Steel Users Federation of India

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INSIDE THE ISSUE:

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CHART OF FORTHCOMING DUE DATES: -

a) GST due dates falling in the month of January, 2022.

Sr No.	Particulars	Due Date
1	GSTR-1 (Monthly)	11.01.22
2	GSTR-1 (QRMP)	13.01.22
3	GSTR-3B	20.01.22

b) Others due dates falling in the month of January, 2022

Sr No.	Particulars	Due Date
1	TDS Payment	07.01.2022
2	ECB-2	07.01.2022
3	PF Payment	15.01.2022
4	Audit report U/s. 44AB	15.01.2022
5	TDS return	30.01.2022

I. OVERVIEW:

- **OVERVIEW OF RETAIL DIRECT SCHEME INTRODUCED BY RBI:**

Earlier, it was very difficult for a retail investor to invest in Government Securities (G-Sec)/Treasury Bills (T-Bills)/Sovereign Gold Bond (SGB)/State Development Loan (SDL) due to lack of information about trading/dealings in these instruments, functioning of G-Sec market and more on. To counter this and to enhance more retail participation in the G-Sec market, RBI announced the 'RBI Retail Direct' Scheme (RD) in February 2021 which was launched by the Hon'ble Prime Minister of India on 12th November, 2021. Retail Direct (RD) Scheme is a one point solution to facilitate investment in G-Sec by individual investors along with facility to open Gilt Security Account with RBI.

LIKE SAVINGS ACCOUNT, RDG ACCOUNT CAN BE OPENED SINGLY OR JOINTLY WITH ANY OTHER RETAIL INVESTOR.

BENEFITS OF THE SCHEME:

1. Retail investors will have the facility to open and maintain the 'Retail Direct Gilt Account' (RDG Account) with RBI. No paperwork is involved.
2. The investor can place non-competitive bids in primary issuance of all Central Government securities (including T-Bills and Sovereign Gold Bonds) as well as securities issued by various State Governments.
3. Individual can also access Secondary market through "NDS OM" – RBI's trading system.
4. Investor will automatically receive any interest paid/maturity proceeds into his linked bank account on due dates.
5. Protection against default risk as Government never defaults in the repayment.

PARTICIPANTS ELIGIBLE TO INVEST IN NON-COMPETITIVE BIDDING SCHEME:

Participation in the Primary Issuance Non-Competitive Bidding Scheme is open to all the eligible retail investors registered under the RDI Scheme. Apart from the eligible investors, scheme is applicable to certain small investors who-

1. Do not have Current Account or Subsidiary General Ledger Account with RBI;
2. Do not require more that Rs. 2 Crore of securities per auction.

BENEFITS OF NON-COMPETITVE BIDDING SCHEME:

1. The non-competitive bidding facility will encourage wider participation and retail holding of G-Sec;

2. It will enable individuals, firms and other mid segment investors who do not have the expertise to bid competitively in the auction;
3. Such investors will have fair chance of assured allotments at the rate which emerges in the auction.

MINIMUM BIDDING AMOUNT:

Investor can bid in the auction with minimum amount of Rs. 10,000/- and multiples thereof.

NEGOTIATED DEALING SYSTEM – ORDER MATCHING (NDS – OM):

NDS – OM is RBI's screen based, anonymous electronic order matching system for trading in G-Sec in the secondary market. This is an order driven electronic system, where the participants can trade anonymously by placing their orders on the system or accepting the orders already placed by other participants. Anonymity ensures a level playing field for various categories of participants. Direct access to the NDS – OM system is currently available only to select Financial Institutions like Commercial Banks, Primary Dealers, HNI, Mutual Funds, Insurance Companies, FPI etc. However, due to Retail Direct Scheme, now a retail investor can open a gilt account with the RBI and can place a direct bid on NDS – OM as well as trade in the secondary market.

FEATURES OF NDS – OM:

1. It covers all G-Sec, T-Bills, Dated G-Sec etc.;
2. Pre and post trade anonymity ensures a level playing field for various categories of participants;
3. Real time information dissemination;
4. T + 1 trading settlement;
5. Operational risk control facility;
6. Separate order book for Standard and Odd Lot market.
7. Efficient Price Discovery-narrow bid/ask spreads;
8. Transparency;
9. Anonymity;
10. Level playing field;
11. Lower transaction time;
12. Reduced search time &cost;
13. Better regulatory surveillance & oversight.

II. INCOME TAX ACT

- **APPLICABLITY OF GIFT TAX**

Gift means, amount of money given in cash/cheque, property including immovable like, land or building or both, shares, jewelry or drawings.

Gift Tax Act:

Tax was levied from the person who give the Gift of more than Rs. 30,000, as per Gift Tax Act, 1958. However, it was later abolish in the year 1988. Thereafter, it was re-introduced under the Income Tax Act, 1961 under section 56(2)(V), for taxing gifts in the hand of recipient. Again it was amended in the year 2017, *gifts received by any person are taxed in the hands of recipient under the head " Income from Other Sources" at normal tax rates.*

Taxability of gifts under the Income Tax Act:

As per the current tax law, any person receiving a sum of money, or an immovable property or any other specified property from any other person(donor) without consideration or for an inadequate consideration i.e. less than the fair market value of the property or stamp duty value in case of an immovable property, is liable to taxed on the value of such gift.

In the above context the "Property" includes immovable property being land or building or both, shares and securities, Jewellary, archaeological collections, drawings, paintings, sculptures, any work of art and bullion, etc.

As per Section 56(2)(X), where any person receives in any previous year, from any person or persons on or after the 1st Day of April, 2017,-

(i) any sum of money, without consideration, the aggregate value of which exceeds Rs. 50,000, the whole of the aggregate value of such sum.
(ii) any immovable property,-
  (a) Without consideration, the stamp duty value of which exceeds Rs. 50,000, the stamp duty vale of such property,
  (b) for a consideration, the stamp duty value of such property as exceeds such consideration, if the amount of such exceed is more than the higher of the following amounts,
    o The amount of Rs. 50,000, and
    o The amount equal to 10% (from 1.4.2021) of the consideration

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(iii) any property, other than immovable property,-

(a) without consideration, the aggregate fair market value of which exceed Rs. 50,000, the whole of the aggregate fair market value of such property;
(b) for a consideration which is less than the aggregate fair market value of such property by an amount exceeding Rs.50,000, the aggregate fair market value of such property as exceeds such consideration:

This clause shall not apply to any sum of money or any property received-

(a) from any relative; or
(b) under the occasion of the marriage of the individual; or
(c) under a WILL or by inheritance; or
(d) in contemplation of death of the payer or donor, as the case may Be; or
(e) from any local authority; or
(f) 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);
(g) from or by any trust or institution registered section 12A,12AA, 12AB; or
(h) from an individual by a trust created or established solely for the benefit of relative of the individual; or
(i) from such class of persons and subject to such conditions, as may be prescribed; or
(j) any compensation or other payment, due to or received by an person, by whatever named called, in connection with the termination of his employment or the modification of the terms and condition related thereto.

Gift from Any Relative:

Gift received from relatives is fully exempt from levy of tax and no income tax would be levied on such gift.

HUF give gift to its members is also exempt.

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III. COMPANY LAW

• ADJUDICATION IN CASE OF STAMP DUTY NOT PAID ON SHARE CERTIFICATE IN MUMBAI, MAHARASHTRA

Background

A company (Private as well as Public) is required to issue Share Certificates to it subscribers to memorandum in case of incorporation and to its shareholders in case of further allotment of shares within the given time line. However, there are many instances where a company fails to pay stamp duty within the given time line and faces difficulty to prove its authenticity this where the process of adjudication comes into the picture.

Relevant Provisions

Section 3 of Indian Stamps Act 1899

As per Section 3 of Indian Stamps Act 1899, Share Certificate shall be chargeable with the specified amount of duty.

Section 17 of Maharashtra Stamp Act

There are certain presumptions which say that Stamp Duty shall be paid within 30 days of execution of the Instrument which is incorrect because as per Section 17 of Maharashtra Stamp Act "All instruments chargeable with duty and executed by any person in this State shall be stamped before or at the time of execution [or immediately thereafter] [on the next working day following the day of execution]"

This presumption possibly could also be a reason of not paying the stamp duty within the prescribed time limit.

Section 56(4) of the companies Act, 2013

Every Private and Public Company is required to issue Share Certificate to its Shareholder as per the time lines stated in the provisions of Section 56 (4) of the **Companies Act, 2013**:

1. within a period of two months from the date of incorporation, in the case of subscribers to the memorandum;
2. within a period of two months from the date of allotment, in the case of any allotment of any of its shares;

3. within a period of one month from the date of receipt by the company of the instrument of transfer or intimation of transmission in the case of a transfer or transmission of securities;
4. within a period of six months from the date of allotment in the case of any allotment of debenture.

Adjudication Process:

Whenever a company fails to pay stamp duty on the Share Certificate in the prescribed time limit it is required to make an offline application along with requisite documents to Collector of Stamps office based on the jurisdiction under which the registered office is situated for adjudication procedure.

Keys Documents:

- Application for Adjudication in given format;
- Application with court fee stamp of Rs. 5;
- Affidavit;
- Authority Letter;
- Original along with duplicate copy of the document which is the subject of adjudication;
- Copy of Resolution for allotment of shares;
- Copy of Resolution Authorizing person to make application of adjudication.

Fee Payable for Adjudication procedure

Fee of Rs. 100/- shall be paid as per Article 31 of Maharashtra Stamp Act through online GRAS portal.

Timeline for adjudication of stamp duty

Adjudication order to pay stamp duty normally comes in maximum of 45 days from the date of submitting of application along with fees and requisites documents.

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IV. GST

- **Important changes in GST Regime with effect from 1st January 2022**

Central Government has brought into effect the provisions of **Finance Act, 2021** effective from 1st January, 2022. In the Budget of 2021-22, changes in **Finance Bill**, 2021 were proposed to make changes in **CGST Act, 2017**. Accordingly, CGST Act, CGST Rules and **IGST Act, 2017** has been amended.

The Government vide Notification No. 14/2021-Central Tax) & Notification No. 15/2021-Central Tax dated 18th November 2021 has made some major amendments that will come into force from 1st January 2022.

The following are the 10 important changes that has come into effect from 1st Jan 2022

Compliance Related

1 – GST ITC available to Recipient only when supplier pay and file GSTR 1, which matches with GSTR 2B
2 – Registered persons can't file GSTR-1 if not furnished GSTR-3B for the preceding month
3 – Aadhaar authentication is compulsory filing refund claim and application for revocation of cancellation of registration

Changes in Rates Related

4 – Changes in GST rate on footwear from 5% to 12%
5 – GST leviable on services provided by Club or Association to its members retrospectively w.e.f. July 01, 2017
6 – Composite supply of works contract services to Governmental Authority or Government Entity taxable @ 18%
7 – Food delivery apps like Zomato & Swiggy, and Cloud kitchens brought within the restaurant services, liable to pay GST @5% with no ITC

Litigation & Assessment Related

8 – Commissioner can pass Order for Provisional Attachment of property/ bank account of taxable or any person to protect Govt. revenues
9 – Minimum Pre-deposit of 25% for filing appeal against E-way bills violations
10 – Recovery of self-assessed tax can be made without Show Cause if there is difference between GSTR 1 and GSTR 3B

V. RBI

- ### Foreign Owned or Controlled Companies (FOCC)

Introduction

Foreign Owned or Controlled Companies or FOCC is a familiar name for Indian subsidiaries or entities controlled of/by non- resident/ foreign or multinational companies. FOCC is an Indian company set up or owned or controlled by a non- resident/ a foreign company or MNCs (hereinafter referred as parent company). FOCC becomes a great source of investment for those companies who wish to invest and have a controlling interest and ownership in the investee or even want to conduct business operations in India as a domestic company. Foreign company conducts business operation in India but with the status of a foreign company which holds them back from the benefits enjoyed by a domestic company. As a result, many companies prefer to incorporate a FOCC to enjoy the benefits of a domestic company like Disney India, Star India etc.

Guidelines for Incorporation

There are certain compliances that are needed to be adhered to at the time of obtaining ownership/ control. Companies Law and Foreign Exchange Management Law (FEMA) are two major laws that govern the whole process. Companies Law governs the whole incorporation process and FEMA governs the investment related procedures. The incorporation process is same as that of a domestic company except for some additional requirements like for examples the requirement of having at least one Indian director out of two directors if the FOCC is a private limited company. The documents provided by the foreign director should be in English and apostille.

Different Types

of FOCC Knowing about the pre- conditions we can now move towards the types of FOCC. FOCC can be set up as a joint venture as well as Wholly- Owned Subsidiary (WOS). WOS can be set up by the parent company only for sectors where 100% foreign investment is allowed under automatic route and none other than that. Joint ventures can be set up in sectors where regulations of FEMA permit. A parent company can also acquire equity instruments (instruments like equity shares, compulsorily convertible preference shares and debentures) in an existing company and make the latter a FOCC.

The procedure and compliances for all the three are different.

For setting up a WOS-

First the company needs to be incorporated in India. The process is quite similar to incorporation of a Non WOS. The Parent company has to nominate one director through a resolution who will represent the parent in the functioning of WOS (The nominated director can be Indian or foreign national). There also needs to be a second director who has to be mandatorily Indian if the first director is not an Indian citizen. After incorporation, subscription money has to be received from the parent company and Foreign Inward Remittance Certificate (FIRC) along with KYC of the foreign investor needs to be collected from the Authorized Dealer Category I banks. Then the company needs to file FC- GPR (Foreign Currency- Gross Provisional Return) for approval from RBI.

For setting up a joint venture-

There are two alternatives method for this:

- If it is a sector under automatic route then the same process as that of WOS has to be followed.
- If it is a sector under approval route additionally, prior approval has to be taken from government after which the subscription money can be brought into India.

For acquiring equity instruments in an existing company-

There are two methods of acquiring interest in an existing company. The first one is transfer of equity instruments and the other one is issue of new shares. As in most cases, there will be transfer of equity instrument, so Foreign Currency- Transfer of Shares (FC-TRS) needs to be filed with RBI. But if new shares are issued, the domestic company needs to file FC- GPR along with statutory requirements of Companies Law.

Process for obtaining approval-

Department of Industrial Policy & Promotion (DIPP) along with concerned sector ministry manages the approval process of Foreign Direct Investment (FDI) from FDI portal- Foreign Investment Facilitation. An application has to be submitted as a proposal along with the documents required on the portal. If the application is not digitally signed, then a copy of the application has to be submitted physically also. DIPP sends the application to the concerned ministry and RBI within two days of receiving it. The ministry can ask for any additional information required and DIPP has to give the clarification within 15 days from receiving it from the applicant.

After receiving the required information, the decision is communicated within 2 weeks. In cases where security clearance is required like investment from countries of concern like Pakistan or Bangladesh, Union Home Ministry is to be communicated and its approval is also required. If the investment amount exceeds INR 5000 Crore, Cabinet Committee of Economic Affairs is to be involved. If the proposal is to be rejected by the concerned ministry, DIPP has to be consulted.

Process for reporting of funds received-

Whether funds are received through direct route or approval route, the domestic company is required to report to the RBI about receipt of funds. This is done through the AD bank through which the funds have been received by reporting in FC-GPR containing details like name and address of parent company, date of receipt of fund, rupee equivalent, etc.

Valuation Requirements

Annual Compliances

FEMA guidelines:
Annually form FLA (Foreign Assets and Liability) is required to be filed. It covers details of all foreign holding in the company whether it is a FDI (Foreign Direct Investment) or FPI(Foreign Portfolio Investment). It also covers details about ODI(Overseas Direct Investment) made by the company, if any.

Income Tax

Apart from the usual annual returns a FOCC is also required to file Transfer Pricing Report(Form 3CEB) with the Income Tax Authorities in case of specified transactions with its foreign Associated Enterprises. This involves getting these transactions audited by a Practicing Chartered Accountant.

Companies Act

Along with the usual compliance requirements, a foreign company is also required to file eForm FC-3 (Annual accounts along with the list of all principal places of business in India established by foreign company) and E form FC-4(Annual Return).

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