INSIDE THE ISSUE:

I. CHART OF FORTHCOMING DUE DATES: -

a) GST

Month	GSTR -1 Monthly	GSTR -3B
Dec 2018	11th	20th

b) Others

Month	TDS Payment	ESIC Payment	P.F. Payment	Advance Tax Payment	ROC Annual Returns
Dec 2018	7th	15th	15th	15th	31st

II. OVERVIEW:

o BENAMI TRANSACTION (PROHIBITION) ACT, 1988

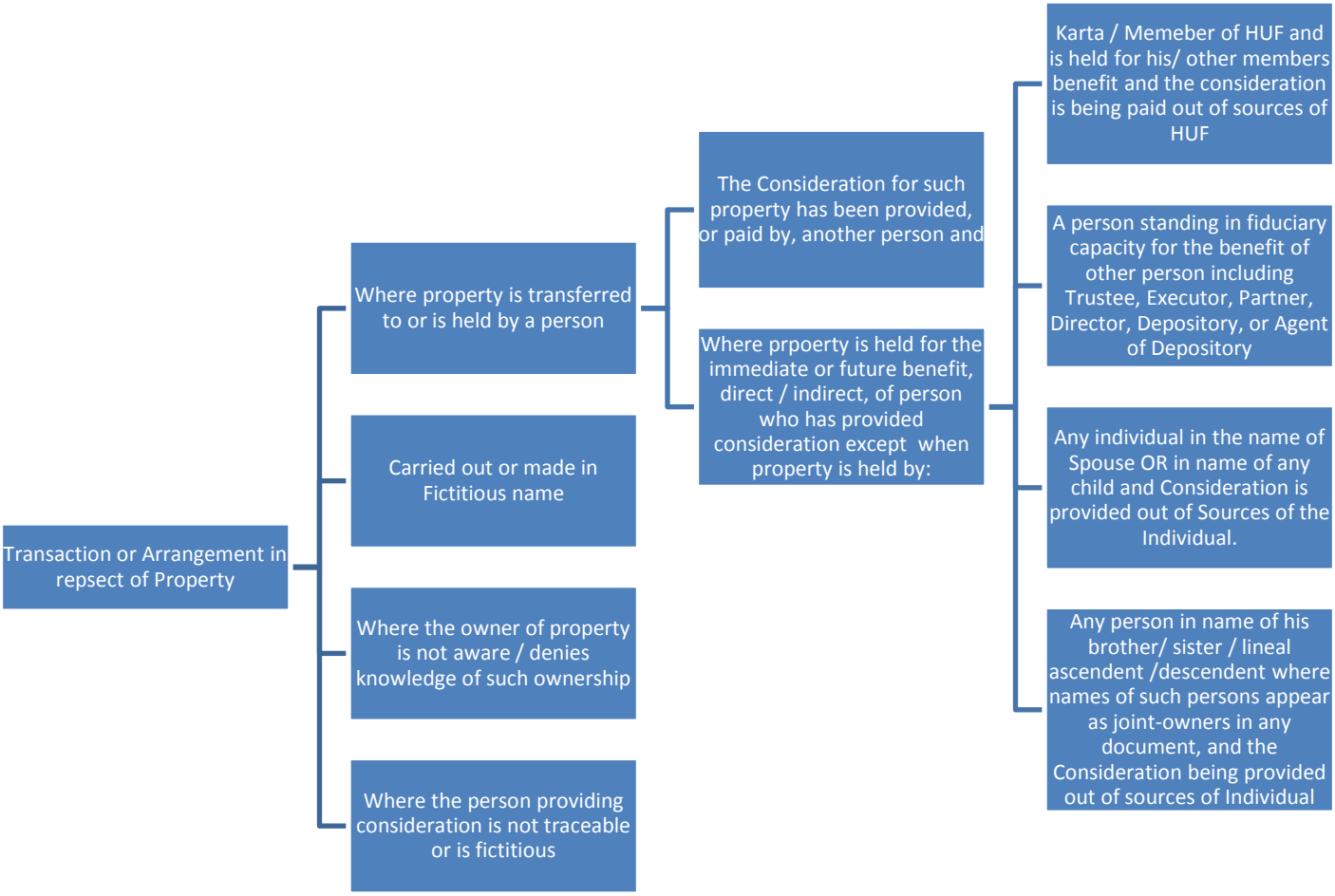
- **What is Benami**

  "Benami" in the present context means proxy, i.e. Purchase of property by the original owner through Proxy.

- **Background**

  The Prohibition of Benami Property Transaction Act, 1988 was enacted in year 1988. However due to some political gaps and some other reasons this act could never came into force for almost 28 years. However, to curb black money new government who came in power in year 2014, revised the Act and broadens its scope, with the insertion of 63 new sections and changing its name to "The Benami Transactions (Prohibition) Act, 1988" with an aim to not only track the Benami properties but also Benami transactions, and made it applicable with effect from 1st November 2016.

➢ Definition of Benami Transactions



➢ Prohibition of Benami Transactions

Section 3 of the Act provides that no person shall enter into any Benami Transaction.

Benami transaction shall not include any transaction involving the allowing of possession of any property to be taken or retained in part performance of a contract referred to in Section 53A of the Transfer of Property Act, 1882, if, under any law for the time being in force, where—

(i) consideration for such property has been provided by the person to whom possession of property* has been allowed but the person who has granted possession thereof continues to hold ownership of such property;

(ii) stamp duty on such transaction or arrangement has been paid; and

(iii) the contract has been registered

Thus, acquisition of a property in the name of a person other than the one paying the consideration thereof may result into a Benami Transaction.

- **Impact of Entering into Benami Transactions**

1. 100% confiscation of Benami Property.

2. Prosecution, which could lead to imprisonment for a term of minimum one year, and could extent to maximum of 7 years.

3. Penalty @25% of the fair market value of the Benami property.

III. INCOME TAX:

o TDS provision in relation to payment on transfer of immovable property

- As per Sec 194 IA, the purchaser of immovable property has to deduct TDS @ 1% from the consideration paid to resident seller if amount exceed Rs. 50,00,000. TDS has to be deducted even if the payments are made in installments.
- TDS @ 20% will be deducted if the seller does not provides its PAN.
- TDS is deducted at the time of payment or at the time of giving credit to the seller, whichever is earlier.
- TDS needs to be deposited along with Form 26QB within 30 days from the end of the month in which TDS was deducted.
- TDS credit is available to seller when he furnishes his return of income.

Consequences to a Deductor if he fails to deduct TDS or after deducting the same fails to deposit it to the Government's account:

Default/Failure	Section	Quantum of demand / penalty
Failure to deduct tax at source - Interest	201	1% for every month or part of a month
Failure to deposit tax at source – Interest	201	1.5% for every month or part of a month
Failure to deduct tax at source – Penalty	271C	An amount equal to tax not deducted or paid

IV. GOODS & SERVICE TAX

o Registration in every state for E-Commerce Platforms

With the implementation of Section 52 of the Central GST Act, e-commerce Companies, whether Indian or Foreign will be responsible for collecting Tax at Source, when a supplier supplies some goods or services through its portal and the payment for that supply is collected by the E-Commerce operator.

It has been observed that some of the e-Commerce operators have no physical presence in all the States/UTs whereas, the registration application and process requires address of Principal Place of Business in every state/UT.

Therefore, in order to facilitate registration of e-Commerce Operators in those States / UTs, where they don't have physical presence but transaction are made by the suppliers through their e-commerce platform, it has been decided that such e-Com operators can be registered by furnishing details of their Head Office as Principal Place of Business in other States / UTs.

A person supplying services, other than supplier of services under Section 9 (5) of the CGST Act, 2017, through an e-commerce platform are exempted from obtaining compulsory registration provided their aggregate turnover does not exceed Rs 20 lakh (or Rs 10 lakh in case of specified special category states) in a financial year

Changes on GST Portal for E-Commerce Operators

- The "District" related field in Part-A of the application (REG-07) has been disabled.
- On completion of Part-A of the application, the applicant will move to complete Part-B, where they will select the "jurisdictions" as notified by the concern states (list attached). The applicant may select central jurisdiction as the jurisdiction falling under State Headquarter, since such registration shall be processed by the Centre through CPC.
- They are also expected to select State Jurisdiction as applicable. (Every State has to notify a specialised /dedicated Jurisdiction for such taxpayers and intimate to GSTN). Till such notifications come, the e-com operators should select any one jurisdiction and the application should not be rejected merely on ground of the incorrect jurisdiction.
- In the content fields of principal place of Business, the applicants shall mention address of their Head Office and attach the relevant documents as specified under registration application.

o Relief to Tax Deductors under GST

From 1st October 2018, provisions for TDS were brought into effect under the Goods and Services Act. The Form GSTR-7 monthly return form for TDS is due on 10th of every next month.

During the initial phase of GSTR-7 applicability, many issues were faced on GST portal with regard to acceptance of tax deducted for claiming credit/ benefit by the deductee and generation of TDS certificates. Even after accepting the transaction by the Deductee, when the deductor is trying to generate TDS certificate, the portal was unable to generate TDS certificate, and is reflecting error "No record found".

This error on the screen created much of hassle between the Tax deductors & Deductee during the initial month of applicability of TDS provisions of GST.

As a result, the government has extended the due date of filing tax deducted at source (TDS) returns under GST laws for the October-December period till January 31, 2019.

V. Companies Act

o Corporate Social Responsibility

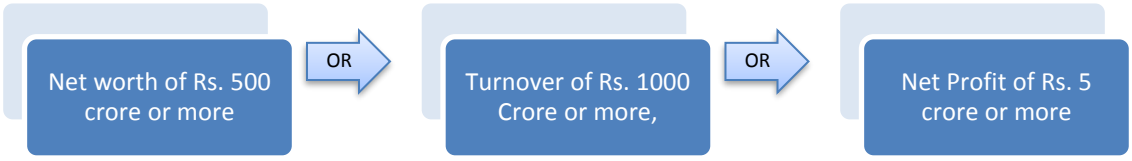
CSR is the responsibility of enterprises for their impacts on society. To meet their social responsibility, enterprises have a process to integrate social, environmental, ethical human rights and consumers into their business operations in collaboration with its stakeholders.

CSR activity shall be undertaken by the company as per CSR policy, projects, programmes or activities of the company.

A company may collaborate with other companies for undertaking projects or programmes on CSR activities in such a manner that CSR committees of respective companies are in a position to report separately on such projects or programmes with these rules.

Applicability (Section 135)

It is applicable to all every company which fulfills the below criteria:



CSR rules have come into force on the date of their publication in the official gazette and applicable from the financial year 2014-15.

- **Provisions of Companies Act, 2013 on CSR**

Compliances required

- ***Every Company which falls under Section 135(1) shall ensure to spend atleast 2% of the average net profits of the Company in every financial years***
- ***If the Company fails to spend the above-mentioned amount, the reason for such failure shall be disclosed in the Board's Report.***

Impact of non-compliance with CSR Provisions:

If the Board does not disclose the reason in its report then as per Section 134(8),

- The Company shall be punishable with fine which shall not be less than ***Rupees Fifty Thousand*** but which ***may extend to Rupees Twenty Five Lakh***
- Every Officer shall be punishable with ***imprisonment*** for a term which may extend to ***3 Years*** or with fine which shall not be less than ***Rupees Fifty Thousand*** but which may ***extend to Rupees Five Lakh***, or ***with both***

Conclusion

The Companies Act provides for punishment only for not disclosing the reason in the Board's Report for not spending the requisite amount. Except this there is no specific provision in the Companies Act, 2013 that provides for punishment for non-compliance of CSR responsibility given under Section 135.

Therefore, in absence of any other specific provision for non-compliance of CSR responsibility Section 450 of the Companies Act, 2013 will apply. Section 450 of the Companies Act, 2013 is a residuary penalty provision, according to which the maximum penalty of Rs. 10,000 is imposed

On analyzing the general implication of Section 450 of the Companies Act, 2013 we find that rather imposing any penalty, it provides a better way or a legal route to any company to escape from the CSR responsibility.

- **Provisions of GST on CSR**

Under GST law is no specific exemption from GST that has been granted on supply of goods of supply or both under CSR projects and accordingly the suppliers of goods /services will charge GST from the company who is incurring the CSR expenses unless such supply is otherwise exempt.

Whether input tax credit can be availed on GST paid on CSR expenses?

As per section 16(1) of CGST Act, 2017 every registered person shall be entitled to take credit of input tax charged on any supply of goods or services or both him which are used or intended to be used in the course or furtherance of his business thus incurring of expenses for business purpose is a precondition for availing of input tax credit .therefore as to , in order to take a call in regard to availing of input tax credit on CSR expenses we need to determine as to have been expended in the course or furtherance of business.

With reference to the recent judgement of CESTAT Mumbai in the matter of Essel Propack Ltd. v. Commissioner of CGST and with reference to the handbook on CSR published by CII, CESTAT observed that CSR is mandatory requirement. Unless the same is trated as an input service in respect of activities relating to business and production, the sustainability of the Company itself would be at stake.

On the basis of the above, CESTAT held that CSR activities are input services for availing of CENVAT Credit.

Conclusion

In case of Input Tax Credit on CSR expenses is availed, the Department may take other view and such availment may have to face legal grinding. Further, availing Input Tax Credit is not beneficial to a Company, as it is anyway required to incur 2% of the average net profits as CSR expenses and it avails the Input Tax Credit, it will again have to incur the CSR expense to the tune of such availment of input tax credit.

- **Provisions of Income Tax on CSR**

Section 37 of income Tax Act, 1961 is a residuary section which allows deduction of business expenditures not covered specifically under sections 30 to 36. Since the admissibility of CSR expenditure as business expenditure under section 37 was not clear due to differing Court rulings, the Budget proposals were expected to clarify the same, which it did, however not in the interest of the corporate sector.

In order to clarify, the Finance (No.2) Act, 2014 has inserted an Explanation to section 37 which is reproduced as under:

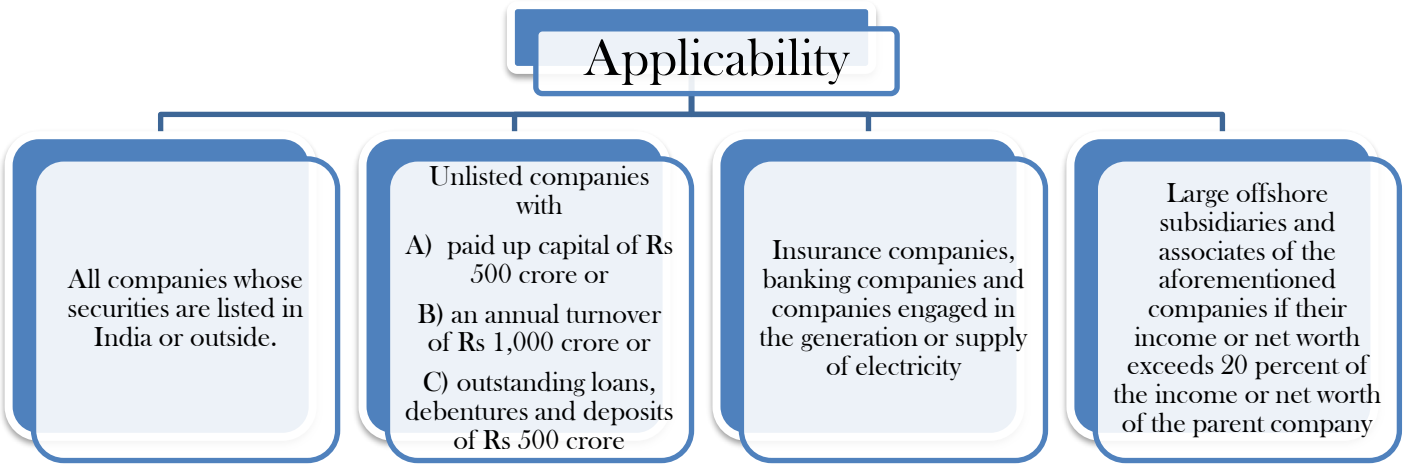
"Explanation 2.—For the removal of doubts, it is hereby declared that for the purposes of sub-section (1), any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession."

Further, if it can be shown that the contributions are made to a charitable trust, which can produce the 80 G certificate, then such contributions can be treated as CSR and a rebate can further be obtained. Thus if companies undertake CSR activities through registered NGOs they can avail 50% or 100% tax benefit on CSR spending and will thus save on their tax liabilities. However, if the company executes CSR spending directly on its own, the company will have to pay additional taxes on disallowance of CSR spending.

Thus, executing CSR activities through registered NGOs would yield better tax benefit and therefore would be in the interest of Companies

o NFRA Rule, 2018 – An Analysis

Ministry of Corporate Affairs MCA vide its notification dated 13th November 2018 notified National Financial Reporting Authority (NFRA) Rules 2018.



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Composition of the Authority

The Authority shall consist of the following persons to be appointed by the Central Government:

a. Chairperson
The Chairperson shall be a person of eminence, ability, integrity and standing and having an expertise and experience of not less than 25 years in the field of accountancy, auditing, finance or law.

b. Three Full time members
A full time member shall be a person of ability, integrity and standing and having an expertise and experience of not less than 20 years in the field of accountancy, auditing, finance or law.

c. Nine part time members
A part time member shall be a person who shall not have any such financial or other interest as is likely to affect prejudicially his functions as a part-time member

** The Chairperson and the full-time members shall not be associated with any audit firm including related consultancy firms during the course of their appointment and 2 years after ceasing to hold such appointment.*

Compliances for Companies and Auditors

I. Submission of Details of Auditors

- Every existing body corporate other than a company governed by these rules, shall inform the Authority **within thirty days** of the commencement of these rules, in Form NFRA-1, the particulars of the auditor as on the date of commencement of these rules.
- Once a Company falls under the above limits under NFRA, will be covered by NFRA for 3 More years **EVEN IF LIMITS ARE REDUCED/ LISTED STATUS CHANGES LATER ON.**
- **Every Body Corporate** other than Company as defined u/s 2(20) formed in India and governed under this rule shall, within fifteen days of appointment of an auditor under sub-section (1) of section 139**, inform the Authority in Form NFRA-1, the particulars of the auditor appointed by such body corporate.**

II. Annual Returns

- Every Auditor shall file a return with the Authority on or before 30th April every year in such form as may be specified by the Central Government

Punishment for non-compliance

If a company or any officer of a company or an auditor or any other person contravenes any of the provisions of these rules, the company and every officer of the company who is in default or the auditor or such other person shall be punishable as per the provisions of section 450 of the Act.

According to Section 132 of Companies Act, NFRA has the powers to impose sanctions against defaulting auditors and audit firms in form of monetary penalties and debarment from practice for upto 10 years.

VI. Insolvency and Bankruptcy Code

o Valuation under the Insolvency and Bankruptcy Code, 2016

The Insolvency and Bankruptcy Board of India (IBBI) vide its circular no. IBBI/RV/019/2018 dated 17th October, 2018, directed that from February, next year i.e. 2019, only entities registered as Valuers with the IBBI can carry out the valuation of assets under the Insolvency law.

Valuation is a key factor for an "informed decision making" under the Insolvency and Bankruptcy Code (IBC).

The Companies (Registered Valuers and Valuation) Rules, 2017 notified under the Companies Act, 2013 provides a comprehensive framework for development and regulation of the profession of valuers

An individual is eligible to be registered Valuer if:

- is a fit and proper person
- necessary qualification and experience,
- valuer member of a Registered Valuer Organisation (RVO)
- completed a recognised educational course as member of a RVO
- passed the valuation examination conducted by the Insolvency and Bankruptcy Board of India (IBBI)
- is recommended by the RVO for registration as a valuer

There are eight RVOs and 162 registered valuers as on date

VII. RBI

o Liberalization of norms for Masala Bonds

Masala Bond are reckoned as most evolving and effectual debt instrument for the Indian Corporates with more option to blend their debt portfolio to optimize the borrowings and minimize the cost. The objective of Masala Bonds is to fund big projects and pacing the internal growth of the Corporates. The term 'Masala' was used by the International Finance Corporation (IFC) to evoke the culture and cuisine of India.

In the case of Masala bonds, the cost of borrowing can work out much lower. If the value of Indian currency falls, the foreign investor will have to bear the losses, not the issuer which is an Indian entity.

The Indian currency has fallen over since the beginning of this year as investors remain concerned over sustained foreign capital outflows. If foreign investors eagerly invest in Masala Bonds or bring money into India, this will help in supporting the rupee.

To curb the downfall, the Finance Ministry, on 15th September'18 has cut the withholding tax (a tax deducted at source on residents outside the country) on interest income of such bonds to 5 per cent from 20 per cent, making it more attractive for investors.

RBI has also now permitted Indian banks to participate as arrangers / underwriters / market makers / traders in RDBs issued overseas subject to applicable prudential norms.

Conclusion:

A vibrant bond market can gear up the economy with greater pace. With the falling rupee, Government's move to withdraw withholding tax will attract more investors thereby internationalizing the Indian currency. Liberalizing the Indian Banks to participate as arranger, underwriters, market makers/ traders in Masala Bond is an amicable move which will enhance liquidity of the Masala bonds, rescuing the falling Rupee.

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