of secondary discounts ?**

It has been clarified that if the conditions laid down in Section 15(3)(b) of the CGST Act are not satisfied then GST credit note cannot be issued. However, such discounts can be given by issuing financial / commercial credit note by the supplier.

#### **(b.) Tax treatment of various secondary discounts i.e., discounts which were not established before or at the time of supply?**

It has been clarified that secondary discounts which were not established before or at the time of supply shall not be excluded while determining the value of supply.

#### **(c.) Whether input-tax credit thereof may be availed by the Supplier ?**

There is no impact on availability or otherwise of ITC in the hands of supplier in this case.





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## **Risk Management and Governance – A perspective**

In the last decade or so, the kind of ups and downs that the World has seen have been unprecedented. Be it the financial crisis in 2008 or plummeting oil prices and the ongoing technological advancements, all of them have fundamentally altered the way the World operates and have caused widespread disruption.

This has also brought into focus, time and again, the significance of Risk Management in Governance at different places, Corporate or otherwise, in terms of anticipating and managing these changes. Governments the World over have been trying to do their bit through legislations. It did help a bit but not to the extent envisaged.

### **Evolution of Risk Management**

It would be good to have a look at the history of Risk Management and how it took the shape it is in today. It was first studied in World War II. Different sources mention the origin of Modern Risk Management to 1955-1964. The first two academic books were published by Mehr and Hedges (1963) and William and Hems (1964). The content was pure risk management, which excluded corporate risk management. Simultaneously, engineers developed technological risk management models. Risk Management has long been associated with the use of market insurance to protect individuals and companies from various losses associated with accidents.

The new form of pure risk management emerged during 1950s as an alternative to market insurance, when different types of insurance coverage became very costly and incomplete. During the 1960s contingent planning activities were developed and various risk prevention and self-protection activities along with self-insurance instruments to mitigate some losses were put in place. Protection activities and coverage for work related illness and accidents was also initiated at companies during this period

The use of derivatives as instruments to manage insurable and uninsurable risk began in 1970s and developed very quickly in the 1980s. Companies also started considering financial management or risk profiles in the 1980s. Operational risk and liquidity risk management emerged in the 1990s. Also, international regulation of risk began in the 1990s. Financial Institutions developed internal risk management models and capital calculation formulas to protect themselves from risk and reduce regulatory capital. Also, as the governance of risk management became essential, integrated risk management was introduced and the first risk manager position was created. There was emergence of the COSO framework IN 1992, for Risk Management and Internal Controls which has evolved over the period. The Foreign Corrupt Practices Act (FCPA), a federal United States law was introduced in 2012, with an aim to prevent the bribery of foreign government officials in an effort to obtain or retain business.

In the wake of the various scandals and bankruptcies resulting from poor risk management, the Sarben Oxleys regulations was introduced in the US in 2002 stipulating Governance rules for the companies. The stock exchange, including the NYSE, also added risk management governance rules for listed companies in 2002. But it is interesting to note that all this could not prevent the Financial crisis of 2007. It is not the regulation of risk and governance rules that were inefficient, but their application and enforcement instead. It is common knowledge that the stakeholders regularly bypass the rules, regulations and processes and as a consequence, deviant actions became common place as the authorities could not manage the enforcement.

Below are the milestones in the history of risk management.

### Milestones in the History of Risk Management

1.	1730	First future contract on the price of rice in Japan
2.	1864	First future contracts on agricultural products at the Chicago Board Trade
3.	1900	Louis Bachelier's thesis "Theorie de la Seculation"; Brownian motion
4.	1932	First Issue of the Journal of Risk and Insurance
5.	1941	Institute of Internal auditors was established
6.	1946	First Issue of the Journal of Finance
7.	1952	Publication of Markowitz's Article "Portfolio Selection"
8.	1961-66	Treynor, Sharp, Lintner and Mossin develop CAPM
9.	1963	Arrow introduces optimal insurance, moral hazard and adverse selection
10.	1972	Future contract on currencies at the Chicago Mercantile Exchange
11.	1973	Option valuation formulas by Black and Scholes and Merton
12.	1974	Merton's default risk model
13.	1977	Interest Rate Model by Vasicek and Cox, Ingersoll and Ross
14.	1980 - 90	Exotic options, swaps and stock derivatives
15.	1979 - 82	First OTC counter in the form of Swaps: currency and interest rate swaps
16.	1985	Creation of swap deal association, which established the OTC exchange standards; COSO was formed
17.	1987	First Risk Management department in a Bank (Merrill Lynch)
18.	1988	Basel I
19.	Late 80s	Value at Risk and calculation of optimal capital

20.	1992	Article by Hath, Jarrow and Morton on the forward rate curve
21.	1992	Integrated Risk Management
22.	1992	Risk Metrics
23.	1994 - 95	First bankruptcies associated with misuse of derivatives: Procter and Gamble (manufacturer, rate derivatives, 1994); Orange County (management funds, derivatives on financial securities, 1994) and Baring (Futures, 1995)
24.	1997	Credit Metrics
25.	1997-98	Asian and Russian crisis and LTCM Collapse
26.	2001	Enron bankruptcy
27.	2002	New Governance Rules by Sarbanes – Oxley and NYSE; PCAOB established
28.	2004	Basel II
29.	2007	Beginning of the Financial Crisis
30.	2009	Solvency II
31.	2010	Basel III
32.	2016-17	Basel IV





### Contemporary Scenario:

In today's time Risk Management has occupied a significant place in Governance, which has evolved over the years as shown in the table above. Now the question is "Why risk management"?

Risk management is central to good corporate governance because it closes the loop between strategic initiatives and day-to-day operational performances. It also provides the foundation for dynamic goal setting, balanced score-cards and guided analysis. Following are the requirements:

- (a.) A commitment by management to the process.
- (b.) A demonstrable system of risk mitigation activities.
- (c.) A system of documented risk communications.
- (d.) A system of documenting the cost of non-compliance and losses.
- (e.) A documented system of internal control and risk management.
- (f.) An alignment of assurance of efforts to the risk profile.

### Risk management manifests itself in many ways today viz:

- (1.) Environmental Risks** containing aspects like competitors, customer wants, sensitivity, technological innovations, legal, regulatory etc. aspects like competitors, customer wants, sensitivity, technological innovations, legal, regulatory etc.
- (2.) Process Risk** containing aspect like Financial, Environment, Operations, Reputation, Integrity etc
- (3.) Risk pertaining to information for decision making** containing strategic, public reporting and operational aspects.

### Further, Risk Management is facilitated by the following:

- (1.) Relevant Provision of the Companies Act
- (2.) Relevant provision of Listing Agreements
- (3.) Insurance Risk Management
- (4.) FMEA – Failure Mode Effect Analysis used in Production ( A Six Sigma Lean concept)
- (5.) ISO 9000: 2015 standards which is now Risk based
- (6.) COSO Framework for Enterprise Risk Management and Internal Audit etc.



Although, the above stated frameworks are used in an organisation, the challenge lies in the lack of an integrated approach to Risk Management.

While risk-taking is a fundamental driving force in business and entrepreneurship, the cost of risk management failures is still often underestimated, both externally and internally, including the cost in terms of management time needed to rectify the situation. Corporate governance should ensure that risks are understood, managed and when appropriate, communicated.

Following the financial crisis, many companies have started to pay more attention to risk management. This is, however, seldom reflected in changes to formal procedures, except in the financial sector and in companies that have suffered serious risk management failure in the recent past. It appears that most companies consider that risk management should remain the responsibility of line managers.

Existing risk governance standards for listed companies still focus largely on internal control and audit functions and primarily financial risk, rather than on (ex-ante) identification and comprehensive management of risk. Corporate governance standards should place sufficient emphasis on ex ante identification of risks. Attention should be paid to both financial and non-financial risks, and risk management should encompass both strategic and operational risks.

Currently, risk governance standards tend to be very high-level, limiting their practical usefulness, and focus largely on financial institutions. There is scope to make risk governance standards more operational, without narrowing their flexibility to apply them to different companies and situations. Experiences from the financial sector can be valuable, even if not necessarily transferable to the non-financial sector.

It is not always clear that boards place sufficient emphasis on potentially "catastrophic" risks, even if these do not appear very likely to materialise. More guidance may be provided on managing the risks that deserve particular attention, such as risks that will potentially have large negative impacts on investors, stakeholders, taxpayers or the environment. Boards should be aware of the shortcomings of risk management models that rely on questionable probability assumptions. The Board Members, specially the independent director must be made accountable for ensuring robust risk management and their performance must be measured.

**Conclusion :** It is the need for the hour that an integrated approach is evolved to Risk Management so that it gets its rightful place in overall governance process. It should not be restricted merely to financial controls but should address all the risk of an organisation. The organisation must be trained well to understand Risk Management at the grassroots to make it work and develop a Risk Management culture in the organisation.



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## **RBI NOTIFIES NEW FRAMEWORK POLICY FOR EXTERNAL COMMERCIAL BORROWINGS**

The Reserve Bank of India (RBI) has notified the **new policy** for External Commercial Borrowings (ECB) on January 16, 2019 vide its A.P. (DIR Series ) Circular No. 17 with an objective to make it easier for Indian companies to raise money from foreign entities and for improving "ease of doing business" in India. The new policy has come into force with effect from January 16, 2019. The Principal Regulations governing the ECB policy have been rationalized through the Foreign Exchange Management (Borrowing and Lending) Regulations, 2018 (the FEMA Regulations) and notified through **Notification No. FEMA.3R/2018-RB dated December 17, 2018, vide G.S.R. 1213(E) dated December 17, 2018.**

The key highlights of the Revised ECB Framework are as follows:

- (i) **Limit of ECB** : All the eligible borrowers can raise ECB up to USD 750 million or equivalent per financial year, in compliance with the parameters and other terms and conditions as set out in the new ECB framework, under the automatic route of RBI without the prior approval of the Reserve Bank. Earlier, the individual limits on the amount that could be raised through ECB were based on the sector in which the borrower operated and now it has been replaced by a common upper limit of USD 750 million under the automatic route.
- (ii) **Merging of Tracks** : Merging of Tracks I and II as "Foreign Currency denominated ECB" and merging of Track III and Rupee Denominated Bonds framework as "Rupee Denominated ECB".
- (iii) **Eligible Borrowers** : All the resident entities which are eligible to receive FDI shall be considered as "Eligible Borrowers" under the new policy. Additionally, Port Trusts, Units in SEZ, SIDBI, EXIM Bank, registered entities engaged in micro-finance activities, viz., registered not for profit companies, registered societies/trusts/cooperatives and non-government organisations can also borrow under this framework. The "Indian entity" as defined under the FEMA Regulations include both companies and limited liability partnerships (LLPs) as formed and registered in India in accordance with the provisions of the Companies Act, 2013 and Limited Liability Partnership Act, 2008 respectively. As per the earlier, ECB policy only companies engaged in the specific business activities were considered as "Eligible Borrowers".
- (iv) **Recognised Lender** : The lender should be resident of FATF or IOSCO (International Organisation of Securities Commissions) compliant country, Multilateral and Regional Financial Institutions, Individuals (only if they are foreign equity holders or they are subscribers of bonds/debentures listed abroad) and Foreign branches / subsidiaries of Indian banks can also be lenders only for FCY ECB (except FCCBs and FCEBs).
- (v) **Minimum Average Maturity Period (MAMP)** : MAMP will be 3 years for all ECBs. However, manufacturing sector companies may raise ECBs with MAMP of 1 year for ECB up to USD 50 million or its equivalent per financial year. Further, if the ECB is raised from foreign equity holder and utilised for working capital purposes, general corporate purposes or repayment of Rupee loans, MAMP will be 5 years. T

- (vi) **All-in-cost ceiling per annum** : The same would be Benchmark rate plus 450 bps spread in both FCY denominated ECB and INR denominated ECB.
- (vii) **End-uses (Negative List)** : The negative list, for which the ECB proceeds cannot be utilised, would include the following:
- a.) Real estate activities.
  - b.) Investment in capital market.
  - c.) Equity investment.
  - d.) Working capital purposes except from foreign equity holder.**
  - e.) General corporate purposes except from foreign equity holder.
  - f.) Repayment of Rupee loans except from foreign equity holder.
  - g.) On-lending to entities for the above activities.
- (viii) **Late Submission Fee (LSF) for delay in Reporting** : Any borrower, who is **otherwise in compliance of ECB guidelines, except for** delay in reporting drawdown of ECB proceeds before obtaining LRN or Form ECB 2 returns, can regularize the delay by payment of LSF by way of demand draft in favour of "Reserve Bank of India" or any other mode specified by the Reserve Bank, The matrix for payment of LSFs is mentioned as below:

Sr No.	Type of Return/Form	Period of delay	Applicable LSF
1.	Form ECB 2	Up to 30 calendar days from due date of submission	INR 5,000
2.	Form ECB 2/Form ECB	Up to three years from due date of submission/date of drawdown	INR 50,000 per year
3.	Form ECB 2/Form ECB	Beyond three years from due date of submission/date of drawdown	INR 100,000 per year

It is pertinent to note that such payment should be accompanied with the requisite return(s). Form ECB and Form ECB 2 returns reporting contraventions will be treated separately. Non-payment of LSF will be treated as contravention of reporting provision and shall be subject to compounding or adjudication as provided in FEMA 1999 or regulations/rules framed thereunder.



- (ix) **Introduction of concept of "Untraceable entity"** : Any borrower who has raised ECB will be treated as 'untraceable entity', if entity/auditor(s)/director(s)/ promoter(s) of the said entity are **not reachable/responsive/reply in negative over email/letters/phone for a period of not less than two quarters** with documented communication/reminders numbering 6 or more and it fulfills both of the following conditions:
- a. Entity not found to be operative at the registered office address as per records available with the AD Bank or not found to be operative during the visit by the officials of the AD Bank or any other agencies authorized by the AD bank for the purpose;
  - b. Entities have not submitted Statutory Auditor's Certificate for last two years or more;  
The followings actions are to be undertaken in respect of 'untraceable entities':
    - ⊙ File Revised Form ECB, if required, and last Form ECB 2 Return without certification from company with 'UNTRACEABLE ENTITY' written in bold on top. The outstanding amount will be treated as written-off from external debt liability of the country but may be retained by the lender in its books for recovery through judicial/ non-judicial means;
    - ⊙ **No fresh ECB application** by the entity should be examined/processed by the AD bank;
    - ⊙ **Directorate of Enforcement should be informed** whenever any entity is designated 'UNTRACEABLE ENTITY'; and
    - ⊙ **No inward remittance or debt servicing** will be **permitted** under automatic route.
- (x) **ECB by entities under restructuring** : An entity which is under restructuring scheme/ corporate insolvency resolution process can raise ECB only if specifically permitted under the resolution plan.

**Conclusion** : The revision in the regulatory framework of ECB by the RBI is a positive step as it will boost "ease of doing business" in India and would allow all the resident entities irrespective of the sectors in which they are engaged in, to borrow funds from the overseas lenders. The track-wise segregation that existed under the previous policy is no longer applicable and the new policy is more liberalized and simplified one. There is no doubt that the relaxations as provided in the new ECB policy would encourage ECB flows into the country and would resolve the current liquidity concerns in the market to some extent..





## Soul Corner

### **The Ant and the Contact Lens: a true story**

Brenda was almost halfway to the top of the tremendous granite cliff. She was standing on a ledge where she was taking a breather during this, her first rock climb. As she rested there, the safety rope snapped against her eye and knocked out her contact lens. 'Great', she thought. 'Here I am on a rock ledge, hundreds of feet from the bottom and hundreds of feet to the top of this cliff, and now my sight is blurry.'

She looked and looked, hoping that somehow it had landed on the ledge. But it just wasn't there.

She felt the panic rising in her, so she began praying. She prayed for calm, and she prayed that she may find her contact lens.

When she got to the top, a friend examined her eye and her clothing for the lens, but it was not to be found. Although she was calm now that she was at the top, she was saddened because she could not clearly see across the range of mountains.

She Prayed to GOD, 'Lord, You can see all these mountains. You know every stone and leaf, and You know exactly where my contact lens is. Please help me.'

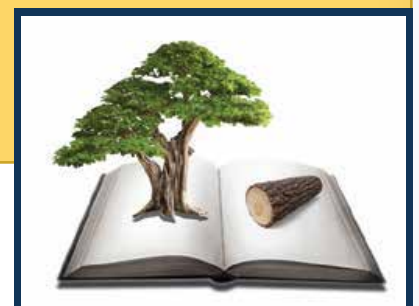
Later, when they had hiked down the trail to the bottom of the cliff they met another party of climbers just starting up the face of the cliff. One of them shouted out, 'Hey, you guys! Anybody lose a contact lens?'

Well, that would be startling enough, but you know why the climber saw it? An ant was moving slowly across a twig on the face of the rock, carrying it!

The story doesn't end there. Brenda's father is a cartoonist. When she told him the incredible story of the ant, the prayer, and the contact lens, he drew a cartoon of an ant lugging that contact lens with the caption, 'Lord, I don't know why You want me to carry this thing. I can't eat it, and it's awfully heavy. But if this is what You want me to do, I'll carry it for You.'

I think it would do all of us some good to say, " \*God, I don't know why You want me to carry this load. I can see no good in it and it's awfully heavy. But, if You want me to carry it, I will\*

**\*God doesn't call the qualified, He qualifies the called\***



## Funny Side Up

A local United Way office realized that the organization had never received a donation from the town's most successful lawyer. The person in charge of contributions called him to persuade him to contribute. "Our research shows that out of a yearly income of at least \$500,000, you did not give a penny to charity. Wouldn't you like to give back to the community in some way?"

The lawyer mulled this over for a moment and replied, "First, did your research also show that my mother is dying after a long illness, and has medical bills that are several times her annual income?" Embarrassed, the United Way rep mumbled, "Um, no." The lawyer interrupts, "Or that my brother, a disabled veteran, is blind and confined to a wheelchair?" The stricken United Way rep began to stammer out an apology, but was interrupted again. "Or that my sister's husband died in a traffic accident," the lawyer's voice rising in indignation, "leaving her penniless with three children?!" The humiliated United Way rep, completely beaten, said simply, "I had no idea." On a roll, the lawyer cut him off once again, "So if I don't give any money to them, why should I give any to you?"

## Dates for your diary

<b><u>PF/ESI</u></b>	<ul style="list-style-type: none"> <li>⦿ Payment for the month of April 2019 to be made by 15th May 2019</li> <li>⦿ Payment for the month of May 2019 to be made by 15th June 2019</li> <li>⦿ Payment for the month of June 2019 to be made by 15th July 2019</li> </ul>
<b><u>TCS</u></b>	<ul style="list-style-type: none"> <li>⦿ TCS collected for the month of March 2019 to be deposited by 7th April 2019</li> <li>⦿ TCS collected for the month of April 2019 to be deposited by 7th May 2019</li> <li>⦿ TCS collected for the month of May 2019 to be deposited by 7th June 2019</li> <li>⦿ TCS return for the period January 2019 to March 2019 to be filed by 15th May 2019 and TCS certificate to be issued by 30th May 2019</li> </ul>
<b><u>ADVANCE TAX</u></b>	<ul style="list-style-type: none"> <li>⦿ First instalment (for corporate assesseees and for non-corporate assesseees) of Advance income tax for AY 2020-21 to be paid by 15th June 2019.</li> </ul>
<b><u>TDS</u></b>	<ul style="list-style-type: none"> <li>⦿ TDS deducted for the month of March 2019 to be deposited by 30th April 2019</li> <li>⦿ TDS deducted for the month of April 2019 to be deposited by 7th May 2019</li> <li>⦿ TDS deducted for the month of May 2019 to be deposited by 7th June 2019</li> <li>⦿ TDS return for the period January 2019 to March 2019 to be filed by 31st May 2019 and TDS certificate to be issued by 15th June 2019</li> </ul>
<b><u>GST</u></b>	<ul style="list-style-type: none"> <li>⦿ Summarised Return in Form GSTR 3B for the month of March to be filed by 20th April 2019.</li> <li>⦿ Summarised Return in Form GSTR 3B for the month of April to be filed by 20th May 2019.</li> <li>⦿ Summarised Return in Form GSTR 3B for the month of May to be filed by 20th June 2019.</li> <li>⦿ Quarterly Return of Outward Supplies in Form GSTR-1 for the period January 2019 to March 2019 for registered persons having aggregate turnover upto Rs 1.5 crore to be filed by 30th April 2019</li> <li>⦿ Monthly Return in Form GSTR-1 for the month of March 2019 for registered persons having aggregate turnover of more than Rs 1.5 crore to be filed by 11th April 2019.</li> <li>⦿ Monthly Return in Form GSTR-1 for the month of April 2019 for registered persons having aggregate turnover of more than Rs 1.5 crore to be filed by 11th May 2019.</li> <li>⦿ Monthly Return in Form GSTR-1 for the month of May 2019 for registered persons having aggregate turnover of more than Rs 1.5 crore to be filed by 11th June 2019.</li> </ul>

- ⊙ GSTR-4 for the quarter January 2019-March 2019 to be filed by persons registered under composition scheme by 18th April 2019.
- ⊙ Monthly Return by non-resident taxable person in GSTR-5 for the month of March, April & May 2019 to be filed by 20th April, 20th May & 20th June 2019 respectively.
- ⊙ Monthly Return by input-service distributor in Form GSTR-6 for the month of March, April & May 2019 to be filed by 13th April, 13th May and 13th June 2019 respectively
- ⊙ Monthly Return in Form GSTR-7 by persons liable to deduct tax at source for the month of March, April & May 2019 to be filed by 10th April, 10th May and 10th June 2019 respectively.
- ⊙ Monthly Statement in Form GSTR-8 to be furnished by e-commerce operator specifying the supplies made through it and the tax collected at source thereon for the month of March, April & May 2019 to be filed by 10th April, 10th May and 10th June 2019 respectively.
- ⊙ Details of goods dispatched to or received back from the job worker to be furnished by registered persons in Form ITC-04 for the quarter January-March 2019 by 25th April 2019.
- ⊙ Annual Return in Form GSTR-9 for the financial year 2017-18 along with the copy of audited annual accounts and a duly certified reconciliation statement in Form GSTR-9C, for registered persons having aggregate turnover of more than 2 crore, to be filed by 30th June 2019.
- ⊙ Annual Return in Form GSTR-9 for the financial year 2017-18, for registered persons (other than composition dealers) having aggregate turnover upto 2 crore, to be filed by 30th June 2019.
- ⊙ Annual Return in Form sGSTR-9A for the financial year 2017-18, for persons registered under composition scheme, to be filed by 30th June 2019.

## Corporate law and FEMA

- ⊙ **Individual** (Every Director who has been allotted a DIN and whose DIN status is "Approved") - E-Form DIR-3KYC – On or before 30.04.2019.
- ⊙ **Company** (Every company other than Government Company) which has received any money or loan, but not considered as deposits, in terms of clause (c) of sub-rule 1 of rule 2 of the said rules, during the period from 1st April, 2014 to 22nd January, 2019 and which is outstanding as on 22nd January, 2019, is mandatorily required to file a one-time return of outstanding receipt of the aforesaid money or loan) - **E-Form DPT-3 (One Time Return)** - On or before 22.04.2019.
- ⊙ **Company** (Every company other than Government Company which has received any money or loan **considered as deposit** or received any money or loan but **not considered as deposits** or both in terms of clause (c) of sub rule 1 of rule 2 of the Companies (Acceptance of deposit) Rules 2014, shall file a return (Annually) for furnishing the information contained therein as on the 31st day of March of that year duly audited by the auditor of the company) - **E-Form DPT-3 (Annually)** - On or before 30.06.2019.
- ⊙ **Company** (Every Specified Company shall file in "MSME Form 1" the details of all outstanding dues to Micro or small enterprises suppliers existing on 22.01.2019.) - **MSME Form 1 (One time Return)** - Within 30 days of deployment of MSME Form 1 on MCA Portal.

- ⊙ **Company** (Every Specified Company of all outstanding dues to Micro or small enterprises suppliers during the period from October 1st, 2018 to March 31st, 2019) - **MSME Form 1 (Half yearly Return)** - On or before 30.04.2019.
- ⊙ **Company** (Every company incorporated on or before the 31st December, 2017 for filing Company particulars and its registered office details) - **E-Form INC-22A (ACTIVE)** - On or before 25.04.2019
- ⊙ **Individual** (Every individual who is a Significant beneficial Owner) SBO in a reporting company, is required to file a declaration in Form No. BEN-1 to the reporting company) - **Form BEN-1 (Initial Disclosure)** - On or before 9.05.2019.
- ⊙ **Company** (The declaration of beneficial interest received by the company, is required to be filed in Form No. BEN-2 with the Registrar in respect of such declaration.) - **E-Form BEN-2** - Within a period of 30 days from the date of receipt of declaration in form BEN-1. The form has not yet been deployed on MCA Portal.
- ⊙ **Foreign Company having Branch/ Liaison Office/ Project Office in India** - **E-Form FC-4 (Annual Return)** - On or before 30.05.2019
- ⊙ **Company/ Limited Liability Partnership** [Every Indian Company/ LLP which have received FDI (foreign direct investment) and/or made FDI abroad (i.e. overseas investment) in the previous year(s)] - **Annual Return on Foreign Liabilities and Assets (FLA)** - On or before 15.07.2019.
- ⊙ **Company** (Every class of company as specified under National Financial Reporting Authority Rules, 2018 for filing particulars of the Auditor.) - **Form NFRA-1** - Within 30 days from the date of deployment of Form NFRA-1.
- ⊙ **Limited Liability Partnership - Form 11- (Annual Return)** - On or before 30.05.2019



## Panorama

**Mr. Sanjay Vasudeva, Senior Partner and Mr. Vidur Puri, Senior Partner addressing at Indo-American Chamber of Commerce on 8th March 2019**



## Inside SCV



**Amit Sharma** (Tax Advisory Services)  
Tied knot with Ekta Sharma on  
9th March 2019



**Anuj Dhingra**  
Joining as Partner – ASSURANCE SERVICES W.E.F.  
1st April 2019



**Office Picnic** at Blowsom Farms on 19th January 2019

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