



# STUDENT PROFESSIONALS TODAY



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## INVITATION FOR CONTRIBUTING AN ARTICLE

Readers are invited to contribute article/s for the Journal. The article should be on a topic of current relevance on Corporate Law, Tax Law, or on any other matter or issue relating to Economic or Commercial Laws. The article should be original and of around 7-8 pages in word file (approx. 2500 words). Send your articles at email id : [articles@vidhimaan.com](mailto:articles@vidhimaan.com) along with your student registration number. The shortlisted articles shall be published in the Journal.

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## MESSAGE FROM THE PRESIDENT

जो भरा नहीं है भावों से जिसमें बहती रसधारा। वह हृदय नहीं है पत्थर है, जिसमें स्वदेश का प्यार नहीं।

Dear Students,

At the very beginning, let me convey my best wishes to all of you on the propitious occasion of 72nd Independence Day, India is going to celebrate on August 15, 2018.

Friends, Independence Day holds great significance for all of us, as it is the day when our Tricolour Indian National Flag was raised at the Red Fort in Delhi. The celebration of this day not only commemorate the freedom of India that we have achieved from British Rule, but it also articulates the rich saga of our accomplishments year after year and decade after decade. We should consider ourselves privileged that our forefathers have given us a land of peace and joy where we can exercise our rights without fear and contribute our worth in our identifiable development and in the development of the entire nation.

Our country is making rapid strides in the field of technology, education, sports, finance and various other fields which were almost impossible before freedom. India is one among the countries rich in nuclear power and is now considered as one of the fastest growing economies of the world. We are going ahead by actively participating in global activities, be it governance, technology, economy, policy, sports and alike.

Yes, we are sovereign and relish complete freedom in largest democracy in the world, however we should not take ourselves free of responsibilities towards our country. Being responsible citizens of the country, we should be always ready to abide by the rules and regulations and follow a premier structure of good governance in the interest of entire nation. As a student and a precious stakeholder of the Institute, a Premier National Body in the field of Governance, you have an added responsibility of ensuring best practices of compliance and governance through your professional service to the Nation.

Considering the momentous role of our professional commune in assisting the nation towards a successful attainment of the *Freedom from Corruption, Terrorism, Casteism, Communalism and Dirt*, the Institute is standing shoulder to shoulder in building the capacity of its professionals in the contemporary perspectives of Good Governance.

In the preceding month, the organization of Golden Jubilee Year – 19th All India Students' Conference, opening of 75th Study Center, Observation of Student Month with varied activities of inclusive development of our students, Webcast for Students on Pre-Exam Test, New Syllabus and Prevention of Sexual Harassment at Work Place and alike, features our endeavors in enabling our students to act as the professional catalyst in reaping the glory of the Institute and India at global platform.

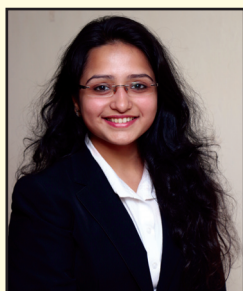
Friends, in last fifty years, the Institute have been a proud partner in the splendid development of the nation and I am sure that with our proficiency and expertise, we would keep serving the nation for an efficacious transformation towards a New India on the proud carnival of 75th year of Independence in 2022.

Last but not the least, '*Let's take decision to value our Nation, not to forget the sacrifices, who gave us the freedom, now it's our turn for reformation*'.

Happy Independence Day!

**CS Makarand Lele**

President, ICSI



## GST – Boon or Bane

In this article, author attempts to give an overview of GST, one of the biggest tax reform of the country. It is attempted to analyse the GST law on the parameters of ascertaining whether GST stands a boon or bane. The article concludes that an endeavour is being made to make GST truly a boon.

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### I. Introduction

The Constitution (One Hundred and Twenty Second Amendment) Bill, officially known as the Constitution (One Hundred and First (Amendment) Act, 2016, introduced a national Goods and Services Tax ('GST') in India from 1st of July 2017. GST is a single tax on the supply of goods and services, right from the manufacturer to the end consumer. GST would bring in an effective and simple tax system to ensure efficient indirect tax administration. It will bring in greater transparency and strengthen monitoring, thus making tax evasion difficult. France was the first country to implement GST to reduce tax-evasion. Since then, more than 160 countries have implemented GST since 1954<sup>1</sup>. GST is designed to bring relief to the tax payers reeling under the multiple and complex indirect tax system existing in the country for six decades.

The Indian GST is structured for efficient tax collection and easy inter-state movement of goods etc. GST is a shift from origin based tax to destination based tax. Destination based tax means that tax would accrue to the taxing authority which has jurisdiction over the place of consumption

which is also termed as place of supply<sup>2</sup>. It is the biggest tax reform in the country.

The need for implementation of GST in India was echoed over the world. The International Monetary Fund (IMF) observed that the long-awaited GST should be implemented, as it would create a single national market, enhance the efficiency of intra-Indian movement of goods and services and boost GDP growth<sup>3</sup>. The international pressure and the prevailing state of affairs prompted the government to finally bring about the most awaited tax reform.

No doubt, whether GST will actually be a boon for the Indian economy will be proved in the course of time. In this article the Author has put forward an analysis of the laws prevailing before implementation of GST and in order to draw a comparison has put forward an analysis of GST in India vis-à-vis laws prevailing before its implementation in Part II of the article.

GST has been implemented in many countries around the globe which has been discussed in Part III of the article. But not all countries are expected to see the same impact of GST on its economy. Whether it has a positive or a negative impact on

1. Reserve Bank of India, *Goods and Services Tax: A Game Changer*, Annual Report 2017, 20, 23 (2017).

2. Central Board of Excise & Customs, *Frequently Asked Questions (FAQs) On Goods And Services Tax (GST)*, (March 2017 31), <https://cbec-gst.gov.in/pdf/new-faq-on-gst-second-edition.pdf>.

3. International Monetary Fund, *Article IV Consultation – Press Release; Staff Report; And Statement By The Executive Director For India*, 16/75, March 2016.



the Indian Economy is to be evaluated and thus an analysis is provided in Part IV of the article.

Well, it is for the reader to decide and form an opinion on effectiveness of GST the Author has expressed an opinion in Part V which concludes the article.

## II. GST regime vis-à-vis Pre GST Regime

Before drawing a conclusion as to whether GST is a boon or bane for India, a comparison between the pre and post GST scenario is required. These comparison are follows –

**Legislation** - Previously, there were separate laws for separate levy. For instance, Central Excise Act, 1944, respective State VAT laws etc. While under GST, no doubt there are separate laws but all of them are based on the same principles. For instance, the definition of 'supply' under section 7 of the CGST Act would be applicable to IGST, SGST and UTGST Acts as well. The taxable event, point of taxation, time of supply identical in all the GST laws.

**Concurrent Power** - Pre-GST, there was no such power to both Centre and State on same subject tax matter. With GST on board, both Centre and State are vested with the concurrent power to make laws with respect to goods and services tax, as proposed in article 246A of the Constitution. The intra-state trade now comes under the jurisdiction of both centre and state; while inter-state trade and commerce is "exclusively" under central government jurisdiction

**Cascading** - The issue of cascading of taxes was one of the major issues which called for an urgent reform in the indirect tax regime in the country. This issue of cascading has been resolved to a great extent by the introduction of GST, as the tax is levied only on supply of goods and due to the elimination of other taxes like VAT and CST, input tax credit would be available to the person who has paid GST except the final customer. Though cascading effect remains on imported goods as IGST is levied after basic custom duty, and also due to definition of 'transaction value' as per section 15 (2) of the

CGST Act includes any taxes, fees, charges levied under any law other than GST law<sup>4</sup>. This brings into light the truth that, though the evil of cascading of taxes has been removed, it remains to exist in some areas.

**Rate of Tax** - In the pre GST regime, due to the applicability of taxes of different nature on a single transaction, there were multiple rates of tax under multiple laws. This issue has been discussed in detail in the "Report of the Task Force on GST" that was submitted to the 13th Finance Commission. The Report recommends a broad base for the GST, and a combined Centre and State revenue neutral rate of 12 per cent. A broad base and moderate rate is an essential feature of a good tax system. Multiplicity of tax rates is also to be avoided. While under GST, the rates of tax will remain uniform under all the Acts, as decided by the GST Council.

**Exclusion of Certain Items** - Certain items namely petroleum crude, motor spirit, aviation turbine fuel, high speed diesel, natural gas, alcohol for human consumption, electricity and real estate sector have not been covered under the penumbra of GST. Inclusion of electricity under GST has not been envisaged ever since the First Discussion Paper was published in 2009 on GST. Neither the Empowered Committee, nor the Parliamentary Standing Committee ever recommended inclusion of electricity under GST. In the case of alcohol, the States have been consistently opposing the inclusion of alcohol under GST. Even in the First Discussion Paper, it had been recommended that alcohol be excluded from GST. States retain the powers to levy excise duty as well as sales tax on alcohol. Centre has no powers vis-à-vis alcohol.

**Compliances** – The major shift to filling several returns in place of one return has made it the compliances difficult under GST. Also the technological handicaps have come in the way of compliances. There is lack of infrastructure with the traders. When there are multiple rates of tax, the assessee tries to fit his goods/services within

4. Central Goods and Services Tax Act, 2017.

the definition of that goods/services which attract a lower rate of tax. A classic example of this is the case of *CCE v. Connaught Plaza Restaurant (P) Ltd.*<sup>5</sup>. As ice cream was charged with a higher rate of tax as compared to dairy products, the Respondents claimed that their product namely the soft serve ice cream fell under the heading of dairy products and not ice cream. The Court allowed the appeal and held that the nature of the product and the general perception of the consumers should be considered for deciding the heading for levy of excise.

### III. Indirect Taxation Around the World

As the scope of this article is restricted to GST, the study indirect taxation system around the world is restricted only to GST or alike components of the system.

**Canada** – Canada imposes a 5 per cent federal value-added tax called the goods and services tax (GST), which applies to the supply of most goods and services in Canada and to imports of most goods into Canada. Five Canadian provinces (Ontario, Nova Scotia, New Brunswick, Prince Edward Island, and Newfoundland and Labrador) have harmonized their provincial sales taxes with the federal GST to make a single harmonized sales tax (HST), which applies to most supplies within these provinces. The general rule is that if goods are delivered or made available to a recipient outside Canada, then the supply is considered to be made outside Canada and the sale is generally not subject to GST/HST. If goods are delivered or made available to the recipient within Canada, then the supply is generally considered to be made in Canada and the sale is subject to GST/HST<sup>6</sup>. The rates of GST applicable in Canada differ from province to province. The rate of GST is 5 per cent. The maximum HST is 15 per cent which is applicable in four provinces<sup>7</sup>. The dual GST (CGST-SGST) model in India is similar to the GST-QST model implemented the province of Quebec.

5. 2012 (286) E.L.T. 321 (S.C.).

6. Excise Tax Act

7. Government of Canada, Taxes, Duties and Fees (GST/HST) Regulations, viewed 7 March 2018, <http://laws-lois.justice.gc.ca/eng/regulations/SOR-91-34/index.html>

**France** - The VAT adopted in France as a substitute for turnover taxation is currently receiving the most attention as a potential source of new revenue. The tax is levied normally at a rate of 20 per cent on the value of total sales including the tax element (25 per cent on luxury articles, 10 per cent on many raw materials, 6 per cent on some foodstuffs, 12 per cent on construction, 5 to 12.5 per cent on various services, and no tax on exports), but credit is given for value-added tax paid on purchased inputs. The performing of certain services is subject to a separate services tax, in lieu of VAT. The tax is paid by those who perform the services, but they normally bill it separately on the invoice to the customer. The normal rate is 8.5 per cent, with a 12 per cent rate on certain categories<sup>8</sup>.

**United Kingdom** - United Kingdom follows VAT system of indirect taxation on goods and services. VAT is levied on most goods and services provided by registered businesses in the UK and some goods and services imported from outside the European Union. There are three rates of VAT in UK namely the standard rate, reduced rate and zero rate. The standard rate of VAT increased to 20 per cent on 4 January 2011 (from 17.5 per cent)<sup>9</sup>.

**Australia** - In Australia, GST is a broad sales tax of 10 percent on most goods and services transactions<sup>10</sup>. It is a value added tax, not a sales tax, in that it is refunded to all parties in the chain of production other than the final consumer. Financial supplies; Sale of residential premises; Residential rent; Precious metals; School tuckshops and canteens if supplied by non-profit body, Fund raising events conducted by charities are exempted.

### IV. GST – The Journey So Far

Implementing a new tax, encompassing both goods and services, to be implemented by the Centre, 29 States and 2 Union Territories, in a large and

8. Otto Eckstein, *Comparison of European and United States Tax Structures and Growth Implications, The Role of Direct and Indirect Taxes in the Federal Reserve System*, Princeton University Press, pp. p. 217 - 293

9. Government of UK, *Businesses and charging VAT*, viewed 7 March 2018, <https://www.gov.uk/vat-businesses/vat-rates>

10. A New Tax System (Goods and Services Tax) Act, 1999.

complex federal system, via a Constitution (101st Amendment) Act 2016, following the passage of Constitution 122nd Amendment Bill requiring broad political consensus, affecting millions of tax paying entities, and marshalling the latest technology to use and improve tax implementation capability, is perhaps unprecedented in modern global tax history. This unprecedented move has been debated and discussed all over the country.

The Economic Report of the President of February 2018, among other economic reforms made certain observations on the growth of Indian economy. The introduction in July 2017 of a single, countrywide sales tax replaced a vast number of different state and local tax rates, and has created short-term uncertainty,” the report noted<sup>11</sup>. Thus the uncertainty emerging in India due to GST has caught the attention of people even outside India.

The implementation of the pan-India GST is expected to help create a single national market and enhance the efficiency of intra-Indian movement of goods and services<sup>12</sup>. This was the observation made by IMF in its recent 2018 report titled India-Financial sector assessment program.

A major difficulty faced by auditors and allied professionals was due to the fact that GST law came into effect from 1st July 2017 which is after 3 months of the Financial Year 2017-18 commencement date which is 1st April 2017. Due to which the accounting and the calculations involved had both the pre GST and the GST law taken into consideration. For instance, in the pre GST regime manufacturers included the amount paid towards Central Sales Tax in the cost of production because they did not get any input tax credit for the same. Whereas under GST, manufacturers did not add the amount paid towards IGST as they were entitled to input tax

credit. This made the calculations and the system more complex. An ideal solution was to have GST implemented from the beginning of the financial year so that a uniformity could be maintained.

Due to the multiple slabs, it has become difficult for traders to determine which goods get taxed at which rate. Reducing the number of slabs would also be helpful as it would reduce the complexity of the system.

The inclusion of real estate sector, petroleum products has been on the to-do list of the GST Council since a very long time. The idea of one nation one tax is said to be a mere delusion as not bringing various goods and services within its ambit was not envisaged. Keeping natural gas out of the GST is causing hardships and having adverse impact on the producers as it is increasing their costs.

In a case before the Bombay High Court, *Abicor & Binzel Technoweld Pvt. Ltd. v Union of India*<sup>13</sup> provisional registration number under the CGST Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 was granted but the petitioner was unable to access its online profile on the GST network. Among other grievances raised by the petitioner was one of not being able to claim input tax credit. The Court made the following observations during the course of the judgment :

*“A tax like Goods and Services Tax was highly publicised and termed as popular. We had yet not seen a celebration of new tax regime, but that has followed with great hue and cry. These celebrations mean nothing. The special sessions of Parliament or special or extraordinary meetings of Council would mean nothing to the assesseees unless they obtain easy access to the website and portals. The regime is not tax friendly. (Emphasis supplied)”*<sup>14</sup>

## V. Conclusion

It might be argued that a year’s time is not sufficient to draw a conclusion and form a judgment on the effectiveness of GST, but we need to consider

11. President Donald J. Trump, 2018, *Economic Report of the President Together with The Annual Report of the Council of Economic Advisers*, viewed 7 March 2018, [https://www.whitehouse.gov/wp-content/uploads/2018/02/ERP\\_2018\\_Final-FINAL.pdf](https://www.whitehouse.gov/wp-content/uploads/2018/02/ERP_2018_Final-FINAL.pdf)

12. International Monetary Fund, *Detailed Assessment of Observance of the Basel Core Principles For Effective Banking Supervision*, 18/4, January 2018.

13. Writ Petition (L) No. 2230 OF 2018.

14. Ibid.

the fact that this reform had been in making for a decade and a half<sup>15</sup>.

There is general perception that human beings resist change. When GST came into effect small traders reiterated this perception, they opposed this reform on various grounds without appreciating the benefits. Technological handicap was a major issue and probably still remains to be, while increased compliances had a corresponding increase in the need of appointing professionals for the work which in turn increased the overheads. The traders claimed that they have not benefitted from GST as much as they have suffered the burden of overheads and compliances.

After the introduction of GST, several Indian states have lost their autonomy in public policy owing to a reduction in their tax revenue because the GST subsumes state taxes such as the value added tax (VAT, sales tax, and luxury tax. For this insecurity the Central Government decided to compensate the States by providing for 14 percent nominal growth every year for a period of five years.

Due to the exclusion of petrol and petroleum products from the ambit of GST, there is a break in the value chain across and this has resulted in abundant inconsistency and increase in prices for traders.

While on the other hand one must not ignore that one of the most primitive and important sectors in the country namely the textile and clothing sector is now fully part of the tax net. Previously, some parts of the value chain, especially fabrics, were outside the tax net, leading to in formalisation and evasion.

Under the GST, there is seamless flow and availability of a common set of data to both the Centre and states, making tax collections more effective. Notwithstanding the benefits, India as the fastest growing economy in the world deserves a system which if not flawless, then is at least near to being perfect.

As it is said that it's never too late, the changes have been made and are still being made and an endeavour is made to make GST truly a boon as envisaged.



15. The idea of goods and services tax (GST) was first mooted in India in the year 2000.

## KNOWLEDGE UPDATE

### CASE LAW

#### Erstwhile Companies Act, 1956

**Official liquidator does not have jurisdiction to adjudicate the claim of the secured creditor permitted to stand outside the liquidation proceeding.**

The official liquidator does not have jurisdiction to ascertain or adjudicate the claim of a secured creditor who has been permitted by the Company Judge to stand outside the liquidation proceeding with liberty to pursue the remedy as per statutory rights available under the State Financial Corporations Act, subject only to the conditions imposed by the court – *Laxmi Fibres Ltd. v. A P Industrial Dev. Corpn. Ltd.* CA No.5805 of 2005 & CA Nos.5803 and 5804 of 2005 dated 7th August 2015.

#### Companies Act, 2013

**Where the scheme has complied with the legal requirements on amalgamation, it is liable to be sanctioned.**

Allotment of shares at a premium and credited as fully paid up by the transferee-company in a scheme of amalgamation with two private companies is no ground for non-sanctioning of the scheme by the Tribunal and if scheme complies with legal requirements, it has to be sanctioned. [*Ritemed Pharma Retail (P.) Ltd. v. Official Liquidator*, (NCLAT) CA (AT) No.60 of 2018 dated 3rd May 2018]

**Refusal to register transfer of shares can be permitted on the ground of violation of law or any other sufficient cause and conflict of interest can also be a cause.**

Where the appellant-company takes specific grounds in the appeal raising questions of law regarding its right to refuse registration of transfer of shares on sufficient ground and the appeal being a statutory appeal under section 10F of the Companies Act, 1956, the High Court should have considered the same among other questions of law. [*Mackintosh Burn Ltd. v. Sarkar & Chowdhury Enterprises (P.) Ltd.*, (SC) CA Nos. 3322-3323 of 2018, 27th March 2018].





## Tax Deduction at Source Under GST Regime

**Tax deduction at source (TDS) is a tax collection system wherein the tax liability is paid in part by the recipient of the goods or service at the time of making payment to the supplier. Similar to TDS under the Income-tax Act 1961, it is also a mechanism to prevent tax evasion and introduces checks and balances and ensures regular cash flow to the Government. In this article, the author explains mechanism of tax deduction at source under the GST regime**

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### Applicability

Section 51 of the Central Goods and Services Tax Act, 2017 ('CGST Act') provides for deduction of TDS in certain circumstances and mandates four specified recipients for deduction of tax at source under the GST.

- Department or establishment of Central or State Government [Section 51(1)(a)]
- Local Authority [Section 51(b)]
- Government agencies [Section 51(1)(c)]
- Notified persons/category of persons [Section 51(1)(d)]

### Local Authority

'Local Authority' is defined in clause (69) of section 2 of CGST Act and means the following:-

- "Panchayat" as defined in clause (d) of article 243 of Constitution.
- "Municipality" as defined in clause (e) of article 243P of Constitution.
- Municipal committee, a Zilla Parishad, a District Board, and any other authority legal entitled to, or entrusted by the central Government or any state Government with control or management of a municipal or a local fund.
- Cantonment Board as defined in section 3 of the Cantonment Act 2006.

- Regional council or a District Council constituted under the Sixth Schedule to the Constitution.
- Development Board constituted under article 371 of the constitution; or
- Regional Council constituted under article 371A of the constitution;

### Notified Persons

Following are the Notified persons/category of persons:

- An authority or board or any other body set up by an Act of Parliament or a State Legislature or established by any Government, with 51% or more participation by way of equity or control.
- Society established by the Central Government or State Government or local authority under the society registration Act, 1860
- Public sector undertaking.

### Rate of Tax and Threshold Limit

The tax would be deducted at 2 per cent of the payment made to supplier of the taxable goods or services, if the total value of such supply, under a contract, exceeds Rs.2.5 lakh. The TDS is calculated on the value excluding CGST, SGST, UTGST, IGST and Cess indicated in the invoice). The TDS is applicable even if the individual supplies

may be less than Rs.2.5 lakh, but total value of supply under a contract is more than Rs.2.5 lakh. If the value of the contract is more than Rs.2.5 lakh and payment is made in installments of less than Rs.2.5 lakh, in such case also TDS is to be deducted at 2 per cent against each payment.

### Requirement of Registration for TDS Deductor

A person who is liable to deduct TDS has to compulsorily register and there is no threshold limit for this. The registration under the GST can be obtained without PAN and by using the existing tax deduction and collection account number (TAN) issued under the Income-tax Act.

The registration application for tax deductor can be filed electronically by submitting a duly signed application in Form GST REG-07. In the place of PAN, such persons will indicate their TAN in the registration application. Obtaining TAN issued under the Income-tax Act is mandatory.

For registration as tax deductor, the applicant must have the following :

- Valid TAN
- Valid mobile number
- Valid e-mail ID
- Prescribed documents and information on all mandatory fields as required for registration
- Place of business
- Authorized signatory with valid details

The registration application of the applicant will then be processed and approved by the relevant tax officer after which he will be issued the registration certificate containing the number.

### Time-limit for Payment

The deductor shall be required to pay the amount deducted as the tax within 10 days after the end of the month in which such deduction is made. It shall be paid to the Central Government for CGST/IGST and State Government for SGST/UTGST.

### Filing of TDS Return

The person deducting tax is required to file a TDS

return in form GSTR-7 within 10 days from the end of the month. While filing the return the deducted amount will be reflected in electronic ledger of the deductee.

### TDS Certificate

Similar to Income-tax Act, under GST also the person deducting tax has to issue the TDS certificate to the deductee. GSTR-7A is the form for TDS certificate and it is to be issued to the concerned person within 5 days of depositing the tax to the government. Failure to do so will make the person liable to pay a late fee of Rs. 100 per day up to a maximum of Rs.5000. The TDS certificate contains the following:

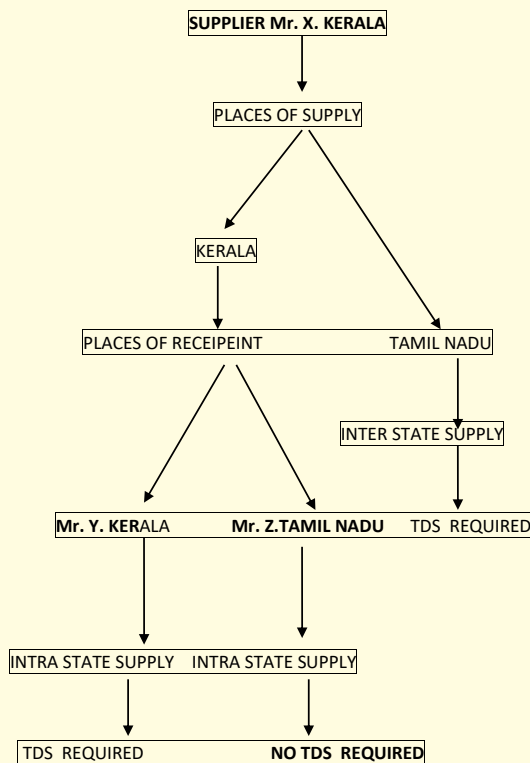
- Contract value
- Rate of deduction
- Amount deducted
- Amount paid to the appropriate Government
- Such particulars as may be prescribed in this behalf

### Refund of TDS

If any excess amount is deducted and paid to the government, a refund can be claimed. However, if the deducted amount is already added to the electronic cash ledger of the supplier, the amount so added cannot be got back as a refund by the deductor. Deductee can claim a refund of tax subject to refund provisions of the Act.

### Circumstances When TDS Not to Be Deducted at Sources Under GST

TDS is not to be deducted if the location of supplier and place of supply both are same but it is different from that of the recipient. If the location of supplier as well as the place of supply are in Kerala and the location of recipient is in Tamilnadu. The supply would be considered as intra-State supply and Central tax and State tax would be levied. In such cases, transfer of TDS (Central tax + State tax of Tamil Nadu State) to the cash ledger of the supplier (Central tax + State tax of Kerala State) would be difficult. So TDS would not be deducted. This would be clearer as per the following chart.



In the above chart the place of supplier X is Kerala. When he supplies goods or service in Kerala it becomes an intra-state supply. When he supplies to Mr. Y the recipient in Kerala, the TDS is applicable whereas when he supplies to Mr. Z, the recipient in Tamilnadu, the TDS is not applicable since the location of supplier and place of supply both are same but it is different from that of the recipient. In the third instance if Mr. X supplies to Tamilnadu, it will be an inter-state supply attracting TDS.

### Penalty

- If TDS is not deducted, interest is to be paid along with the TDS amount; else the amount shall be determined and recovered as per the law
- If TDS certificate is not issued or delayed beyond the prescribed period of 5 days, late fee of Rs. 100 is to be charged per day subject to a maximum of Rs. 5000 is to be charged.
- If TDS is deducted but not paid to the Government or paid later than 10th of the

succeeding month, interest to be paid along with the TDS amount; else the amount shall be determined and recovered as per the law.

- If TDS returns are filed after the due date, late fee of Rs. 100 is to be charged for every day during which such failure continues, subject to a maximum amount of Rs. 5000.

### Illustration

- Public sector undertaking (PSU) made a contract with AB for the total contract value of Rs.10 lakh. After the completion of works, AB issued invoice for Rs. 11.8 lakh (Rs. 10 lakh plus GST at 18 per cent). While making payment to the vendor/contractor, the PSU has to deduct Rs. 20,000 as TDS (tax at 2 per cent on Rs.10 lakh excluding GST) under GST, in addition to TDS deducted as per the Income-tax Act. The TDS deducted under Income-tax Act will be reflected in form Form 26AS while TDS under GST will be reflected in electronic ledger of the vendor which may be adjusted against payment of other tax liability under GST.
- Suppose Government Department makes payment on 15th October, the tax deducted under GST has to be remitted on or before 10th November. PSU has to file return on or before 10th November (against the deduction done in October and its payment) and has to issue TDS certificate on or before 15th November to the vendor/contractor. TDS is applicable even if the PSU is making part payment of less than Rs. 2.5 Lakh since total contract value is more than Rs.2.5 lakh.
- Where the tax deductor fails to deduct the tax in accordance with provision of section 51(1) of the CGST Act or deducts an amount which is less the amount required to be deducted under the section or if he fails to pay the amount deducted as tax to Government under section 51(2), he shall be liable to pay a penalty of Rs.10000 or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government.

### Provisions Regarding Issue of Show Cause Notice (SCN)

- Section 73 of the CGST Act, provides for issue of show cause notice for demand of the amount not paid or short paid or erroneously refunded, or input tax credit has been wrongly availed or utilized for any reason except other than fraud or willful misstatement or suppression of facts to evade tax. The notice for payment of tax along with interest payable and penalty to be issued at least 3 months prior to the time limit specified for issuance of order. Statement to be issued for demand for subsequent period if notice for previous period on similar grounds has been issued. No notice shall be served if entire amount along with interest is paid on own ascertainment by the party. Penalty of Rs.10000 or 10 per cent of tax whichever is higher may be imposed.
- Order to be issued within 3 years from the date of due date for furnishing of annual return for the subject financial year.
- Where non-payment or short payment of tax is due to reason of fraud, willful misstatement or suppression of facts, demand for tax, interest and penalty equal to the tax amount has to be made. Issue of notice at least 6 months prior to the time limit specified for issue of order.
- No notice shall be served if entire amount along with interest and penalty equivalent to 15 per cent of tax is paid on own ascertainment by the party.
- Even after issuance of notice, option to pay tax, interest and penalty equivalent to 25 per cent of tax amount within 30 days of issue of notice.
- The time limit for order is 5 years from the due date of furnishing of Annual Return or within 5 years of erroneous found.
- TAN already issued by IT department can be used while applying for GST registration
- No tax deduction is required where the location of supplier and place of supply is different from the State of the registration of the recipient
- The tax would be deducted at 2 per cent of the payment made to supplier of the taxable goods or services, i.e., 1 per cent CGST+1 per cent SGST/UTGS or 2 percent IGST
- TDS is applicable if the total value of supply of goods or service, under a contract, exceeds Rs.2.5 lakh
- TDS is calculated on the value excluding CGST, SGST, UTGST, IGST and Cess indicated in the invoice
- TDS is deducted at the time of making payment to the vendor
- Deductors need to remit such TDS collected by the 10th day of the month succeeding the month in which TDS was collected
- Deductors require to file a TDS return in form GSTR-7 within 10 days from the end of the month
- Deductors require to issue TDS certificate in form GSTR-7A to the deductees within 5 days of depositing the tax to the government
- If the deductor issues TDS certificate within 5 days of remittance, the deductor has to pay a late fee of Rs. 100 per day from the 6th day until the day he furnishes the certificate subject to the maximum late fee of Rs. 5000
- Rate of interest for delayed payment is upto 18 per cent per year, the exact rate of interest payable is yet to be notified
- The refund to the deductor or the deductee arising on account of excess or erroneous deduction shall be dealt with in accordance with the provisions of Section 54, provided that no refund to the deductor shall be granted, if the amount deducted has been credited to the electronic cash ledger of the deductee.

### Points At a Glance

- A TDS deductor has to compulsorily register without any threshold limit







## Rectification of Mistakes apparent from Record

In this article the author explains provisions of section 161 of the CGST Act, 2017 which deals with rectification of mistakes or errors apparent on the face of record.

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### What is 'Mistake Apparent from Record'

The phrase 'mistake apparent from record' has not been defined under the CGST Act. It means an obvious mistake. There are detailed provisions provided for this concept under section 154 of Income-tax Act, 1961. The 'term mistake' in legal perspective can be understood to mean the following:

- Misreading a clear provision is a mistake
- Application of a wrong provision of Act
- Applying an inapplicable provision
- Overlooking a mandatory provision
- Non-following of decision of jurisdictional High Court

The term 'record' can be understood to mean record of the case comprising the whole proceedings including documents and materials produced by the parties and taken on record by the authorities, which were available at the time of passing of order which is the subject matter of rectification proceeding.

### Example

Ram Industries had already paid a tax of INR 31.40 lakh. Copies of payment challan of the same were submitted to assessing officer. While calculating the demand of Ram Industries, Assessing officer gave a credit of INR 29 lakhs payment. This is a mistake apparent from record and proceedings for correcting this payment from Rs. 29 lakh to Rs. 31.40 lakh will

constitute proceedings of rectification of mistake apparent from record.

### Rectification of Apparent Mistakes from Record

Section 161 deals with rectification of mistake or errors apparent from record. It provides that the authority who has issued any decision, order, summon, notice or any certificate may rectify any mistake apparent from record in such documents. Such rectification by such authority can be done:

- *Suo-moto* by such authority
- On bringing to notice of such authority by GST official
- On bringing to notice by the affected person.

### Time Limit for Rectification of any Mistake/ Error Apparent from Record

Rectification of any mistake/error apparent from record can be done within a period of three months of issuance of such document (any decision, order, summon, notice or any certificate) by authority. It may be noted that a time limit of three months is allowed for the affected person to bring to attention any such error or mistake. This time limit does not apply to a CGST/SGST officer from bringing it to the attention to the issuing authority or for making voluntarily rectification. However, no such rectification is permitted after 6 months from the date of its issuance.

### Maximum Period Allowed for Rectification of Mistake

Any rectification done as per provisions of section 161 can be done within maximum period of six months from the date of issue of such document. However, this period of six months will not be applicable where the rectification is purely in the nature of correction of a clerical, arithmetical error or mistake arising from any accidental slip or omission.

### Rectification Effecting Increase of Liability of Taxpayer

In cases where the result of making the correction results in increasing the liability or reducing the

refund of a taxable person, it can be done only after following the principles of natural justice. Without giving notice to affected person and without giving him an opportunity of hearing, no such rectification can be effected.

### Substantive Rectification in Document while Rectifying Error

While correcting any mistake under section 161, no rectification can be made in the substantive portion of the document. In the garb of correcting the mistake, the competent authority cannot change his opinion in respect of the matter already decided by him.



## KNOWLEDGE UPDATE

### INSOLVENCY AND BANKRUPTCY LAW

#### IBBI Amends the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

Insolvency and Bankruptcy Board of India (IBBI) has notified the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2018. The following are salient amendments to the regulations:

- Wherever the corporate debtor has classes of creditors having at least ten creditors in the class, the interim resolution professional shall offer a choice of three insolvency professionals to act as the authorised representative of creditors in each class.
- An application for withdrawal of an application admitted under section 7, 9 or 10 of the Code (for closure of corporate insolvency resolution process) may be submitted to the interim resolution professional or the resolution professional, as the case may be, before issue of invitation for expression of interest.
- Where rate of interest has not been agreed to between the parties in case of creditors in a class, the voting share of such a creditor shall be

in proportion to the financial debt that includes an interest at the rate of eight per cent per annum.

- Where the appointment of resolution professional is delayed, the interim resolution professional shall perform the functions of the resolution professional from the fortieth day of the insolvency commencement date till a resolution professional is appointed.
- A meeting of the CoC shall be called by giving not less than five days' notice in writing to every participant. The CoC may, however, reduce the notice period from five days to such other period of not less than forty-eight hours where there is any authorised representative and to twenty-four hours in all other cases.
- The resolution professional shall form an opinion whether the corporate debtor has been subjected to certain transactions (preferential transactions, undervalued transactions, extortionate transactions or fraudulent transactions) by 75th day.
- The resolution professional shall publish an invitation for expression of interest (EoI) by the 75th day from the insolvency commencement date.
- The resolution professional shall issue the information memorandum, the evaluation matrix and the request for resolution plans (RFRP), within five days of issue of the provisional list to the prospective resolution applicants and allow at least 30 days for submission of resolution plans.



## Statutory Provisions on Documents and Notices Under GST

In this article, the author delves into the provisions of section 169 of the Centre Goods and Services Tax Act, 2017 which prescribes methods for service of notice, etc. in certain circumstances.

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### Methods of Service of Documents

Various methods of service of any decision, notice, order, summon or any other communication under the Central Goods and Services tax Act, 2017 or Rules made thereunder have been prescribed in section 169, which are as follows:

- By giving or tendering it directly or through a messenger or courier to the addressee or the taxable person or to his manager or to person duly authorized or an advocate or a tax practitioner holding authority to appear in the proceeding on behalf of the taxpayer or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxpayer.
- By registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised agent, if any at his last known place of business or residence.
- By sending a communication to his e-mail address, provided at the time of registration or as amended from time to time.
- By making it available on common portal.
- By publication in a newspaper circulating in the locality of taxpayer or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain.
- If none of the above is practicable, by affixing it in some conspicuous place on his last known place of business or residence address.
- If such affixing is also not practicable, by affixing a copy thereof on the notice board of the officer who has passed such decision or order or issued such summons or notice.

The meaning of terms such as authorised representative, common portal, tax practitioner etc shall be governed by the definitions provided in the Act or rules, as the case may be.

### Erstwhile Case Law on Service of Notice

For service of show cause notices or orders, etc, following judicial pronouncements under erstwhile law are relevant :

- In *Saradha Travels v. CST*, (2014) 47 GST 334/ [2015] 37 STR 433, it was held that pasting adjudication order on premises of assessee under a Mahazar before two independent witnesses, when assessee was not available in premises and premises was also locked, is a valid service under section 37(1)(b) of Central Excise Act, 1944.
- In *Saral Wire Craft Pvt. Ltd. v. CC, CE & ST* [2015] 322 ELT 192/ 51 GST 697, where adjudication order was served on kitchen boy of the assessee, it was held to be not a proper service. As per section 37C of the Central Excise Act, 1944, notice must be served to the person for whom it is intended or his authorized agent under proof of acknowledgment. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The judgment lays down the pre-requisite for issuance of notice. Any notice issued in violation of section 37C is not valid. It is worth mentioning that section 37C has been made applicable to service tax also by virtue of section 83 of the Finance Act, 1994. Hence, the principle laid down in the judgment shall mutatis mutandis apply to notice served in service tax cases also.

- In *Ventrapathi Financial Services v. Superintendent of Central Excise* [2015] 39 STR 956 (AP), where ex parte adjudication order, show cause notice and other communications were sent at wrong address and petitioner came to know only when bank informed about recovery proceedings, it was held that principles of natural justice were violated and service of order was not in terms of statutory provisions and as such impugned order was set aside. Adjudication proceedings were ordered to be completed afresh within three months.
- In *CST v. Sunil Haribhau Pote* [2017] 80 taxmann.com 366 (Bom), assessee was engaged in manufacture and sale of edible oils, the department served notice at correct address of assessee, but it was returned by the postal authorities with the remark, that the addresses refused to accept the notice. It was held that there was no dispute about his identity, so it amounted to sufficient and adequate service of notice i.e., deemed to be served.

### What Documents Require Service

Service may be required in relation to any of the following :

- any decision
- any order
- summons
- notice

other communication such as letter of enquiry, notice of hearing, seeking

details or information, audit report, recovery notice etc.

These terms have not been defined but shall take their meanings under General Clauses Act. Such communications are required for administration of the tax law under various provisions. However, notice means show cause notice as referred to in section 28(1) of Customs Act, 1962.

### When Deemed to be Served

Every decision, order, summon, notice or any communication shall be deemed to have been served to the addressee on the date on which it is tendered or published or a copy thereof is affixed in the manner as provided in section 169(1).

### Service in Case of Registered or Speed Post

Any decision, order, summons, notice or any other communication shall be deemed to be served where such communication is sent by registered post or speed post in terms of section 169 (3). Accordingly, when any such communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by a registered/speed post letter in transit unless contrary is proved. Following judicial pronouncements can be relied upon for communications sent by speed post or registered post.

- In *Mirzapur Electrical Industries Ltd. v. CCE* (2013) 40 STT 282 (2013) 35 taxmann.com 15 (All), since object of sending post by registered post was to keep a record, which was also served by sending an article by speed post through same agency, 'Registered Post' and 'Speed Post' were considered to be same modes of service and sending order by speed post was held to be a valid compliance with section 37C of the Central Excise Act, 1944. Hence, where assessee had not given forwarding addressing for communication, envelope was returned back undelivered and revenue made an attempt to serve assessee by pasting order on factory gate, it was considered to be valid compliance.
- In *Jay Balaji Jyoti Steels Ltd. v. CESTAT*, [2015] 37 STR 673 (Ori), where order was sent by speed post, it was held that post office receipt for both by registered post and by speed post have to be treated as registered post in view of section 28 of the Indian Post Office Act, 1898. Only difference between the two is that charges payable are normally higher for 'speed post' for delivery at an early date. Further, insertion of 'or by speed post with proof of delivery' after the words 'sending it by registered post with acknowledgement due' in section 37C(1)(a) of the Central Excise Act, 1944 with effect from 10th May, 2013 is clarificatory and procedural amendment. It is curative since various courts had held that communication of notices through speed post was in consonance with law.

■■■



# KNOWLEDGE UPDATE

## COMPANY LAW

### Commencement of Sections of the Companies (Amendment) Act, 2017

Vide SO 3684(E) dated 27th July 2018, the Central Government has enforced Sections 5 and 6 of the Companies (Amendment) Act, 2017 with effect from 27th July, 2018.

### Companies (Registration of Charges) (Amendment) Rules, 2018

Central Government has amended the Companies (Registration of Charges) Rules, 2014 by substituting the words “shall be filed” for the words “and filed” in sub-rule (1) of rule 3, sub-rule (1) of rule 8 and the words “within a period of three hundred days” for the words “within thirty days” in sub-rule (1) of rule 12.

### Appointment of Inspectors for Compliance of Investor Education and Protection Fund

Central Government has established Centralized Scrutiny and Prosecution Mechanism (CSPM) and appointed officers of Ministry as Inspectors for compliance of Investor Education and Protection Fund.

### Constitution of Committee to Review the Offences under the Companies Act, 2013

Central Government has constituted a Committee to review offences Companies Act, 2013 under the Chairmanship of Secretary, Ministry of Corporate Affairs. The Committee has to examine the nature of all “acts” categorized as compoundable offences viz. offences punishable with fine only or punishable with fine or imprisonment or both under the Companies Act, 2013 and recommend if any of such “acts” may be re-categorized as “acts” which attract civil liabilities wherein the company and its “officers in default” are liable for penalty; to review the provisions relating to non-compoundable offences and recommend whether any such provisions need to be re-categorized as compoundable offence; to examine the existing mechanism of levy of penalty under the Companies Act, 2013 and suggest any improvements thereon etc.

### Companies (Registration Offices and Fees) (Third Amendment) Rules, 2018

Central Government has amended the Companies (Registration Offices and Fees) Rules, 2014 by inserting item (VII) after item (VI) [i.e. fee for filing e-Form DIR-3 KYC under rule 12A of the Companies (Appointment and Qualification of Directors) Rules, 2014] relating to Fees for Removal of Names of Companies from the Registrar of Companies under section 248 (2) of the Act. [Note: For the current financial (2018-2019), no fee shall be chargeable till the 31st August, 2018 and fee of Rs.5000 shall be payable on or after the 1st September, 2018].

### Companies (Authorised to Register) (Second Amendment) Rules, 2018

Vide Notification No. G.S.R. 613(E) dated 5th July, 2018, Central Government has notified Companies (Authorised to Register) (Amendment) Rule, 2018 to amend the Principal Rules, 2014 by substituting rule 2 (1), 4 (1)/(2) and rule 5.

### Companies (Appointment and Qualification of Directors) (Fourth Amendment) Rules, 2018

Vide notification no. G.S.R. 615(E) dated 5th July, 2018, Central Government has amended the Companies (Appointment and Qualification of Directors) Rules, 2014 by inserting rule 12A, which states that every individual who has been allotted a Director Identification Number (DIN) as on 31st March of a financial year as per these rules shall, submit e-form DIR-3-KYC to the Central Government on or before 30th April of immediate next financial year and accordingly inserted new form no. DIR-3-KYC. *Every individual who has already been allotted a Director Identification Number (DIN) as at 31st March, 2018, shall submit e-form DIR-3 KYC on or before 31st August, 2018.*

### Companies (Acceptance of Deposits) (Amendment) Rules, 2018

Vide notification no. G.S.R. 612(E) dated 5th July, 2018, Central Government has amended the Companies (Acceptance of Deposits) Rules, 2014 by substituting Forms DPT-1 and DPT-3 and inserting second proviso in sub-rule (1) of rule 4.

## New Syllabus for Executive and Professional Programmes

### ICSI Notification No. 01 of 2018 Introduction of New Syllabus for the Executive and Professional Programmes of the Company Secretaryship Course

The Council of the Institute of Company Secretaries of India in exercise of the powers vested under clause (a) of sub-section (2) of Section 15 of the Company Secretaries Act, 1980, as amended by the Company Secretaries (Amendment) Act, 2006 approved the new syllabus (Syllabus 2017) for the Executive and Professional Programmes of the Company Secretaryship Course.

The New Syllabus shall comprise of Eight papers at Executive Programme and Nine papers at Professional Programmes including one Paper to be opted by the students out of eight elective papers namely, (i) Banking – Law & Practice; (ii) Insurance- Law & Practice; (iii) Intellectual Property Rights- Laws and Practices; (iv) Forensic Audit; v) Direct Tax Laws & Practice; vi) Labour Laws & Practice; vii) Valuations & Business Modelling and viii) Insolvency- Law and Practice.

The nomenclature of eight papers of the Executive Programme & nine papers of Professional Programme including electives under the new syllabus are as under:

<b>Executive Programme</b>	<b>Professional Programme</b>
<b>Module – 1</b>	<b>Module-1</b>
1. Jurisprudence, Interpretation & General Laws	1. Governance, Risk Management, Compliances and Ethics
2. Company Law	2. Advanced Tax Laws
3. Setting up of Business Entities and Closure	3. Drafting, Pleadings and Appearances
4. Tax Laws	
<b>Module – 2</b>	<b>Module – 2</b>
5. Corporate & Management Accounting	4. Secretarial Audit, Compliance Management and Due Diligence
6. Securities Laws & Capital Markets	5. Corporate Restructuring, Insolvency, Liquidation & Winding-up
7. Economic, Business and Commercial Laws	6. Resolution of Corporate Disputes, Non-Compliances & Remedies
8. Financial and Strategic Management	
	<b>Module – 3</b>
	7. Corporate Funding & Listings in Stock Exchanges
	8. Multidisciplinary Case Studies ( <i>The examination for this paper will be open book examination</i> )
	9. Electives 1 paper out of below 8 papers
	9.1 Banking – Law & Practice
	9.2 Insurance– Law & Practice
	9.3 Intellectual Property Rights– Laws and Practices
	9.4 Forensic Audit
	9.5 Direct Tax Law & Practice
	9.6 Labour Laws & Practice
	9.7 Valuations & Business Modelling
	9.8 Insolvency – Law and Practice
	( <i>The examination for this paper will be open book examination</i> )

The Scheme of Paper-wise exemption for switchover from Old Syllabus to New Syllabus is as under:

#### SCHEME OF PAPERWISE EXEMPTION FOR SWITCHOVER FROM OLD SYLLABUS TO NEW SYLLABUS

<b>EXECUTIVE PROGRAMME</b>	
<b>Existing Syllabus (2012)</b>	<b>Paper-wise Exemption under New Syllabus (2017)</b>
<b>MODULE 1</b>	
Company Law	Module 1; Paper 2- Company Law
Cost and Management Accounting	Module 2, Paper 5- Corporate and Management Accounting
Economic and Commercial Laws	Module 2; Paper 7- Economic, Business and Commercial Laws
Tax Laws and Practice	Module 1; Paper 4- Tax Laws

<b>MODULE 2</b>	
Company Accounts and Auditing Practices	Module 2, Paper 5- Corporate and Management Accounting
Capital Markets and Securities Laws	Module 2; Paper 6- Securities Laws & Capital Markets
Industrial, Labour and General Laws	Module 1; Paper 1- Jurisprudence, Interpretation and General Laws
<b>PROFESSIONAL PROGRAMME</b>	
<b>MODULE 1</b>	
Advanced Company Law and Practice	Module 2; Paper 6 - Resolution of Corporate Disputes, Non-Compliances & Remedies
Secretarial Audit, Compliance Management and Due Diligence	Module 2; Paper 4 - Secretarial Audit, Compliance Management and Due Diligence
Corporate Restructuring, Valuation and Insolvency	Module 2; Paper 5 - Corporate Restructuring, Insolvency, Liquidations & Winding-up
<b>MODULE 2</b>	
Information Technology and Systems Audit	<b>No Exemption</b>
Financial, Treasury and Forex Management	Module-3, Paper- 7- Corporate Funding & Listings in Stock Exchanges
Ethics, Governance and Sustainability	Module 1; Paper 1- Governance, Risk Management, Compliances and Ethics
<b>MODULE 3</b>	
Advanced Tax Laws and Practice	Module 1; Paper 2 - Advanced Tax Laws
Drafting, Appearances and Pleadings	Module 1; Paper 3 - Drafting, Pleadings and Appearances
Elective Subjects	Module 3; Paper 9 - Elective paper

The objective of the course is to develop a cadre of Company Secretaries by imparting professional knowledge and training considered pre-requisite for functioning of a Company Secretary- whether in employment or in practice. The syllabus for the examination as set out gives the broad framework within which questions may be asked. The questions may not be necessarily restricted to specific wordings or nomenclature of any terms and legislative enactments contained therein. The field of business being in a constant flux, the candidates are expected to be thoroughly conversant with the latest developments in different areas, amendments to the laws or the corresponding provisions of any statutory modification or re-enactment thereof and judicial pronouncements related and relevant to the stated course contents. The Candidates are expected to keep track of and have intelligent grasp of the latest developments in the relevant areas that have taken place up to six months preceding the date of examination.

Each paper at the Executive and Professional Programme Examination will be of three hours duration and will carry 100 marks. The examination for the Paper 16: Multidisciplinary Case Studies and Paper 17: Elective Paper will be open book examination.

Further, students registered under Executive and Professional syllabus (2017) shall have to successfully complete a Pre-Examination Test to become eligible to enrol and appear in the Executive and Professional Examinations.

#### **Applicability of New Syllabus for the Executive Programme Candidates**

1. The first examination of the Executive Programme under the new syllabus shall be held in December, 2018
2. Candidates registered effective from 1<sup>st</sup> March, 2018 shall be examined under the new syllabus.
3. Candidates registered prior to 1<sup>st</sup> March, 2018 shall be allowed to appear in the Executive Program Examination under the old syllabus upto and including December, 2019.
4. Candidates registered prior to 1<sup>st</sup> March, 2018 will be permitted to appear in the Executive Program Examination under the new syllabus if they so opt.
5. The last examination of the Executive Programme under the old syllabus shall be held in December, 2019
6. From and including June 2020, Executive Programme Examination shall be held under the new syllabus only.

#### **Applicability of New Syllabus for the Professional Programme Students**

1. The first examination of the Professional Programme under the new syllabus shall be held in June, 2019.
2. Candidates registered effective from 1<sup>st</sup> September, 2018 shall be examined under new syllabus.
3. Candidates registered prior to 1<sup>st</sup> September, 2018 will be permitted to appear in the Professional Programme Examination under the old syllabus upto and including June 2020.
4. Candidates registered prior to 1<sup>st</sup> September, 2018 will be permitted to appear in the Professional Programme Examination under the new syllabus if they so opt.
5. The last examination of the Professional Programme under the old syllabus shall be held in June, 2020.
6. From and including December 2020, Professional Programme Examination shall be held under the new syllabus only.

*For Detailed Syllabus refer [www.icsi.edu](http://www.icsi.edu)*



## KNOWLEDGE UPDATE

### INSOLVENCY AND BANKRUPTCY LAW

#### Appointment of Authorised Representative for Classes of Creditors under Section 21 (6A) (B) of the Insolvency and Bankruptcy Code, 2016

IBBI Vide Circular No. IBBI/CIRP/015/2018 dated 13th July 2018 has clarified that wherever the approval of resolution plan is at least 15 days away, the resolution professional shall expeditiously obtain, by electronic means, the choice of the insolvency professional from creditors in a class to act as the authorised representative of the class and proceed further in the manner as specified in regulation 16A of the Regulations.

#### Insolvency and Bankruptcy Board of India (Insolvency Resolution Process For Corporate Persons) (Third Amendment) Regulations, 2018

Insolvency and Bankruptcy Board of India amended the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 by inserting clause (aa) in sub-regulation (1) of regulation 2, sub-regulation (IA) in regulation 3, regulation 4A, clause (ba) & (bb) in regulation 6, regulation 8A etc.

### SEBI LAW

#### Strengthening the Guidelines and Raising Industry Standards for RTAS, Issuer Companies and Banker to an Issue

SEBI, vide Circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/73 dated April 20, 2018, inter-alia, mandates RTAs to send a letter under Registered / Speed post seeking PAN and bank details within 90 days of the said circular and two reminders thereof after the gap of 30 days. Further, SEBI vide circular no. SEBI/HO/MIRSD/DOS3/CIR/P/2018/115 dated 16th July 2018, clarified that the timeline for sending the initial letter by Registered/Speed Post to physical shareholders has been extended to September 30, 2018 to enable companies to send the initial letter along with Annual Reports/notice of AGM. Subsequently, two reminders may be sent by other modes including ordinary post / courier.

### CASE LAW

#### INSOLVENCY AND BANKRUPTCY CODE, 2016

**Sub-section (2) of section 30 does not confer power on resolution professional to decide who is ineligible to submit a resolution plan. No other provision confers any such powers.**

While scrutinizing the resolution plan under sub-section (2) of section 30, the resolution professional cannot hold or decide as to who is ineligible under section 29A to submit a resolution plan. There is no other provision conferring such power to the resolution professional to scrutinize the eligibility of one or other resolution applicant – [*Rajputana Properties (P.) Ltd. v. Ultra Tech Cement Ltd.* (NCLAT), IA No. 594 of 2018 in CA (AT) (Insolvency) No. 188 of 2018, 15th May 2018].

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