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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 along with your student registration number. The shortlisted articles shall be published in the Journal.

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MESSAGE FROM THE PRESIDENT

Leadership and Learning are indispensable to each other. John F. Kennedy

My Dear Students,

Success is no accident, it is hard work, perseverance, learning, studying, sacrifice and most of all, love of what you are doing to or learning to do. Indeed, learning is one of the core post to lead one's discipline. Indulging the significance of learning in success of an endeavour, Institute is persistent in building the capacity of its stakeholders with the emerging trends of compliance and governance. One among such steps was the introduction of new curriculum for Executive and Professional Program of the Institute, subsuming an objective to provide a 360 degree rounded set of education and development to CS students. Our dedication to provide an all rounded set of education and contemporary development of our student does not end here. Pursuant to the introduction of the new syllabus and in view to apprise a comprehensive understanding of the students related to the contents, the new set of study material is also launched recently for Executive Programme under New Syllabus 2017.

In order to ensure a *One Spot Source* of learning and advancing the proficient knowledge, the set of newly launched study material has been developed and supported in deep deliberations with Company Secretaries as well as Industry Experts and other professionals, having a wide spectrum of acquaintance with the needs and requirements of the companies in the Indian Mainland.

Citing, Benjamin Franklin on '*Tell me and I forget. Teach me and I remember. Involve me and I learn*', we are also diving high with the involvement of our students in the synchronous reforms of our Shining and Rising India. For instance, with the implementation of GST, we are not only gearing up our professional through the academic updates in the form of GST Newsletter, GST App, GST Point and alike, rather we are also involving our students in the factual practice of GST through their enrolments in GST Accounts Assistant course, launched in association with National Skill Development Corporation.

Friends, indeed when the noblest pleasure is the joy of learning and understanding, the Institute is dedicated in advancing the learning and understanding of our budding professionals in the emerging era of compliance and good-governance.

Looking forward for your treasured feedback.

Best Wishes

CS Makarand Lele

President, ICSI



Input Service Distributor in GST Regime

In this article, the author briefly explains the concept of Input Service Distributor in the GST perspective.

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Definition of Input Service Distributor

1. Clause (61) of section 2 of the CGST Act, 2017 defines “Input Service Distributor” (ISD) to mean an office of the supplier of goods or services or both which receives tax invoices issued towards the receipt of input services and issues a prescribed document for the purposes of distributing the credit of Central tax, State tax, Integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both having the same permanent account number as that of the said office.

Why ISD is Required?

2. ISD mechanism is meant only for distributing the credit on common invoices pertaining to input services only and not goods (inputs or capital goods). Companies may have their head office at one place and units at other places which may be registered separately. The head office would be procuring certain services which would be for common utilization of all units across the country. The bills for such expenses would be raised on the head office. But the head office itself would not be providing any output supply so as to utilize the credit which gets accumulated on account of such input services. Since the common expenditure is meant for the business of all units, it is but natural that the credit of input services in respect of such common invoices should be apportioned between all the consuming units.

ISD mechanism enables such proportionate distribution of credit of input services amongst all the consuming units.

Compulsory Registration

3. Clause (viii) of section 24 of the CGST Act, 2017, read with rule 8 of CGST Rules, 2017, provides that an ISD will have to compulsorily take a separate registration as such ISD and apply for the same in form GST REG-1. There is no threshold limit for registration for an ISD.

Transfer of Credit to ISD

4. Rule 54(1A)(a) of the CGST Rules, 2017 provides that a registered person, having the same PAN and State code as an ISD, may issue an invoice or a credit or debit note to transfer the credit of common input services to the ISD, which shall contain the following details :

- Name, address and GSTIN of the said registered person
- Consecutive serial number not exceeding sixteen characters, unique for a financial year;
- Date of its issue
- GSTIN of supplier of common service and original invoice number whose credit is sought to be transferred to the ISD
- Name, address and GSTIN of the ISD
- Taxable value, rate and amount of the credit to be transferred and

- Signature or digital signature of the registered person or his authorised representative.

Distribution of Credit

5. For the purposes of distributing the input tax credit, an ISD have to issue an ISD invoice, as prescribed in rule 54(1) of the CGST Rules, 2017, clearly indicating in such invoice that it is issued only for distribution of input tax credit. The input tax credit available for distribution in a month shall be distributed in the same month and details shall be furnished in Form GSTR-6. Further, an ISD shall separately distribute both the amount of ineligible and eligible input tax credit. The ISD may distribute credit subject to following:

- The credit has to be distributed only to the unit to which the supply is directly attributable to.
- If input services are attributable to more than one recipient of credit, the distribution shall be in the pro-rata basis of turnover in the State/Union Territory.
- However, if a particular input service pertains exclusively to only one unit and the bill is raised in the name of ISD, the ISD can distribute the credit only to that unit and not to other units.
- If the input services are common for all units, then it will be distributed according to the ratio of turnover of all the units.

Procedure for Distribution of Credit

6. Rule 39 of the CGST Rules, 2017 provides that the input tax credit that is required to be distributed in accordance with the provisions of law to one of the recipients 'R1', whether registered or not, from amongst the total of all the recipients to whom input tax credit is attributable, including the recipient(s) who are engaged in making exempt supply, or are otherwise not registered for any reason, shall be the amount, "C1", to be calculated by applying the following formula -

$$C1 = (t1 \div T) \times C$$

where,

"C" is the amount of credit to be distributed,

"t1" is the turnover of person R1 during the relevant period, and

"T" is the aggregate of the turnover, during the relevant period, of all recipients to whom the input service is attributable.

The input tax credit on account of central tax and State tax or UT tax in respect of recipient located in the same state shall be distributed as central tax and State tax or UT tax respectively. The input tax credit on account of central tax and State tax or UT tax shall, in respect of a recipient located in a State or Union territory other than that of the ISD, be distributed as integrated tax. The input tax credit on account of integrated tax shall be distributed as integrated tax. The amount to be so distributed shall be equal to the aggregate of the amount of input tax credit of central tax and State tax or Union territory tax that qualifies for distribution to such recipient.

Issuance of Invoice

7. For the purposes of distributing the input tax credit, an ISD has to issue an ISD invoice which shall contain the following details as prescribed under rule 54(1) of CGST Rules, 2017:

- Name, address and GSTIN of the ISD
- Consecutive serial number not exceeding sixteen characters, unique for a financial year
- Date of its issue
- Name, address and GSTIN of the recipient to whom the credit is distributed
- Amount of the credit distributed
- Signature or digital signature of the ISD or his authorised representative.

The ISD shall issue a credit note, for reduction of credit in case the input tax credit already distributed gets reduced for any reason, if any.

Filing of Return

8. Sub-section (4) of section 39 of the CGST Act, 2017, read with rule 65 of the CGST Rules, 2017 provides that an ISD will have to file monthly returns in GSTR-6 within thirteen days after the end of the month and will have to furnish information of all ISD invoices issued.

The details in the returns will be made available to the respective recipients in their GSTR 2A. An ISD shall not be required to file Annual return and cannot accept any invoices on which tax is to be discharged under reverse charge mechanism.

Important Terms

9. Following are the definition of the terms 'relevant period', 'recipient of credit' and 'turnover':

- 'Relevant period' shall be –
 - (i) If the recipients of credit have turnover in their States or Union territories in the financial year preceding the year during which credit is to be distributed, the said financial year ; or
 - (ii) If some of all recipients of the credit do not have any turnover in their States of Union

territories in the financial year preceding the year during which the credit is to be distributed, the last quarter for which details of such turnover of all the recipients are available, previous to the month during which credit is to be distributed.

- 'Recipient of credit' means the supplier of goods of services or both having the same Permanent Account Number as that of the Input Service Distributor.
- 'Turnover', in relation to any registered person engaged in the supply of taxable goods as well as goods not taxable under this Act, means the value of turnover, reduced by the amount of any duty or tax levied under entry 84 of List 1 of the Seventh Schedule to the Constitution and entries 51 and 54 of List II of the said Schedule.



KNOWLEDGE UPDATE

COMPANY LAW

Reconstitution of NCLT Bengaluru Bench

NCLT has reconstituted NCLT Bengaluru Bench consequent to order No.10/36/2016-NCLT dated 16th April, 2018 by appointing Shri Rajeswara Rao Vittanalla, as a Member (Judicial) and Dr. Ashok Kumar Mishra, as a Member (Technical).

Companies (Share Capital and Debentures) (Amendment) Rules, 2018

The Central Government vide GSR (E) dated 10th April, 2018, has amended the Companies (Share Capital and Debentures) Rules, 2014, by substituting sub-rule (3) of rule 5.

Amendments to Schedule 1 of the Companies Act, 2013

The Central Government, vide F.N 11/08/2012-CLV-Vol XVII dated 10th April, 2018, amended Schedule I of the Companies Act, 2013 as follows:

- In Table F, in paragraph II, Sub-paragraph (2), item (ii), has been substituted
- In sub-paragraph (79), after item (ii), Explanation has been inserted

Amendments to SO 529(E), dated 5th February, 2018

Central Government, vide Notification No. SO 1965(E) dated 2nd April, 2018, has amended the Notification dated the 5th February, 2018 by omitting words "for seven years" in the opening paragraph.

Constitution of Steering Committee on Corporate Social Responsibility (CSR)

Central Government, vide F. No. 12/03/2018-CSR dated 4th April, 2018, has constituted Steering Committee on CSR, under the Chairmanship of Shri. Manmohan Juneja, RD (WR), to review the functioning of CSR enforcement and to recommend a uniform approach for its enforcement.



Taxability of Legal Services under GST (Including Registration Provisions)

This article delves into the provisions relating to the taxability of legal services under the GST

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Meaning of 'Legal Services'

'Legal services' means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority- Notification No. 12- Central Tax(CT) (Rate) dated 28th June, 2017. Legal services can be any service which an 'advocate'¹ (including a 'senior advocate'²)/firm of advocates' provide during the course of practice. For example:

- Advice or representation even before any government authority (say Municipal Corporation in relation to land dispute).
- Monthly computations, fillings, etc in relation to labour law.

Exemptions and other provisions in respect of legal services are used only in the context of 'advocates'/'firm of advocates'. For example:

- A professional providing legal advice in relation to commercial laws though covered by definition of legal services but not considered under any reverse charge mechanism (RCM) provisions or exemption provisions.

1. "Advocate" has the same meaning as assigned to it in clause (a) of sub-section (1) of section 2 of the Advocates Act, 1961.

2. "Senior Advocate" has the same meaning as assigned to it in section 16 of the Advocates Act, 1961.

- Payroll consultants providing monthly payroll computations and fillings services (including PF, ESI, etc).

Taxability of Legal Services

It can be categorized under the following categories:

Services which are fully exempt - Following services are fully exempted by virtue of Notification No. 12- Central Tax (CT) (Rate)/9-Integrated Tax (IT) (Rate) dated 28th June, 2017:

- Legal services provided by individual advocate or partnership firm of advocates to –
 - ◆ Individual advocate or partnership firm of advocates³
 - ◆ Any person other than a business entity⁴ [For example: Legal advice provided to a retail consumer for filing consumer complaint, partition of joint family property]
 - ◆ A business entity with an 'aggregate turnover' up to 20 lakh (10 lakh in special category states⁵) in preceding financial year.

3. It looks like 'individual advocate' shall also cover 'senior advocate' since there is no separate clause dealing with a case where 'individual advocate'/'firm of advocates' is providing services to a senior advocate)

4. 'Business Entity' means any person carrying out any business.

5. Total 10 states i.e. 7 North east states and 3 other states i.e. Sikkim, Uttarakhand, Himachal Pradesh.

- Legal services provided by senior advocate to the following –
 - ◆ Any person other than a business entity⁶
 - ◆ A business entity with turnover up to 20 lakh (10 lakh in special category states) in preceding FY.

Services which are chargeable under RCM (i.e., liability to pay tax is on the recipient and not on the supplier) – Services provided by an individual advocate including a senior advocate or firm of advocates by way of legal services, directly or indirectly to a business entity located in the taxable territory- Notification No. 13- CT (Rate)/10- IT (Rate) dated 28th June 2017 (read with corrigendum dated 25th. September, 2017).

Services which are chargeable under normal charge (i.e., liability to pay tax is on the 'advocate'/'firm of advocates' themselves) – If we closely look at aforesaid provisions, services provided by an individual advocate (including senior advocate) or a firm of advocates to a business entity (having turnover of more than Rs.20/10 lakh) not located in taxable territory is neither under RCM nor under exemption. Following needs to be noted:

- This is inter-state service (as per section 7 of Integrated Goods and Services Tax (IGST) Act). This taxable service can qualify (not certainly) as 'export of service' subject to qualifying conditions. For example: X Advocate has established legal practice in India. He provides legal advice in establishing business in India to a business entity located in Japan. Now As per section 2(6) of the IGST Act, in order to qualify as export of services :
 - ◆ Supplier should be in India (X is in India)
 - ◆ Recipient should be outside India (business entity is in Japan)
 - ◆ Place of supply is outside India (as per section 13 of the IGST Act, it is determined to be Japan)

⁶ It looks this clause shall also cover 'individual advocate'/'firm of advocates' since there is no separate clause dealing with a case where 'senior advocate' is providing services to a 'individual advocate'/'firm of advocates'. For example: A 'senior advocate' rendering representation services to a 'firm of advocates' for their client);

- ◆ Payment is received in convertible foreign exchange (assuming forex is received)
- ◆ Supplier and recipient are not 'distinct persons' (assuming not 'distinct persons' as per Explanation 1 to section 8 of the IGST Act).
- *Registration in case of 'Export of Services'* – As per Notification No. 10/2017- IT dated 13th October, 2017, if turnover of a person engaged in inter-state services is up to Rs.20/10 lakh in a financial year, registration is not required. Therefore, if turnover (including turnover of export of services) is up to Rs.20/10 lakh, registration is not required. This exemption is majorly redundant due to below reasons –
 - ◆ This exemption has turnover limit.
 - ◆ This exemption will not enable 'exporter of services' to claim refund of taxes as only a registered person can claim refund (i.e. costly affair)- Section 16 of the IGST Act:
 - Registered supplier of services can supply services without paying taxes by submitting 'letter of undertaking (LUT)' and can claim refund for taxes paid on inputs/input services;
 - Registered supplier of services can supply services by paying taxes and can claim refund for taxes paid.

Requirement to Obtain Registration

As seen above, legal services when supplied to business entity located outside India mandatorily requires registration, subject to a single costly and redundant exception. Now let us examine registration requirement for legal services when supplied to business entity located only in India :

- A person engaged in supply of services having turnover exceeding Rs.20 lakh shall be mandatorily required to take registration [Section 22 of Central Goods and Services Tax Act, 2017 (CGST Act)]
- A person engaged exclusively in supplying services wholly exempt from tax is not required to obtain registration- Section 23(1) of the CGST Act.
- A person engaged in supplying inter-state services

is mandatorily required to obtain registration- Section 24 of the CGST Act. However, if turnover of a person engaged in inter-state services is up to Rs.20/10 lakh in a financial year, registration is not required- Notification No. 10- IT dated 13th October, 2017.

- A person engaged in supplying intra-state services where entire tax is payable under RCM is exempted from registration- Notification No. 5- CT dated 19th June, 2017.

On analysis, the following points worth mentioning:

- All the services of advocates/firm of advocates are exempt except when provided to a business entity having T/o exceeding Rs.20/10 lakh.
- Services provided to a business entity located in India having turnover exceeding Rs.20/10 lakh is under reverse charge.
- Notification No. 5- CT has been issued under the CGST Act only (i.e. intra-state services), however, it is applicable in respect of inter-state services as well by virtue of section 20 of the IGST Act.
- Sale of an old printer, furniture, etc., is not exempted. Thus, liability to register can arise from other supplies also.

Important examples dealing with registration requirement are as follows:

- Advocate in Delhi having turnover of Rs.50 lakh in respect of services provided to his clients (turnover>20 lakh of each client) located in Delhi/

Haryana/Uttar Pradesh is not required to obtain registration since all services are taxable under RCM. Refer Notification No. 13- CT (Rate)/10- IT (Rate) which states of RCM applicability and notification no. 5- CT read with section 20 which states where entire tax is payable under RCM, there is no requirement to obtain registration.

- Advocate in Chennai having legal services turnover of Rs.19 lakh and turnover of Rs.2 lakh in respect of sale of old printer shall be mandatorily required to take registration since turnover exceeds Rs.20 lakh. Section 22 shall apply in this case since sale of printer is not exempt/under RCM.

Summing Up

Registration is required only in the following cases (Registration is not required in every other case):

- If there is supply of any other goods or services (For example: sale of printer, furniture, etc., which is neither exempt nor under reverse charge and turnover exceeds Rs.20 lakh. This is very practical case and registration is accordingly mandatorily required to be taken.
- In case of export of services of any amount and refund is to be claimed.
- Where turnover exceeds Rs.20 lakh and it includes turnover for services rendered to a business entity located outside India (irrespective whether the same qualifies as exports).

Analysis of registration provisions by way of a matrix

Total Turnover (including legal services) (Amount Rs. in lakh in FY)	Nature		Provided to		Registration required (Yes(Y)/No(N)) and Reason
	Intra-State (Rs. in lakh)	Inter-State (Rs. in lakh)	Business entity T/o<20/10 lakh (Rs. in lakh)	Business entity T/o>20/10 lakh (Rs. in lakh)	
25	25	-	25	-	N wholly exempt (section 23 to apply)

25	25	-	-	25	N wholly under RCM (Notification No. 5 to apply)
21	-	21	-	21	N wholly under RCM (Notification No. 5 read with section 20 to apply)
22	20	2	22	-	N wholly exempt (Section 23 read with section 20 to apply)
30	12	18	-	30	N wholly under RCM (Notification No. 5 read with section 20 to apply)
28 + 2 (Sale of printer)	18	12	-	30	Y (Section 22 to apply. Rs.28 lakh under RCM and Rs.2 lakh under normal charge)
2	-	2	-	2 (Business entity located outside India)	N (But no refunds available) (Notification no. 10 to apply)
21	4	17	4	15 + 2 (Business entity located outside India)	Y (Section 22 to apply. Rs.4 lakh exempt, Rs.15 lakh under RCM, Rs.2 lakh under normal charge (can qualify as export))

Other Provisions

Following are other provisions which merit mention:

- **Cancellation of voluntary registration** – Application for cancellation of voluntary registration can be made in form GST REG-16. Earlier requirement of waiting period of one year from effective date of registration has been done away by notification No. 3- CT dated 23rd January, 2018.
- **Furnishing of return** – Once registered, all applicable returns/statements, i.e., GSTR-1, 2, 3, 3B, etc to be furnished.
- Delhi High Court judgment in *J K Mittal & Co. v. Union of India* [W.P.(C) 5709/2017 & CM No. 23814/2017], states that no coercive action can be taken against any advocate or firm of advocates till government clarify its stand in relation to taxability or issues relevant notifications exempting advocate/firm of advocates from obtaining registration.

■■■



GST-Provisions on Audit, Accounts Assessment and Demand

Goods and Service Tax is structured for efficient tax collection, reduction in corruption, easy inter-state movement of goods and a lot more. The CGST Act, 2017 provides for self-assessment to facilitate easy compliance and payment of taxes. It also deals with the provisions relating to notices, demand and recovery, when the taxes are unpaid, short paid and/or returns are not filed. In this background, the article focuses on the provisions related to Audit, Account Assessment and Demand.

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Introduction

The tax payer is himself required to self assess his tax liability, so any mis-appropriations in the return, government has put in a place a robust audit mechanism to ensure compliance of this by the taxpayer. This audit is required under following circumstance :

- Audit by cost accountants or chartered accountants if turnover exceed Rs.2 crore. [Rule 80 and Section 35(5)]
- Normal audit by relevant authorities. [Section 65]
- Special audit [Section 66]

Audit by Relevant Professionals if Turnover Exceeds Rs.2 crore

As per sub-section (5) of section 35 of the Act every registered person whose turnover during a financial year exceeds the prescribed limit [Rs 2 crore by rule 80(3) of CGST Rules 2017 (Rules)] shall get his accounts audited by a relevant professionals and shall submit a copy of the audited annual accounts, the reconciliation statement under sub-section (2) of section 44 of the Act and such other documents in such form and manner as may be prescribed.

Normal Audit by Relevant Authorities

As per sub-section (1) of section 65 of the Act, the Commissioner or any officer authorised by him, by way of a general or a specific order, may

undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed. The officers referred to in sub-section (1) may conduct audit at the place of business of the registered person or in their office. The registered person shall be informed by way of a notice not less than fifteen working days prior to the conduct of audit in such manner as may be prescribed. The audit under sub-section (1) shall be completed within a period of three months from the date of commencement of the audit. Provided that where the Commissioner is satisfied that audit in respect of such registered person cannot be completed within three months, he may, for the reasons to be recorded in writing, extend the period by a further period not exceeding six months. On conclusion of audit, the proper officer shall, within thirty days, inform the registered person, whose records are audited, about the findings, his rights and obligations and the reasons for such findings. Where the audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilized, the proper officer may initiate action under section 73 or section 74 of the Act.

Special Audit

As per sub-section (1) of section 66 of the Act, If at any stage of scrutiny, inquiry, investigation or any other proceedings before him, any officer not below the rank of Assistant Commissioner, having

regard to the nature and complexity of the case and the interest of revenue, is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits, he may, with the prior approval of the Commissioner, direct such registered person by a communication in writing to get his records including books of account examined and audited by a relevant professional as may be nominated by the Commissioner. The relevant professional so nominated shall, within the period of ninety days, submit a report of such audit duly signed and certified by him to the said Assistant Commissioner mentioning therein such other particulars as may be specified. The Assistant Commissioner may, on an application made to him in this behalf by the registered person or the relevant professional or for any material and sufficient reason, extend the said period by a further period of ninety days. The expenses of the examination and audit of records under sub-section (1), including the remuneration of such relevant professional, shall be determined and paid by the Commissioner and such determination shall be final. Where the special audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilized, the proper officer may initiate action under section 73 or section 74 of the Act.

Account and Records Maintain under GST

Every registered person is required to keep accounting books up to 72 months the due date of filing annual return for a particular year. For example, for the financial year 2017-18, accounting records must be kept up to December, 2024. Reason being 72 months from due date of filing the annual returns (31st December, 2018 in this example) will end on December 2024. Sections 35 and 36 specify the requirements of accounts and other records as well as retention of these documents. Section 35 of the Act, specifies the documents to be maintained by a registered person. Every registered person shall keep and maintain at his principal place of business a true and correct account of the following :

- ◆ Production or manufacture of goods
- ◆ Inward and outward supply of goods or services or both

- ◆ Stock of goods
- ◆ Input tax credit availed
- ◆ Output tax payable and paid; and any other document as may be prescribed

These records can be kept in electronic form. Further if tax payer makes supplies from different business place, then each business place should have its accounting records. Every owner or operator of warehouse or godown or any other place used for storage of goods and every transporter, irrespective of whether he is a registered person or not, shall maintain records of the consigner, consignee and other relevant details of the goods in such manner as may be prescribed. If accounting records as specified above are not maintained or where the registered person fails to account for the goods or services or both in accordance with the provisions of sub-section (1), the proper officer shall determine the amount of tax payable on the goods or services or both that are not accounted for, as if such goods or services or both had been supplied by such person and the provisions of section 73 or section 74, as the case may be, shall, mutatis mutandis, apply for determination of such tax.

Assessment

Assessment under GST means the determination of tax liability under GST. Assessment under GST has been divided into following five types :

Self assessment – Every registered taxable person shall assess the taxes payable by them on their own, and furnish a return for each tax period. This is called self-assessment.

Provisional assessment – A registered dealer can request the officer for provisional assessment if he is unable to determine the value of goods or rate of tax. The proper officer can allow the assessee to pay tax on a provisional basis at a rate or a value specified by him.

Scrutiny assessment – A GST officer can scrutinize the return to verify its correctness. The officer will ask for explanations on any discrepancies noticed in the returns.

Summary assessment – Summary assessment is done when the assessing officer comes across sufficient grounds to believe any delay in showing a

tax liability can harm the interest of the revenue. To protect the interest of the revenue, he can pass the summary assessment with the prior permission of the additional/joint commissioner.

Best judgment assessment – If a registered taxable person does not file his return even after getting a notice, the proper officer will assess the tax liability to the best of his judgment using the available relevant material. This assessment is done when a taxable person fails to obtain registration even though he is liable to do so. The officer will assess the tax liability of such persons to the best of his judgment. The taxable person will receive a show cause notice and an opportunity of being heard.

Demand Raised for Tax

Broadly speaking, the demand for tax can be raised by the GST officials for short payment or non-payment of tax in two different cases:

- When there is fraud or willful misstatement or suppression of facts
- When there is no fraud or willful misstatement or suppression of facts

When there is no fraud – Section 73 of the Act deals with the cases where taxes are short paid or unpaid, but without invocation of fraud by the assessee. Let's have a look at the time frame specified for the adjudication of such cases. Following are the time limits for adjudication of cases :

- In case the assessee has short paid or not paid at all, or input tax credit has been wrongly availed or used by him, the adjudication of the case should be done within 3 years from the date of filing of annual return for the relevant FY.
- If the assessee received an erroneous refund, the case must be adjudicated within 3 years from the date on which such refund was credited to the assessee's account.
- The law also ensures that the concerned assessee gets notified well in advance about the demand raised by the tax authorities. As per the law, the taxpayer shall be issued a notice well in advance if the tax authorities identify a default in tax payment. The notice must be issued at least

3 months before the deadline for adjudication of case or issue of order.

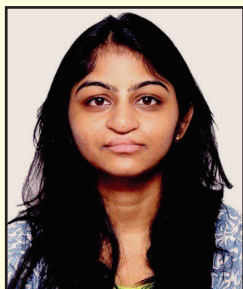
When there is fraud – Section 74 deals with cases where there is non-payment or short payment of tax by the assessee and the authorities find willful suppression of facts or misstatement or fraud to be involved. Let's have a look at the time frame specified for the adjudication of such cases. Following are the time limits for adjudication of cases :

- In case the assessee has short paid or not paid at all, or input tax credit has been wrongly availed or used by him, the adjudication of the case should be done within 5 years from the date of filing of annual return for the relevant FY.
- If the assessee received an erroneous refund, the case must be adjudicated within 5 years from the date on which such refund was credited to the assessee's account.
- The law also ensures that the concerned assessee gets notified well in advance about the demand raised by the tax authorities. As per the law, the taxpayer shall be issued a notice well in advance if the tax authorities identify a default in tax payment. The notice must be issued at least 3 months before the deadline for adjudication of case or issue of order.

Note:

- During the trial of a normal case, if it is found that fraud is involved, then the trial can be extended up to 5 years (under section 74) from 3 years (under section 73).
- The provision to extend the period to 5 years from 3 years can be invoked only when there is a willful misrepresentation/suppression with the intention to evade tax as per one of the Judgments of Honorable Supreme Court.
- If there is no suppression of the facts or all the facts have been disclosed to the department then the time limit for adjudication can't be extended.
- Where the service of notice or issuance of the order is stayed by an order of Court or Appellate Tribunal, the period of stay is excluded in computing the period specified based on the case in the Act.





E-Way Bill-Rules & Procedures

This article aims at discussing the concept of E-way bill, along with brief explanation to the related rules and procedures thereof.

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Introduction

1. An electronic way bill (E-Way Bill) is a kind of permit for transport of goods exceeding Rs. 50,000 in value across state borders. From traditional physical system of way bill, e-way bill is now a reality. It will bring transparency, uniformity, and simplification in movement of goods. It provides details of items being transported and where they are headed. Monitoring of movement of goods both intra state and inter-state will be possible without much human interface. It is generated using GST portal by registered persons or transporters moving the goods. The GSTN and the National Informatics Centre are handling rollout of GST e-way bill and the system is prepared to handle 75 lakh e-way bills daily and is generating 60,000 e-way bill per hour.

1.1 The trial for e-way bill began on 16th January, 2018 and was formally implemented on 1st April, 2018. E-way bill for intra-state transport, which involve movement of goods have started on 15th April, 2018 in Andhra Pradesh, Gujarat, Kerala, Telangana, and UP*. With the rollout of e-way bill in these States, it is expected that trade and industry will be further facilitated in so far as the transport of goods is concerned, thereby paving the way for a nation-wide single e-way bill system.

1.2 The e-way bill mechanism is an integral part of goods and services tax regime that's aimed at plugging evasion, being one of the reasons cited by government for fall in GST revenue in past few months from a high of Rs. 95132 crore in October before declining to Rs. 85931 crore in December 2017. It has since recovered to Rs. 89264 in February.

1.3 It is expected that post implementation, tax avoidance will become extremely difficult as the government will have details of all goods above the value of Rs. 50,000 and can spot mismatch if either the supplier or purchaser does not file tax returns. Till 9th April, 2018 more than 63 lakh e-way bills have been generated*. With successful rollout of e-way bill, an electronic documentation of movement of goods, a key anti-evasion measure under goods and services tax is now in place. This will help in improving tax revenues under GST.

Clarifications with Respect to Varied Situations in E-way bill System

2. Situation 1 : Consider a situation where a consignor is required to move goods from City X to City Z. He appoints Transporter A for movement of his goods. Transporter A moves the goods from City X to City Y. For completing the movement of goods i.e., from City Y to City Z, Transporter A now hands over the goods to Transporter B. Thereafter, the goods are moved to the destination i.e. from City Y to City Z by Transporter B. How would the e-way bill be generated in such situations?

Clarification : It is clarified that in such a scenario, only one e-way bill would be required. Part A of Form GST EWB-01 can be filled by the consignor and then the e-way bill will be assigned by consignor to Transporter A. Transporter A will fill the vehicle details, etc., in Part B of Form GST EWB-01 and will move the goods from City X to City Y. On reaching City Y, Transporter A will assign the said e-way bill to the Transporter B. Thereafter, Transporter B will be able to update the details of Part B of Form GST EWB-01. He will fill the details of his vehicle and move goods from City Y to City Z.

*Press Release dated 10th April 2018, issued by CBEC

2.1 Situation 2 : Consider a situation where a consignor hands over his goods for transportation on Friday to transporter. But, the assigned transporter starts the movement of goods on Monday. How would the validity of e-way bill be calculated in such situations?

Clarification : It is clarified that the validity period of e-way bill starts only after the details in Part B of Form GST EWB- 01 are updated by the transporter for the first time. In the given situation, consignor can fill the details in Part A of Form GST EWB-01 on Friday and handover his goods to the transporter. When the transporter is ready to move the goods, he can fill the Part B of Form GST EWB-01, i.e., the assigned transporter can fill the details in Part B of Form GST EWB-01 on Monday and the validity period of e-way bill will start from Monday.

Notified Rules and Forms

3. Section 68 of CGST Act 2017 and rule 138 of CGST Rules 2017 lays down the requirement and mechanism of e-way bills as follows:

Generation of E-way Bills

3.1 Every registered person who causes movement of goods of consignment value exceeding Rs. 50,000 in relation to a supply, or for reasons other than supply, or due to inward supply from an unregistered person, shall, before commencement of such movement furnish information prescribed in Part A of Form GST EWB-01 on the common portal.

3.1.1 Based on an authorisation from a registered person, the transporter may also furnish information in Part A of Form GST EWB-01. Similarly, an e-commerce operator or a courier agency can provide information in Part A of Form GST EWB-01 for goods supplied through them, based on an authorisation from the consignor.

3.1.2 A unique number will be generated in the above instances on the common portal for each e-way bill.

3.1.3 When goods are sent by a principal located in one State or Union Territory (UT) to a job worker located in any other State or UT, e-way bill shall be generated by either the principal or the job worker, if registered, irrespective of the value of consignment.

3.1.4 Transport of “handicrafts” from one State or UT

to another State or UT by a person who is exempted from obtaining registration will require generation of e-way bill by the said person irrespective of value of consignment.

3.1.5 When goods are transported by railways or by air or vessel, the e-way bill shall be generated by registered person (either supplier or recipient) and shall, either before or after the commencement of movement, furnish information in Part B of Form GST EWB 01 on the common portal.

3.1.6 For goods transported by railways, railway is barred from delivering goods unless e-way bill is produced at the time of delivery.

3.1.7 For movement of goods caused by an unregistered person either in his own or a hired conveyance, or through a transporter, the said person or transporter may, at their option, generate e-way bill in Form GST EWB-01. In this instance, the movement of goods shall be deemed to be caused by a recipient who is registered, if his details are known at the time of commencement of movement of goods.

3.1.8 When goods are transported for a distance of up to fifty kilometers within the State or UT from the place of business of consignor to the place of business of transporter for further transportation, furnishing of details of conveyance in Part B of Form GST EWB-01 is not required.

3.1.9 When e-way bill is generated on common portal, a unique e-way bill number (EBN) shall be available to the supplier, the recipient and the transporter on common portal.

3.1.10 When the consignor or consignee has not generated the e-way bill in Form GST EWB-01 and the aggregate of consignment value of goods carried in the conveyance is more than INR 50,000 the transporter shall, in respect of inter-State supply, generate e-way bill in Form GST EWB-01 on the basis of invoice or bill of supply or delivery challan and may also generate a consolidated e-way bill in Form GST EWB-02 on the common portal prior to movement of goods.

3.1.11 If an e-way bill is generated, but goods are not transported within 24 hours of generation, then the said e-way bill can be cancelled. However, it cannot be cancelled if it has been verified in transit.

3.1.12 The unique number generated for e-way bill shall be valid for a period of 15 days for updation of Part B of Form GST EWB-01.

3.1.13 The details of e-way bill generated would be made available to the supplier, if registered, when the information in Part A of Form GST EWB-01 is furnished by recipient or transporter. Conversely, the details of e-way bill generated shall be furnished to the recipient, if the information in Part A of Form GST EWB-01 is provided by the supplier or the transporter.

3.1.14 The person who receives the communication with respect to the generation of e-way bill has to accept or reject the same within 72 hours of the details being made available on common portal or the time of delivery of goods, whichever being earlier. Otherwise, it shall be deemed that he has accepted the details.

3.1.15 The generation of e-way bill has been exempted in certain instances as detailed in Rules.

3.1.16 For the purpose of bill generation, value of exempted goods have been excluded from the value of consignment.

3.1.17 The facility of generation, cancellation, updation and assignment of e-way bills shall be made available through SMS to the supplier, recipient and the transporter.

3.1.18 If goods cannot be transported within the validity period of e-way bill, the transporter may extend the validity period in case of trans-shipment or in the case of circumstances of an exceptional nature.

3.1.19 Validity of one day will expire at midnight of the day immediately following the date of generation of e-way bill.

3.1.20 Movement of goods on account of "Bill-to-Ship-to" supply will be handled through the capturing of place of dispatch in PART-A of e-way bill.

3.1.21 An extra validity period has been provided for "Over Dimensional Cargo."

Rules Governing Conveyance

3.2 The person in charge of conveyance needs to carry invoice or bill of supply or delivery challan and a copy of e-way bill in physical form or the e-way bill number in electronic form or mapped to a Radio Frequency Identification Device (RFID) embedded to the conveyance.

3.2.1 When a registered person uploads tax invoice in Form GST INV-1 and obtains an Invoice Reference Number (IRN) from common portal and produces the same for verification by proper officer in lieu of tax invoice, the said IRN shall be valid for a period of 30 days from the date of uploading.

3.2.2 Upon a registered person obtaining an IRN, information in Part A of Form GST EWB-01 shall be auto-populated by the common portal.

3.2.3 The Commissioner may notify the class of transporters who would necessarily need to obtain a unique RFID embedded onto the conveyance. The e-way bill may be mapped to RFID prior to movement of goods.

3.2.4 The Commissioner or an officer empowered by him may authorise a proper officer to intercept any conveyance to verify the e-way bill in physical or electronic form for all inter-State and intra-State movement of goods.

3.2.5 The Commissioner shall get RFID readers installed at places where the verification of movement of goods is required to be carried out and verification shall be done through such device readers when e-way bill is mapped to such devices.

Inspection and Verification Process

4.1 When physical verification of goods being transported on any conveyance has been done during transit at one place within the State or UT, or in any other State or UT, no further physical verification of the said conveyance shall be carried out again in the State or UT, unless a specific information relating to evasion of tax is available.

4.1.2 The transporter can upload information of detention of vehicle (in the event of such detention exceeding a duration of 30 minutes).

4.1.3 Every inspection of goods in transit needs to be recorded online by proper officer via summary report (within 24 hours) and final report (within 3 days).

4.1.4 Officials should not issue an order for confiscation of goods or conveyance, or for imposition of penalty, without giving the person in charge of the conveyance an opportunity of being heard.

4.1.5 The e-way bill number by the person in charge

of conveyance in the form of a printout, SMS or on an invoice will be valid, and in case the proposed tax and penalty are not paid within seven days from the date of issue of order of detention, action under section 130 of CGST Act shall be initiated by serving a notice, proposing confiscation of goods and conveyance and imposition of penalty. A release order shall be issued by designated officer when there are no discrepancies. However, where officer is of the view that goods and conveyance need to be detained, an order of detention and notice, specifying tax and penalty payable, shall be served on the person in charge of conveyance. Section 129 of CGST Act provides for a penalty equal to 100% of tax payable on goods detained. In case goods are otherwise exempted from tax, fine shall be lower of 2% of the value of goods or Rs. 25,000. The penalty amount rises in case owner of goods does not come forward for payment of tax and penalty.

4.1.6 Also, where the proper officer is of the opinion that such movement of goods is being made to evade payment of tax, he may directly invoke section 130 of the CGST Act by issuing a notice proposing to confiscate the goods and conveyance. Once the confiscation order is passed, title of such goods/conveyance shall stand transferred to the Central Government. Such goods/conveyance may, however, be released within three months after making payment of demands imposed, but where the payment of dues is not made within the time specified in such order, the officer can also auction the goods/conveyance and remit sale proceeds to the central government.

Implications

5. It is unclear whether common portal is free of technical glitches and further, the trade and industry will require additional time to assimilate and synchronise new e-way bill forms with their Accounting ERP softwares, ASP and GSP solutions. Empowering Commissioners to notify proper officers to verify E-way bills physically is tantamount to bringing of physical check posts through the backdoor and is a retrograde step. The revised Rules also do not clarify on complex situations such as lease/sub-lease transactions etc. The present system of filing Forms GSTR-3B and GSTR-1 has been extended for another three months until June 2018. The tax exemption on procurements for exporters will continue for an

additional period of six months until 1st October, 2018. It is a positive development considering the refund process issues that resulted in blockage of working capital. The liability to pay tax on a reverse charge basis on procurements from unregistered dealers has been deferred until 30th June, 2018. The provisions for deduction and collection of tax at source (TDS and TCS) shall remain suspended until 30th June, 2018 and will relieve tax compliance burden to the industry. The exemption with respect to small intra-state consignments and the exclusion of value of exempt supplies for e-way bill compliance is a positive development as it may facilitate hassle-free movement of goods.

Conclusion

6. The Bill is a paradigm shift for movement of goods. Its effective implementation can provide solution to various current problems faced by business houses, transporters and Government. However, with its introduction from, the contentious debate on how this measure can be a serious impediment for goods movement, supply chain efficiencies, harassment and rent seeking has begun. Industry is concerned whether this would again lead to stoppage of trucks, impeding movements and delaying delivery timelines which had started to improve with no check posts in GST. Also the concern is how smoothly will this be implemented and its efficacy on the ground considering the fact that logistics sector and specially truckers are not an organised sector. With industry already grappling and coming to terms with GST compliance this e-way bill process is believed will be another arduous process to contend with in the initial months.

6.1 The concern is that organised sectors will ensure compliance but the evaders will still find ways to skirt this process which will lead to situations of collusion. Even in the legacy regime e-way bills and other transportation documentations were in use for trail of goods movements but evasion still happened along with rent seeking opportunities, that spectre may return to haunt the industry. It is proposed that trucks caught without e-way bills can be levied a penalty of upto Rs. 10,000 besides which the cargo can be inspected to ascertain tax evasion. A penalty to the tune of 100% of tax being evaded can be levied along with the tax itself. Both the vehicle and goods can be impounded as well.





THE INSTITUTE OF
Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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PD, PP&S/BM/14

May 02, 2018

Dear Student,

Sub: GST Account Assistant Course

Hon'ble Prime Minister, Shri Narendra Modi while inaugurating Golden Jubilee Year Celebrations, addressed the CS fraternity and conveyed the need of the hour for the Company Secretaries to play an active role in producing a new business culture. Shri Narendra Modi shared that nearly 19 lakh new citizens have come under the scope of indirect taxes following the implementation of GST. He emphasized that a small trader or a big trader, everyone should adopt the honest tax system inbuilt in the GST and it was also the duty of, Company Secretaries to encourage the business community in this regard. The Prime Minister reposed confidence that ICSI would shoulder the responsibility to train one lakh youth about minutest nuances related to GST to build their capacities and hone up their skills so that they can help small businesses and traders in their area linking them with GSTN, in filing returns after receiving a short term training and earning a their livelihood in return.

The Institute has taken up this opportunity endowed by the Hon'ble Prime Minister. Consequently, the Institute joined hands with National Skill Development Corporation (NSDC) to organize a Training Program on GST for the students. The Institute is inviting students for taking up this Training Programme being organized all across the nation through the Skill Development Centres empanelled with NSDC.

GST Accounts Assistant

The Course trains candidates for the job of a "Goods & Services Tax (GST) Accounts Assistant", in the "BFSI" Sector/Industry and aims at building the key competencies amongst the learners about GST. With access to around 500 Training Centres, the course will be accessible across India and will be 'Free of Cost'. The course will enable the students to help the small/big size business entities, traders and others in understanding GST and help them in filing there taxes and maintaining the proper systems/data for the same.

Deliverables:

- Compute Tax Liabilities namely GST, Filing of returns and maintaining records of the same for audit purpose
- Fill the form and register under GST
- Make payment electronically of such amount of taxliability
- Fill-up the tax return form in the prescribed format with relevant transaction details
- File periodic GST Returns independently

Interested students may confirm their willingness for the GST Course by filling up the form at: https://www.icsi.edu/GST_AAC.aspx.

For more information please speak to the following helpline number: 88000-55555 (NSDC) (Toll-free)

We look forward to your enrollment to enhance your skills and abilities, hence get benefitted from the same.

Best Regards,

CS Makarand Lele,

President

PS: All candidates successfully completing the training should send their details to the Institute for hosting the same on the ICSI website and dissemination amongst the prospective employers and other stakeholders.

KNOWLEDGE UPDATE

INSOLVENCY AND BANKRUPTCY LAW

Insolvency and Bankruptcy Board of India signs a Memorandum of Understanding with the Indian Institute of Corporate Affairs

Vide Press Release No. IBBI/PR/2018/17 dated 10th April, 2018, IBBI has signed a Memorandum of Understanding (MoU) with the Indian Institute of Corporate Affairs (IICA) to undertake research and publication for strengthening the insolvency and bankruptcy framework and to collaborate for research and publication, advancement of knowledge, capacity building, awareness and advocacy initiatives on the basis of reciprocity, best effort, mutual benefit and frequent interactions.

Compliance with the Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Amendment) Regulations, 2018

IBBI, vide its Circular No. IPE/008/2018 dated 5th April, 2018, has clarified that in terms of amended sub-regulation (1) of regulation 12 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, the recognition granted to insolvency professional entities in subject to that it shall at all times continue to satisfy the requirements under regulation 12.

CASE LAW

Adjudicating Authority cannot hold that approval of resolution with less than 75 per cent voting of committee of creditor's amounts to approval of resolution. It has no jurisdiction in the matter till there is a resolution plan approved by the committee with 75 per cent.

Sub-section (8) of section 21 mandates that all decisions of the committee of creditors shall be taken by a vote of not less than 75 per cent of voting shares of the financial creditors. Neither any proviso nor any exception has been carved out to this mandate. Therefore, resolution by the committee of creditors has to be approved with 75 per cent voting shares by the committee of creditors. The Adjudicating Authority, therefore, cannot put its neck into to say that approval of committee of creditors

with less than 75 per cent amounts to approval of resolution by committee of creditors. In fact, to invoke the jurisdiction of Adjudicating Authority, there must be first a resolution plan approved by the committee with 75 per cent - *ICICI Bank Ltd. v. Innoventive Industries Ltd.*, CP No. 01/I & BP/2016; MA Nos. 529, 530, 557 & 590 of 2017 dated 23rd November 2017

CASE LAW

COMPANIES ACT

Section 108 does not apply to transfer of shares pursuant to scheme of amalgamation.

The transfer of shares in a third company pursuant to an order of sanctioning a scheme of amalgamation does not require compliance with the provisions of sub-section (1) of section 108 as the transfer of shares occurs automatically by operation of law - *Metro Infrastructure Development Ltd. v. Bengal Tools Ltd.*, ACO 82 of 2015 & APO No.229 of 2015 dated 27th July, 2016

Sub-section (2) of section 173, which gives right to a director to participate in Board meetings through video conferencing, is mandatory and its mandate read with rule 3 cannot be avoided by companies.

Sub-section (2) of section 3, which gives right to a director to participate in Board meetings through video conferencing, is mandatory and companies cannot be permitted to make any deviation. Rule 3 of the Meetings of Board and its Powers Rules mandates company to comply with the procedure prescribed for conducting Board meetings through video conferencing. The chairperson and company secretary have to take due and reasonable care as specified in sub-rule (2) of rule 3 and clause (d) of sub-rule (4) of that rule puts responsibility on the director participating also. The chairperson has to ensure compliance with clause (e) of sub-rule (2) and the director has to satisfy the chairperson that clause (d) of sub-rule (4) has been complied with - *Achintya Kumar Barua alias Manju Baruah v. Ranjit Barthkur*, CA (AT) No. 17 of 2018 dated 8th February 2018

KNOWLEDGE UPDATE

SEBI LAW

Amendment to the Securities and Exchange Board of India (STP Centralised Hub and STP Service Providers) Guidelines, 2004

SEBI, vide its Circular No. SEBI/HO/MIRSD/DOSR1/CIR/P/2018/0000000072 dated 17th April, 2018, substituted sub-clause (2) of the clause 3 which regulates the services and infrastructure set-up in respect of straight through processing

Guidelines for Issuance of Debt Securities by Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (INVITS)

SEBI, vide its circular no. SEBI/HO/DDHS/DDHS/CIR/P/2018/71 dated 13th April, 2018, has revised guidelines for issuance of debt securities by Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (INVITS)

Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) (Amendment) Regulations, 2018

SEBI, vide Notification No. LAD-NRO/GN/2018/04 dated 2nd April, 2018, has amended regulations 2(1), 29(1) and 44C and inserted regulation 44D in the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012. These amendments shall come into force on October 1, 2018.

Monitoring of Foreign Investment Limits in Listed Indian Companies

SEBI, vide Circular No. IMD/FPIC/CIR/P/2018/61 dated 5th April, 2018, has formulated new system for monitoring of foreign investment limits in listed Indian companies which shall be made operational on 1st May, 2018. The existing mechanism for monitoring the foreign investment limits shall be done away with once the new system is operationalized. RBI shall issue the necessary guidelines in this regard.

Know your Client Requirements for Foreign Portfolio Investors (FPIS)

SEBI, vide Circular No. CIR/IMD/FPIC/CIR/P/2018/64 dated 10th April, 2018, has amended Know Your Client (KYC) requirements of eligible foreign investors classified as Category I, II and III investing under Portfolio Investment Scheme (PIS) route

Clubbing of Investment Limits of Foreign Government/Foreign Government Related Entities

SEBI, vide Circular No. SEBI/HO/IMD/FPIC/CIR/P/2018/66 dated 10th April, 2018, has issued following clarification on clubbing of investment limits to be applied to Government and its related entities.

Securities and Exchange Board of India (Foreign Portfolio Investors) (Amendment) Regulations, 2018

SEBI, vide Notification No. SEBI/LAD-NRO/GN/2018/05 dated 5th April, 2018, has amended regulations 4, 5, 23, 32 of the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014.



If undelivered, please return to:
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128, Municipal Market, Super Bazar Compound,
Connaught Place, New Delhi-110001.