

**CRITICAL ISSUES
IN
TAX AUDIT
COMPANIES (AMENDMENT) ACT 2017**



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Shared at

North Campus Study Circle of NIRC of ICAI

16th August 2018

AGENDA

- ✘ **Changes in Tax Audit Report**
- ✘ **Critical issues in Companies (Amendment) Act 2017**



LEGISLATION FOR AY 2017-18

S. 44AB

- Business – exceeds Rs. 1 Crore
- Profession – exceeds Rs. 50 L
- Business u/s 44AE /44BB /44BBB; income < deemed profits;
- Profession u/s 44ADA; deemed profit < 50% & TI >ANCT
- Business u/s 44AD (4)

Rule 6G

- Prescribing the Forms for Report u/s 44AB

Form 3CA

- Report in case of a person who is required to get his A/cs audited under any law

Form 3CB

- Report in any other case

Form 3CD

- Particulars as required u/F 3CA or 3CB

S. 271B

- Penalty $\frac{1}{2}\%$ maximum Rs. 1.50 L

**Form 3CD Latest
Changes in Tax
Audit Report**

AMENDMENTS W.E.F 20.8.2018

- × 7 items amended**
- × 1 item replaced**
- × 10 new items**

20.8.2018 - AMENDMENTS

- × **S. No. 4, 19, 24, 26 & 31(c), (d) & (e)**
- × **4 – GST added**
- × **19 – Amounts deductible – s. 32AD added**
- × **24 – Amounts deemed to be profits u/s 32AC, etc.. 32AD added**
- × **26 – 43B – clause (g) added – railway**

S. NO. 31 (C)- S. 269 SS/T – AMENDED W.E.F. 19.7.17

- ✘ (c) - Particulars of each repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T made during the previous year
 - + New (iv) - whether the repayment was made by cheque or bank draft or use of electronic clearing system through a bank account;
 - + New (v) - in case the repayment was made by cheque or bank draft, whether the same was **taken or accepted repaid** by an account payee cheque or an account payee bank draft.

S. NO. 31(D) - S. 269 SS/T – AMENDED W.E.F. 19.7.17

- ✘ **New (d) - Particulars of repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T received otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account during the previous year**
 - + **name, address and PAN (if available with the assessee) of the payer;**
 - + **amount of **repayment of** loan or deposit or any specified advance received otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account during the previous year.**

S. NO. 31(E) - S. 269 SS/T – AMENDED W.E.F. 19.7.17

- ✘ **New (e) -Particulars of repayment of loan/deposit or any specified advance in an amt. exceeding limit specified in s. 269T received by cheque / bank draft which is not an account payee cheque / bank draft during PY**
 - + **name, address & PAN (if available with assessee) of payer;**
 - + **amount of **repayment of** loan or deposit or any specified advance received by a cheque or a bank draft which is not an a/c payee cheque / bank draft during the previous year**

34 (B) - SUSBTITUTED

- × 34 (b) – If TDS / TCS Statement **not furnished within prescribed time**, furnish:
- × **New 34(b)** - Whether the assessee is required to furnish the statement of TDS/TCS. If yes, please furnish the details:
 - + TAN
 - + Type of Form
 - + Due date of furnishing
 - + Date of furnishing, if furnished
 - + Whether the TDS / TCS Statement contains information about all transactions which are required to be reported. **If not, please furnish list of details/transactions which are not reported.** – Transporters??? – yes / no?? – Could be genuine difference of opinion

29A - INSERTED

- ✘ **29A (a) - Whether any amount is to be included as income chargeable under the head 'income from other sources' as referred to S. 56(2)(ix) ? [advance forfeited] (Yes/No)**
- ✘ **29A (b) - If yes, please furnish the following details:**
 - + **(i) Nature of income**
 - + **(ii) Amount thereof**

29A - INSERTED

- ✘ M/s XYZ receives Rs. 25 Lakhs as advance against property in AY 2015-16 from Mr. B
- ✘ As per agreement as the buyer did not comply.. It send forfeiture notice to Mr. B in AY 2018-19 and forfeits the amount but does not entry in books.
- ✘ Mr. B confirms that amount is receivable
- ✘ M/s XYZ writes off in AY 2020-21. When should auditor report?

29B - INSERTED

- ✘ **29B (a) - Whether any amount is to be included as income chargeable under the head 'income from other sources' as referred to in S. 56(2)(x)? (Yes/No)**
- ✘ **29B (b) - If yes, please furnish the following details:**
 - + **(i) Nature of income**
 - + **(ii) Amount thereof**
- ✘ **How to report on controversial items...
Leasehold rights – TDR?**

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S. 56(2) (X) DEEMED GIFTS



DEEMED GIFTS

- × **S. 56(2)(x) w.e.f. 1st April 2017**
- × **Earlier**
 - + Individual & HUF covered for all assets; and
 - + Firms and Companies for shares
- × **Now ANY PERSON covered for:**
 - + Money
 - + Immovable Property
 - + Property other than Immovable Property

MONEY

- ✘ **Receives any sum of money**
- ✘ **Without consideration**
- ✘ **Aggregate value of which exceeds Rs. 50000/-**
- ✘ **Income - whole of the aggregate value of such sum**
- ✘ **Exceptions – relatives, etc.. discussed later**

IMMOVABLE PROPERTY S. 56(2)(X)

- ✘ **Covers land, building or both**
- ✘ **Receives without consideration - stamp duty value exceeds Rs. 50000/-**
- ✘ **Receives through inadequate consideration – consideration less than stamp duty value – difference exceeds Rs. 50000/-**
- ✘ **Exceptions – relatives, etc.. Discussed later**
- ✘ **Where date of agreement & date of registration are not same, value on date of agreement if some payment made by a/c payee cheque /bank draft / ECS on or before date of agreement**

IMMOVABLE PROPERTY

- ✘ If value disputed by assessee u/s 50C(2) , AO may refer to Valuation Officer
- ✘ Is leasehold land covered?
 - + Leasehold rights in a building do not attract provisions of S. 50C - *DCIT v Tejinder Singh (2012) (50 SOT 391) (Kol)*
 - + Leasehold rights in plot is not 'land or building or both' - *Atul G. Puranik v. ITO (132 ITD 499)(Mum)*.
 - + S. 50C applies to Transfer of Development Rights - *Chiranjeev Lal Khanna v. ITO (132 ITD 474)(Mum)*
 - + Not applicable to TDR – *ACIT vs. Munsons Textiles [TS-6710-2012(Mum)-0]* ; *ACIT vs. Shrikishan Dass [TS-6757-2013(Del)-0]*

IMMOVABLE PROPERTY

- ✘ Mr. A (not a relative of Mr. B) gifts immovable property whose stamp duty value is Rs. 15 Lakhs to Mr. B.
 - ✘ Actual cost in hands of Mr. A was Rs. 18 Lakhs.
 - ✘ What would be the cost of acquisition in hands of Mr. B?
 - + S. 49(1) – cost to previous owner i.e. Rs. 18 L
 - + S. 49(4) – If subject to s. 56(2), stamp duty value i.e. Rs. 15 L
- + Rs. 15 L

OTHER THAN IMMOVABLE PROPERTY

- ✘ **Property – Expl. to 56(2)(vii) Capital Asset namely:**
 - + **Imm. Property being land or building or both**
 - + **Shares and securities**
 - + **Jewellery**
 - + **Archaeological collections**
 - + **Drawings**
 - + **Paintings**
 - + **Sculptures**
 - + **Any work of art**
 - + **Bullion**

EXCEPTIONS

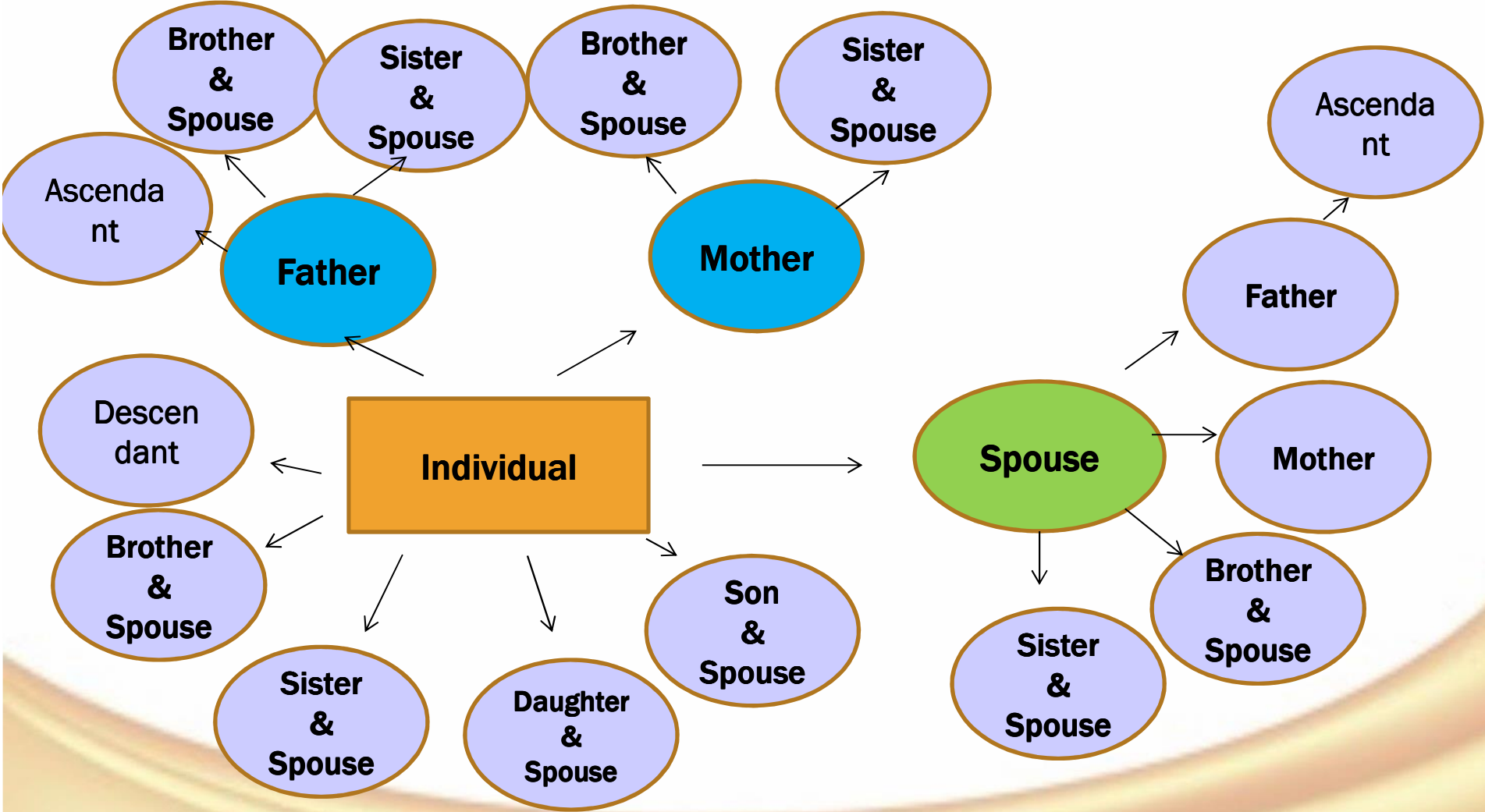
× Relative

+ In case of an individual:

- a) Spouse;
- b) Brother or sister;
- c) Brother or sister of the spouse;
- d) Brother or sister of either of the parents;
- e) Any lineal ascendant or descendant;
- f) Any lineal ascendant or descendant of the spouse;
- g) Spouse of person referred to in (b) to (f)

+ In case of a HUF, any member thereof

RELATIVES



EXCEPTIONS

- ✘ On the occasion of the marriage of the individual**
- ✘ Under a will or by way of inheritance**
- ✘ In contemplation of death of the payer or donor, as the case may be**
- ✘ From any Local Authority as defined in the Explanation to section 10(20)**
- ✘ From any Fund or Foundation or University or other Educational Institution or Hospital or other Medical Institution or any Trust or Institution referred to in section 10(23C)**

EXCEPTIONS

- ✘ From or by any Trust or Institution registered u/s 12A /12AA
- ✘ By any Fund or Trust or Institution or any university or other educational institution or any hospital or other medical institution referred in
 - + S. 10(23C) (iv) – Importance in India / states
 - + S. 10(23C) (v) – Approved religious or charitable trust
 - + S. 10(23C) (vi) – Approved university or educational institute
 - + S. 10(23C) (via) – Approved hospitals

EXCEPTIONS

- ✘ **By way of transaction not regarded as transfer:**
 - + **S. 47 (i) – Total / partial partition of HUF**
 - + **S. 47 (vi) – Amalgamation if amalgamated co. Indian**
 - + **S. 47 (via) – Amalgamation of two foreign companies asset being shares subject to certain conditions**
 - + **S. 47 (viaa) – Amalgamation of banks sanctioned by CG**
 - + **S. 47 (vib) – Demerger if resulting co. in Indian Co**
 - + **S. 47 (vic) – Demerger of foreign company asset being shares subject to certain conditions**

EXCEPTIONS

- ✘ **By way of transaction not regarded as transfer:**
 - + **S. 47 (vica) - business reorganisation, of a capital asset by the predecessor co-operative bank to the successor co-operative bank**
 - + **S. 47 (vicb) - business reorganisation, of a capital asset being shares by predecessor co-operative bank to successor co-operative bank**
 - + **S. 47 (vid) - transfer or issue of shares by the resulting company, in a scheme of demerger to the shareholders of the demerged company**
 - + **S. 47 (vii) - trf by a shareholder, in scheme of amalgamation, of capital asset being share or in amalgamating co. subject to certain conditions**

EXCEPTIONS

- ✘ **From an individual by a trust created or established solely for the benefit of relative of the individual**



× Mr. A gifts immovable property whose stamp duty value is Rs. 10 Lakhs to Mr. B (not a relative). Is there any tax on Mr. A or Mr. B?

× On B

× Mr. X gifts immovable property whose stamp duty value is Rs. 15 Lakhs to Ms. Y (not a relative) on the occasion of her marriage. Is there any tax on Mr. X or Ms. Y?

× No



- ✘ Partner at time of dissolution withdraws immovable property whose book value is 25 Lakhs but stamp duty value is 50 Lakhs. Taxation in hands of firm as well as partner?
 - ✘ Yes, in both hands Rs. 25 L each
- ✘ Few people come together to build a community centre for general public benefit and collect Rs. 5 Lakhs to build it?
 - ✘ Yes
- ✘ Mr. A receives Car Mercedes Benz value Rs. 50 Lakhs as gift from Mr B?
 - ✘ No



✘ **An unregistered religious Trust receives Rs. 5 Lakhs as corpus donation for building of temple? Is it taxable u/s 56(2)(x)?**

✘ **Yes**

✘ **A company dealing in shares receives shares below FMV?**

✘ **No**

✘ **M/s. ABC gives interest free unsecured loan of Rs. 10 Lacs to M/s. XYZ? Is it taxable u/s 56(2)(x)?**

✘ **No**

30A - INSERTED

- ✘ **30A (a) - Whether primary adjustment to TP, u/s. 92CE(1), has been made during PY? (Yes/No)**
- ✘ **30A (b) - If yes, please furnish :-**
 - + **(i) Under which clause of s. 92CE(1) primary adjustment is made? (5 clauses)**
 - + **(ii) Amount (in Rs.) of primary adjustment:**
 - + **(iii) Whether the excess money available with AE is required to be repatriated to India as per s.92CE(2)? (Yes/No)**
 - + **(iv) If yes, whether the excess money has been repatriated within the prescribed time (Yes/No) [90 days from due date of filing of ITR] For AY 2018-19 due date – 31st December 2018**
 - + **(v) If no, amount of imputed interest income on such excess money which has not been repatriated within prescribed time**

30B - INSERTED

- ✘ **30B (a) - Whether the assessee has incurred exp. during PY by way of interest or of similar nature > Rs. 1 Cr u/s. 94B(1)? (Yes/No)**
- ✘ **30B (b) - If yes, please furnish :-**
 - + (i) Amount (in Rs.) of expenditure by way of interest or of similar nature incurred – (to AE or all?)
 - + (ii) (EBITDA) during the previous year (in Rs.):
 - + (iii) Amount (in Rs.) of expenditure by way of interest or of similar nature as per (i) above which exceeds 30% of EBITDA as per (ii) above
 - + (iv) Details of interest expenditure b/f as per s. 94B(4) – NA as 94B inserted w.e.f. AY 2018-19
 - + (v) Details of interest expenditure c/f as per s. 94B(4)

30C - INSERTED

- ✘ **30C (a) - Whether the assessee has entered into an impermissible avoidance arrangement (GAAR), as referred to in s. 96, during the PY? (Yes/No) [w.e.f. AY 2018-19] – Tax benefit 3 Crs.**
- ✘ **30C (b) - If yes, please specify :**
 - + **(i) Nature of the impermissible avoidance arrangement**
 - + **(ii) Amount (in Rs.) of tax benefit in the PY arising, in aggregate, to all the parties to the arrangement**

S. NO. 31 (BA) - SECTION 269 ST

- **No person to receive an amount \geq Rs. 2 Lakhs otherwise than by A/c payee cheque/draft or use of electronic clearing using bank a/c (i.e. primarily in cash):**
 - **in aggregate from a person in a day; or**
 - **in respect of a single transaction; or**
 - **in respect of transactions relating to one event or occasion from a person**

SECTION 269 ST

- **Not applicable to receipts by:**
 - **Government,**
 - **Bank,**
 - **Post Office Savings Bank or Co-operative Bank,**
 - **S. 269SS transactions**
 - **Such other persons or class of persons or receipts, which the CG may notify**
- **Not applicable to receipts from Bank, Post Office Savings Bank or Co-operative Bank**
- **Penalty of equal amount u/s 271DA**
- **Rule 6DD?**



- **M/s AB P. Ltd sells Innova car to Mr. Y for Rs. 3 L in cash?**
 - Yes
- **M/s ABC & Co. purchases grains from Shyam an agriculturist for Rs. 2.5 Lakhs in Cash**
 - Yes
- **Mr. A in his proprietorship firm receives gift of Rs. 5 L in cash from his father**
 - Yes
- **M/s ABC & Co. receives Rs. 2.10 Lakhs on 21.7.2017 for following from Y in cash :**
 - **Loan Rs. 0.15 Lakhs**
 - **Against sale of Car Rs. 1.95 Lakhs**
 - No



- ~~M/s. ABC receives cash payment of Rs. 3.75 L from XYZ P. Ltd. on 25th February 2018 for the following:~~
 - Rs. 2.10 Lakhs part payment for invoice no. 4. dt. 17.9.2017 of Rs. 3 Lakhs
 - Rs. 95000/- part payment for invoice no. 6 dt. 30.12.2017 of Rs. 2.50 Lakhs
 - Rs. 70000/- part payment for invoice no. 12 dt 10.1.2018 of Rs. 1.50 Lakhs
- Implications are:
 - 271DA penalty on M/s ABC for Rs. 3.75 Lakhs
 - M/s. ABC to report Rs. 2.10 Lakhs in SFT in Form 61A
 - XYZ P. Ltd expense of Rs. 3.75 Lakhs would be disallowed u/s 40A(3)



- **ABC Pvt. Ltd organised 3 days exhibition out of town. It receives followings in cash:**
 - **Rs. 10 lacs as participation fee from various persons in 3 days**
- **It pays the following:**
 - **Rs. 70 K 1st day, Rs. 60 K 2nd day & Rs. 80 K 3rd day to tent for extra chairs etc**
 - **Rs. 1.75 lacs per day to 2 caterers for water coffee and snacks**
 - **Rs. 75000 per day for security & Valet Parking to contractor**
 - **Yes, In hands of receiver for payment made by Company**



- **PQR P. Ltd receives Rs. 5 lacs each from its 2 subscribers on incorporation in cash**
 - Yes
- **Mr. B introduces Rs. 3 Lacs as capital in partnership firm ABC & Co?**
 - Yes
- **Mr. B partner withdraws the following in cash from ABC & Co. during FY 2017-18:**
 - **Rs. 1.80 Lacs remuneration Rs. 15K p.m.**
 - **Rs. 36000 being interest on 31.3.2017**
 - **Rs. 3 L on different dates, being profit**
 - S. 40A(3)



- **M/s XYZ takes loan of Rs. 5 Lakhs from ABC Ltd (NBFC) by cheque, but repays instalment of Rs. 20000/- p.m. in cash. Is ABC Ltd liable for s. 271DA penalty?**
 - **No**
- **Circular No. 22 of 2017 dated 3rd July 2017**
 - **Receipt in nature of repayment of loan by NBFCs /HFCs - receipt of 1 instalment of loan repayment in respect of a loan shall constitute a 'single transaction' as specified in S. 269ST(b) & all the instalments paid for a loan shall not be aggregated for the purposes of determining applicability of S. 269ST**


EXEMPTIONS - NOT. NO. 57/2017 DT. 3.7.17

- **Receipt by a business correspondent on behalf of bank or co-operative bank, as per RBI**
- **Receipt by a white label automated teller machine operator from retail outlet sources on behalf of bank or co-operative bank, as per RBI**
- **Receipt from an agent by an issuer of pre-paid payment instruments as per RBI**
- **Receipt by a company or institution issuing credit cards against bills raised in respect of one or more credit cards**
- **Receipts which is not includible u/s 10(17A) - Awards by CG / SG**

31(BA) – INSERTED – 269ST

- ✘ **31(ba) - Particulars of each receipt in an amount exceeding the limit specified in section 269ST:**
 - + in aggregate from a person in a day or
 - + in respect of a single transaction or
 - + in respect of transactions relating to one event or occasion from a person, during the PY
- ✘ **where such receipt is otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account**

31(BA) – INSERTED – 269ST

- × **31(ba) – (i) Name, address and Permanent Account Number (if available with the assessee) of the payer;**
 - × **(ii) Nature of transaction;**
 - × **(iii) Amount of receipt (in Rs.);**
 - × **(iv) Date of receipt;**
- 

31(BB) – INSERTED – 269ST

- × **31(bb) - Particulars of each receipt in an amount exceeding the limit specified in section 269ST, in aggregate from a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion from a person, during the PY, where such receipt is by a cheque or bank draft not being an account payee cheque or an account payee bank draft, during the previous year**

31(BC) – INSERTED – 269ST

- × **31(bc) - Particulars of each **payment made** in an amount exceeding the limit specified in section 269ST, in aggregate from a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion from a person, during the PY, where such receipt is otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account**

31(BD) – INSERTED – 269ST

- × **31(bd) - Particulars of each payment in an amount exceeding the limit specified in section 269ST, in aggregate from a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion from a person, during the PY, where such receipt is by a cheque or bank draft not being an account payee cheque or an account payee bank draft, during the previous year**

31(BD) – INSERTED – 269ST

- ✘ **Particulars at (ba), (bb), (bc) and (bd) need not be given in the case of receipt by or payment to a Government company, a banking Company, a post office savings bank, a cooperative bank or in the case of transactions referred to in section 269SS or in the case of persons referred to in Notification No. S.O. 2065(E) dated 3rdJuly, 2017**

36A - INSERTED

- ✘ **36A (a) Whether assessee has received any amount in the nature of dividend as referred to s. 2(22)(e)? (Yes/No)**
- ✘ **115 0 amended w.e.f. AY 2018-19 – 30%**
- ✘ **Would assessee give details??**
- ✘ **How to ascertain accumulated profits of payer?**
- ✘ **S. 41(2) profit is not part of accumulated profits [CIT vs. Urmila Ramesh (1998) 230 ITR 422 (SC)]**

36A - INSERTED

✘ **Accumulated profits are revenue profits not capital profits:**

- + **Tea Estate India Pvt. Ltd. vs. CIT (1976) 103 ITR 785 (SC)]**
- + **First ITO vs. Short Brothers Pvt. Ltd. (1966) 60 ITR 83 (SC)**
- + **CIT vs. Mangesh J. Sangiri (1979) 119 ITR 962 (Bom)**

✘ **36A (b) If yes, please furnish the following details:-**

- + **(i) Amount received (in Rs.):**
- + **(ii) Date of receipt:”**

42 - INSERTED

- × **42 (a) - Whether the assessee is required to furnish statement in Form No.61 or Form No. 61A or Form No. 61B? (Yes/No)**
- × **42 (b) - If yes, please furnish :-**
 - + **ITDREIN**
 - + **Type of Form**
 - + **Due date for furnishing**
 - + **Date of furnishing, if furnished**
 - + **Whether Form contains information about all details / transactions which are required to be reported. If not, furnish list of details/transactions- not reported.**

PROVISIONS - SECTIONS

139A(5)(c)

- Quoting of PAN

285BA

- Statement of Specified Financial Transactions

**271FA /
271FAA /
272B**

- Penalties

PROVISIONS - RULES

114B

- Transactions in which PAN is to be quoted

114C

- Verification of PAN

114D

- Furnishing of Form 60

114E

- Furnishing of Statement of Financial Transaction (AIR)

114F - H

- Furnishing of Statement of Reportable Account

PROVISIONS - FORMS

60

- Declaration from persons who do not have PAN

61

- Statement containing particulars of declaration received in Form No. 60

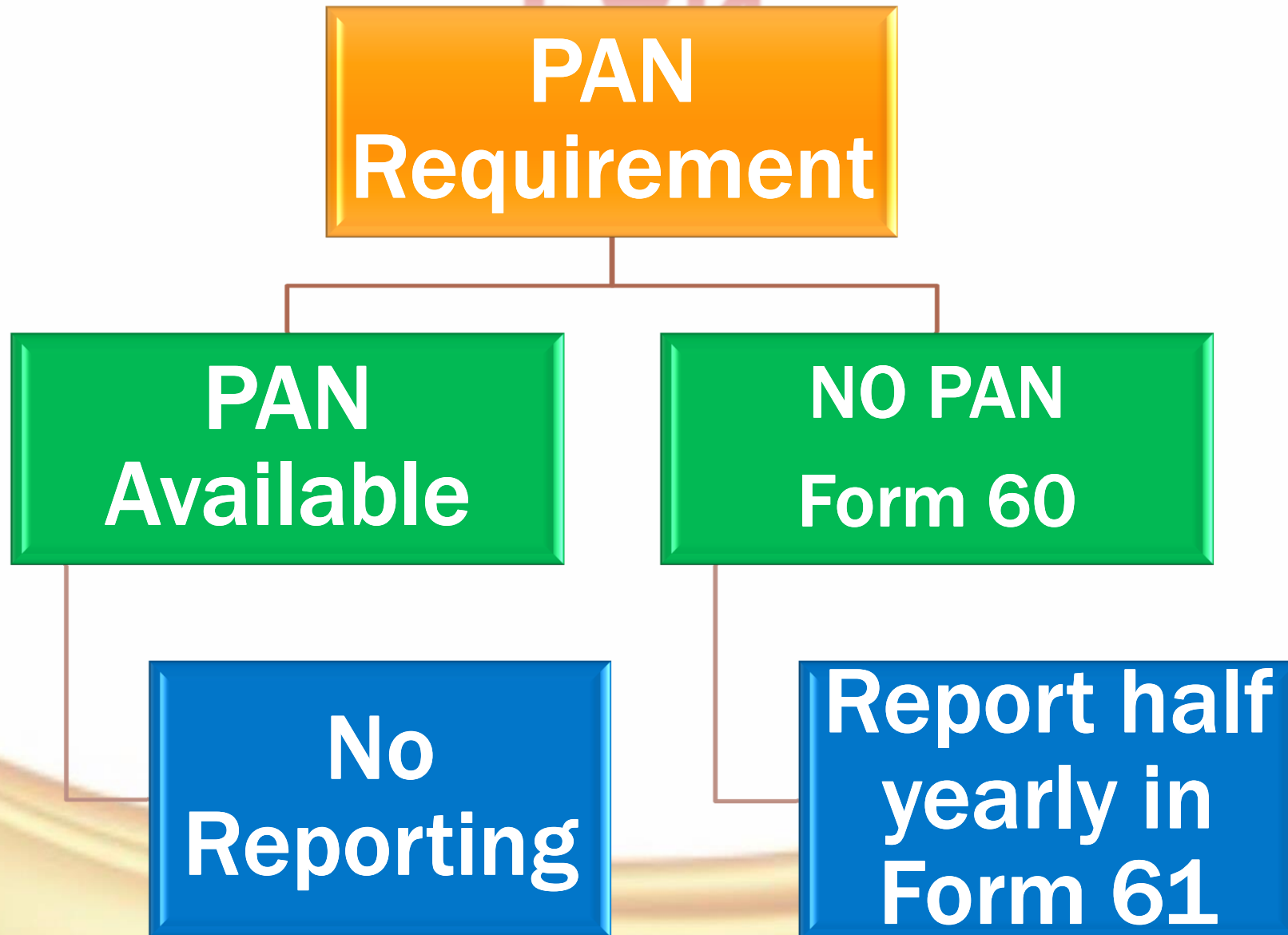
61A

- Statement of Specified Financial Transactions (AIR)

61B

- Furnishing of Statement of Reportable Account

PAN



PAN QUOTING W.E.F. 01.01.2016

S. No.	Nature of Transaction	Value of Transaction
1	Sale / Purchase of Motor Vehicle or Vehicle other than 2 Wheeler	All
2	Opening an Bank A/c other than time-deposit referred to at Sl. No.12 and Basic Savings Bank Deposit A/c	All
3	Application for Debit / Credit Card	All
4	Opening of Demat A/c	All
5	Payment to Hotel / Restaurant at any one time (earlier 25K)	Cash > 50000/-

PAN QUOTING W.E.F. 01.01.2016

S. No.	Nature of Transaction	Value of Transaction
6	Payment for Foreign Travel or foreign currency at 1 time (earlier 25K)	Cash > 50000/-
7	Payment to MF for purchase of Units	> 50000/-
8	Payment to Co. or Institution for Debentures / Bonds issued by it	> 50000/-
9	Payment to RBI for Bonds issued by it	> 50000/-
10	Cash Deposit with Bank in any 1 day	> 50000/-
11	Bank Draft / Pay Order / Banker Cheque during one day	Cash > 50000/-

PAN QUOTING W.E.F. 01.01.2016

S. No.	Nature of Transaction	Value of Transaction
12	Time Deposit with 1. Bank, 2. Post Office, 3. Nidhi Co. 4. NBFC	50000/- each transaction or 5 Lacs in aggregate during FY
13	Payment for 1 or more Prepaid Payment Instruments like smart card; magnetic stripe cards; internet a/c; online wallets; mobile a/c; mobile wallets; paper voucher; mass transit system; other	Cash / draft / PO / banker cheque aggregating > 50000/- in FY

PAN QUOTING W.E.F. 01.01.2016

S. No.	Nature of Transaction	Value of Transaction
14	Life Insurance Premium	Aggregating > 50000/- in FY
15	Sale / Purchase of Securities other than Shares per transaction	> 1 Lac
16	Sale / Purchase of unlisted shares per transaction (verification by Co) [E - 50k for issue of shares all Cos]	> 1 Lac
17	Sale / Purchase of Immovable Property (earlier 5 L)	> 10 Lacs Tran. value or 50C value

PAN QUOTING W.E.F. 01.01.2016

S. No.	Nature of Transaction	Value of Transaction
18	Sale / purchase of goods / services (earlier 5 L for bullion or jewellery dealer only)	> 2 Lacs per transaction

- ✘ Effective from 1st January 2016
- ✘ Concerned person to verify PAN & mention in all documents /invoice/applications
- ✘ If no PAN – take Form 60
- ✘ If Minor – PAN of Father/Mother/Guardian

PAN QUOTING – NOT REQUIRED

- × CG / SG / Consular Offices**
- × Non-Residents for all except:**
 - + Application for Debit and Credit Card**
 - + Payment to a hotel or restaurant against a bill**
 - + Payment for foreign travel or foreign currency**
 - + Payment to RBI for acquiring bonds**
 - + Purchase of DD / PO / Bankers cheque**
 - + Payment for prepaid instruments**
 - + Sale/purchase of goods/services exceeding Rs. 2L**

IMPORTANT FEATURES OF FORM 60

- ✘ **Applicable to all except companies & firm**
- ✘ **If PAN is applied, then application no. to be filled**
- ✘ **If PAN not applied as income is below taxable limits – give estimate of total income**
- ✘ **If estimated total income exceeds taxable limits - Form 60 cannot be accepted unless PAN applied for acknowledgement no. is not mentioned.**

IMPORTANT FEATURES OF FORM 60

- ✘ **Amount & mode of transaction also to be given**
- ✘ **Proof of Identity and address to be furnished along with Form 60**
- ✘ **In case transaction is by HUF, then proof of Karta**
- ✘ **In case transaction is by more than 1 persons, number of persons to be mentioned.**
- ✘ **Wrong verification prosecution u/s 277**
 - + **3 months to 2 yrs & Fine;**
 - + **If amount > 25 Lacs – 6 months – 7 yrs & Fine**

FILING DETAIL OF FORM 60 – FORM 61

- ✘ **Everyone not to file statement in Form 61 with department for PAN collection**
- ✘ **Only persons who does not take PAN, but take Form 60 have to file half yearly:**
 - + **Received upto 30th September – 31st October**
 - + **Received upto 31st March – 30th April**
- ✘ **Retain Form 60 for 6 years from end of the FY in which the transaction was undertaken. (earlier Form 60 were also to be filed)**

SFTS - [1.04.2016]

S. No.	Nature & Value of Transaction	Reporting Person
1(a)	Cash for purchase of bank drafts / pay orders / banker's cheque of aggregate > Rs. 10 Lacs in a FY.	Banks
1(b)	Cash for purchase of pre-paid instruments by RBI aggregate > Rs. 10 Lacs in a FY. [E- 5L bonds all modes]	Banks
1(c)	Cash deposits / withdrawals (including bearer's cheque) aggregating > Rs. 50 Lacs in a FY from 1 or more current account of a person.	Banks

SFTS - [1.04.2016]

S. No	Nature & Value of Transaction	Reporting Person
2	Cash deposits agg. > Rs. 10 Lacs in a FY, in 1 or more a/cs (other than current a/c & time deposit) [E- saving A/c]	Banks P.O.
3	One or more time deposits (other than renewals) of a person aggregating > Rs. 10 Lacs in a FY of a person.	Banks P.O. ; Nidhi NBFC
4	Payments aggregating to- (i) > Rs. 1 Lac in cash ; or (ii) > Rs. 10 Lacs by any other mode, one or more credit cards in a FY [E - 2L]	Banks issuing Credit Cards

SFTS - [1.04.2016]

S. No.	Nature & Value of Transaction	Reporting Person
5	Receipt from a person aggregating > Rs. 10 Lacs in a FY for acquiring bonds or debentures issued by Co. or institution (other than renewals) [E- 5L]	Company Institution
6	Receipt from a person aggregating > Rs. 10 Lacs in a FY for acquiring shares (including share application money) issued by co. [E- Pub / Rght 1L]	Company
7	Buy back of shares from a person (other than bought in open market) for aggregating > Rs. 10 Lacs in a FY	Listed Co.

SFTS - [1.04.2016]

S. No.	Nature & Value of Transaction	Reporting Person
8	> Rs. 10 Lacs in a FY for acquiring units of 1 or more schemes of a MF (except switching) [E- 2L]	MF
9	Sale of foreign currency including through debit /credit card or traveller chq. or draft etc agg. > Rs. 10 L in a FY	Authorised Dealer
10	Purchase or sale of immovable property value > Rs. 30 L or valued u/s 50C	Registrar

SFTS - [1.04.2016]

S. No.	Nature & Value of Transaction	Reporting Person
11	Receipt of cash payment Rs. 2 Lacs for sale, by any person, of goods or services of any nature (other than above mentioned items).	If liable to Tax Audit u/s 44AB
12	Cash Deposit from 9.11.16 to 30.12.16 aggregating: <ul style="list-style-type: none"> • ≥ 12.50 Lacs in 1 or more Current account of a person • ≥ 2.50 Lacs in other than current account 	Bank / PO (inserted by 15.11.16)
13	Cash Deposited from 1.4.16 to 9.11.16 in respect of accounts reportable under S. No. 12	Bank / PO (Inserted by 6.1.17)

SFT??

✘ A Pvt. Ltd. issues following invoices:

+ 1.4.17 – Rs. 1 Lakh

+ 1.5.17 – Rs. 1.50 Lakhs

+ 2.6.17 – Rs. 1 Lakh

+ It receives Rs. 3.50 Lakhs in cash on 15.6.17. Is this a reportable SFT?

+ No, Take care of 269ST

✘ M/s ABC issues an invoice of Rs. 3 Lakhs. Receives Rs. 1.50 Lakhs by Cheque and balance by Cash. Is it reportable SFT?

✘ No

SFT??

- × **XYZ Pvt. Ltd. issues following invoices:**
 - + **1.7.17 – Rs. 2.50 Lakh**
 - + **1.8.17 – Rs. 1.50 Lakhs**
 - + **It receives amounts in cash as under:**
 - × **Rs. 1.50 Lakh on 15.6.17.**
 - × **Rs. 1.50 Lakh on 16.8.17**
 - × **Rs. 1.00 Lakh on 10.9.17**
 - × **Is this a reportable SFT? If yes on which amount?**
 - + **Yes, 2.50 reportable**

SFT REPORTING

✘ Report annually by 31st May in Form 61A

✘ For 12th item before 31st January 2017

✘ Is Nil Form 61A required to be file mandatorily?

✘ No

✘ Is filing Preliminary Response to Form 61A mandatory?

✘ No

HOW TO DETERMINE THRESHOLD LIMITS

- ✘ **Take into account all the accounts of the same nature in respect of that person;**
- ✘ **Aggregate all the transactions of the same nature in respect of that person (except S. No. 10 & 11) (amended w.e.f. 6.10.16);**
- ✘ **Attribute entire value of transaction or the aggregated value of all transactions to all persons, in a case more than 1 person;**
- ✘ **Apply threshold limit separately to deposits & withdrawals in respect of Current a/c**

PRESS RELEASE DT. 23.12.2016

- × **CBDT vide Notification No. 91/2016 dated 6th October, 2016 has amended Sub-Rule 3 of Rule 114E clearly indicating that**
- × **The said transactions **did not require aggregation** and**
- × **The reporting requirement under SFT for this purpose is on **receipt of cash payment exceeding Rs. 2 Lakh for sale of goods or services per transaction.****

PENALTY U/S 271FA

- ✘ Failure to furnish Form 61A**
 - + Rs. 100 per day increased to Rs. 500/- p.d. w.e.f. AY 2018-19**
 - + In case notice issued u/s 285BA(5) – Rs. 500 per day after 30 days increased to Rs. 1000/- p.d. w.e.f. AY 2018-19**

43 - INSERTED

- × **43 (a) - Whether the assessee or its parent entity or alternate reporting entity is liable to furnish the report as referred to in s. 286(2)? (Yes/No)**

- × **43 (b) - If yes, please furnish :-**
 - + **Whether report has been furnished by the assessee or its parent entity or an alternate reporting entity
Name of parent entity. [For FY 2017-18 due date is 31.3.2019]??**

 - + **Name of alternate reporting entity (if applicable)
Date of furnishing of report**

44 - INSERTED

- ✘ **44 - Break-up of total expenditure of entities registered or not registered under the GST. Total amount of Expenditure incurred during the year**
- ✘ **Expenditure in respect of entities registered under GST**
 - + **Relating to goods or services exempt from GST**
 - + **Relating to entities falling under composition scheme**
 - + **Relating to other registered entities**
 - + **Total payment to registered entities**
- ✘ **Expenditure relating to entities not rgd. in GST**

CA. Pramod Jain

COMPANIES (AMENDMENT) ACT 2017



SUMMARY

- ✘ **93 Amendments– This ppt -major amendments**
- ✘ **3 Provisions applicable from 3.01.2018 – IBC**
- ✘ **43 Provisions applicable from 9.02.2018**
- ✘ **25 Provisions applicable from 7th May 2018**
- ✘ **6 Provisions applicable from 13th June 2018**
- ✘ **2 Provisions applicable from 27th July 2018**
- ✘ **1 Provision from 31st July 2018 – S. 134 (D/R)**
- ✘ **1 Provision from 7th August 2018 – S. 42 (PP)**
- ✘ **Compliances emphasized; Penalties rationalized**

MANAGEMENT - 13.6.2018

- × **Beneficial interest defined in S. 89(10) -**
 - + **Beneficial interest in a share includes, directly or indirectly, through any contract, arrangement or otherwise, the right or entitlement of a person alone or together with any other person to—**
 - × **Exercise or cause to be exercised any or all of the rights attached to such share; or**
 - × **Receive or participate in any dividend or other distribution in respect of such share.**
- × **S. 90 substituted to provide for Register of significant beneficial owners in a company**

UBO / SBO – NEW CONCEPT??

- ✘ **Concept of identifying Ultimate Beneficial Owner/ Significant Beneficial Owner is not a new.**
- ✘ **Already been prescribed by following:**
 - + **SEBI under Guidelines on Identification of Beneficial Ownership;**
 - + **RBI under RBI (KYC) Directions, 2016;**
 - + **Rule 9 of Prevention of Money-laundering (Maintenance of Records) Rules, 2005**
- ✘ **Purpose is to identify such individuals, who directly or indirectly, holds beneficial interest over co. & whose names do not reflect in the register of members as holder of such shares**

MANAGEMENT S. 90 - 13.6.2018

- × **Every individual:**
 - + who acting alone or together, or
 - + through 1 or more persons or
 - + trust, including trust & persons resident outside India,
- × holds beneficial intt. of not less than 25% / **10%** in shares of a co. or
- × right to exercise, or actual exercising of significant influence or control as defined in s. 2(27)
- × shall make a declaration to co.in Form BEN 1 specifying nature of his interest&other particular

MANAGEMENT S. 90(5) - 13.6.2018

- ✘ **A company shall give notice, in BEN 4, to any person (whether or not a member of company) whom the company knows or has reasonable cause to believe—**
 - + to be a significant beneficial owner of the company;**
 - + to be having knowledge of the identity of a SBO or another person likely to have such knowledge; or**
 - + to have been a SBO of company at any time during the 3 yrs immediately preceding the date on which the notice is issued**
- ✘ **and who is not registered as a SBO with the company as required under this section.**

COMPANY (SBO) RULES 2018

- ✘ **“Significant beneficial owner” means an individual referred to in S. 90(1) holding ultimate beneficial interest of not less than 10%) read with S. 89(10) but whose name is not entered in the register of members of a company as the holder of such shares.**
 - + **Company as member – SBO would be the natural person who alone or with other natural person or more other persons or trusts is holding not less than 10% of share capital of the company or exercises significant influence or control in the company.**

COMPANY (SBO) RULES 2018

- ✘ **“Partnership Firm as member?? – SBO would be the natural person who whether acting alone or together with other natural persons, or through one or more other persons or trusts, holds not less than 10% of capital or has entitlement of not less than 10%. of profits of the partnership.**
- ✘ **Where no natural person is identified the SBO is the relevant natural person who holds the position of senior managing official**
- ✘ **Trust as member (through trustee) - the SBO will be the trustee who holds not less than 10% interest in trust & any other natural person exercising ultimate effective control over trust through a chain of control ownership**

COMPANY (SBO) RULES 2018

- ✘ **Rules are not made applicable to the holding of shares of companies/body corporates, in case of pooled investment vehicles/investment funds such as Mutual Funds, Alternative Investment Funds (AIFs), Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (Inv ITs) regulated under SEBI Act**
- ✘ **BEN 1 – SBO to file to company within 90 days from 13.6.2018 & within 30 days of any change in SBO**
- ✘ **BEN 1 – within 30 days of acquiring or change therein**
- ✘ **BEN 2 – within 30 days to ROC of receipt of BEN 1**
- ✘ **BEN 3 – Register of SBO**
- ✘ **BEN 4 - Notice**

MANAGEMENT - 13.6.2018

- ✘ **S. 90 – Register of beneficial ownership to be maintained by co – file return. Penalty:**
 - + **On person not making declaration – Min. 1 L to 10 L – continuing 1k p.d.**
 - + **On Co. for not maintaining register and filing return Min. 10 L to 50 L – continuing 1k p.d.**
 - + **Willfully False or incorrect information or suppress – s. 447**

- ✘ **S. 92 - Abridged Annual Return for OPC & small Co. – to exclude indebtedness and details of name address, etc of FII's -(7.5.2018)**


AMENDMENTS – PRIVATE PLACEMENT

- × **S. 42 substituted - (7.8.2018)**
- × **PP offer not to contain right of renunciation**
- × **Can have more than one offer at one time, however offer to no. of persons to be within limit of 50 identified persons**
- × **Amount cannot be utilized unless shares allotted and Form PAS-3 is filed**
- × **PAS-3 is to be filed within 15 days of allotment**
- × **Late filing of PAS 3 – Penalty on company, promoters & directors for each default - Rs. 1k p. d. Max 25L**

AMENDMENTS – PRIVATE PLACEMENT

- ✘ Penalty for contravention changed to amount involved or Rs. 2 Cr whichever is **lower**.
- ✘ Amount to be refunded within 30 days of imposing penalty along with **interest**
- ✘ If offer not as per ss.(2) – 50 limit – public offer – SEBI Act would also apply
- ✘ PAS – 4 amended

AMENDMENTS – NFRA – S. 132 – (9.2.2018)

- ✘ **Firm minimum penalty reduced from Rs. 10L to 5 L**
 - ✘ **Appellate authority not to be constituted now – ss. 6,7,8 7 9 omitted**
 - ✘ **Appeal now to Appellate Tribunal**
- 

AMENDMENTS – AUDIT

- × **S. 139(1) 1st Proviso - Annual Ratification of auditors not required -(7.5.2018)**
- × **S. 140 - ADT 3 – Auditor resignation minimum penalty reduced to 50k or audit fee whichever is less -(9.2.2018)**
- × **S. 143(1) - Auditor to have access to records of associate companies also as it relates to CFS -(9.2.2018)**
- × **S. 143(3)(i) - Auditor to report on Internal Financial Controls with reference to Financial Statements -(9.2.2018)**

AMENDMENTS – AUDIT -(9.2.2018)

- × **147(2) maximum penalty reduced to 5 L or 4 times the audit fee whichever is less**
- × **Where default with intention to deceive penalty reduced from 1 L - 25L to 50k - 25L or 8 times the audit fee whichever is less**
- × **147(3) - For damages (class action) – any other person substituted (restricted to) - members or creditors of company**
- × **147 (5) - Criminal liability restricted to the concerned partner who acted in fraudulent manner or abetted or colluded..**

AMENDMENTS – LOAN TO DIRECTORS -(7.5.2018)

- ✘ **S. 185 substituted. Following restriction on giving loan etc. continues:**
 - + **Director of Company**
 - + **Director of holding Company**
 - + **Partner or relative of Director**
 - + **Firm in which director or relative is partner**
- ✘ **Others including to Private Co. in which director is director or member allowed, subject to:**
 - + **SR, with complete details in Explanatory statement and proposed utilization by recipient**
 - + **Loans to be utilized for principal business activities**

AMENDMENTS – LOAN TO DIRECTORS -(7.5.2018)

- ✘ **Exemption to a company which in the ordinary course of business gives loans or guarantees or securities... in respect of loan if interest is charged — not less than bank rate — changed to 1,3, 5 or 10 year govt. securities prevailing yield (similar to s. 186)**
- ✘ **All other conditions – same**
- ✘ **Penalty – same on giver and receiver – Officer in default added –Imprisonment upto six months or fine min – Rs. 5 L & Max 25 L or both**

AMENDMENTS – FEE – S. 403 – (7.5.2018)

- × If not filed within the due period of section:
 1. 92 – Annual Return
 2. 137 – Financial Statements to be filed with ROC
- × Additional Fee not less than Rs. 100 p.d.
1.7.2018
- × Others additional fee (12 times) other than s. 92, 137 & increase in nominal capital
- × Fee payable - at actual time of filing applicable
- × Higher additional fee – not less than twice the additional fee in case of default on 2 or more occasions

S. 403 AMENDMENT & IMPACT

- × **Within the time specified u/s 403 omitted**
- × **S. 89 – MGT 6 – declaration by beneficial owner – within 30 days of declaration received**
- × **S. 92 – MGT 7 - Annual return**
- × **S. 117 – MGT 14 - Filing of resolutions**
- × **S. 121 – MGT 15 – Report on AGM by listed Cos**
- × **S. 137 – AOC-4 – Filing of FS**
- × **S. 157 – Furnishing of DIN**

AMENDMENTS – FEE – S. 403

- ✘ Shall without prejudice to the liability for the payment of fee and additional fee, be liable for the penalty or punishment provided under this Act for such failure or default
- ✘ Declaration by beneficial owner (89):
 - + Rs. 500 p.d. if continuing Rs. 1000 p.d.
- ✘ AR (92) :
 - + Co – Rs. 50 K to Rs. 5 L
 - + OI – Imp upto 6 Months or fine 50K to 5 L or both
- ✘ FS (137)– Rs. 1000 p.d. max 10 L

AMENDMENTS – FEE – S. 403

- × **Filing of resolution – amended (117):**
 - + Co - 1 L to 25 L
 - + OID – 50K L to 5 L
- × **Report on AGM by listed Cos (121):**
 - + Co – 1 L to 5 L
 - + OID – 25k to 1 L
- × **Furnishing of DIN (157)**
 - + Co – 25k to 1 L
 - + OID – 25k to 1 L

AMENDMENT - OTHERS

- ✘ **S. 441 - Compounding allowed if imprisonment not mandatory or punishable with imprisonment and also with fine**
- ✘ **New S. 446A – Due regard to be given for imposing fine or imprisonment **-(9.2.2018)** :**
 - + **Size of the company;**
 - + **Nature of business carried on by the company;**
 - + **Injury to public interest;**
 - + **Nature of the default; and**
 - + **Repetition of the default.**

AMENDMENT - OTHERS

- ✘ **New S. 446B - OPC & SC only $\frac{1}{2}$ of fine/imp. -s. 92, 117 & 137 -(9.2.2018)**
- ✘ **S. 447 - If amount involved in fraud is less than Rs. 10L or 1% of turnover – imprisonment upto 5 years or fine upto Rs. 25 Lacs or with both. No minimum term or amount -(9.2.2018)**
- ✘ **DIR -3 KYC**

FS / BOARD REPORT – (31.07.2018)

- ✘ **S. 134- FS to be signed by 2 directors out of which 1 MD, if any.**
- ✘ **CEO to sign even if he is not a director**
- ✘ **Extract of Annual Return (MGT-9) not required. Web address where AR is placed to be given.**
- ✘ **If any disclosure is made in FS reference of that to be given in BR instead of repeating again.**
- ✘ **Policies on CSR and Directors (178) not to be repeated in Board Report, if brief and web address where full policy is given is mentioned in BR**

FS / BOARD REPORT – (31.07.2018)

- ✘ **S. 134(3A) - Abridged Board Report for OPC or small Co. may be prescribed**

BOARD REPORT – 2 NEW CLAUSES

- ✘ **Disclosure, as to whether maintenance of cost records as specified by the CG u/s 148(1) is required by the Company and accordingly such accounts and records are made and maintained,**
- ✘ **A statement that the company has complied with provisions relating to the constitution of Internal Complaints Committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013**

BOARD REPORT – OPC / SC – R. 8A

- ✘ **Web address, if any, where annual return u/s 92(3) has been placed;**
- ✘ **Number of meetings of the Board;**
- ✘ **Directors' Responsibility Statement as referred in S. 134(5);**
- ✘ **Details in respect of frauds reported by auditors u/s 143 (12) other than those which are reportable to the CG;**
- ✘ **Explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by auditor ;**

BOARD REPORT – OPC / SC – R. 8A

- ✘ **State of the company's affairs;**
- ✘ **Financial summary or highlights;**
- ✘ **Material changes from the date of closure of the FY in the nature of business and their effect on the financial position of company;**
- ✘ **Details of directors who were appointed or have resigned during the year;**
- ✘ **Details or significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company's operations in future.**

BOARD REPORT – OPC / SC – R. 8A

- ✘ **Particulars of contracts or arrangements with related parties referred in s. 188(1) in Form AOC-2**

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Together ...we shall make it....

Thank You!



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