Newsletter
MAY, 2017

Kreston OPR Advisors LLP

KRESTON
OPR ADVISORS

POLO

O.P. RATHI & CO.
CHARTERED ACCOUNTANTS

Highlights

INCOME TAX/DIRECT TAX

- Procedure for Linking PAN Card & Aadhaar Card
- Issues in Linking PAN Card & Aadhaar Card
- You can withdraw EPF for medical treatment without doctor certificate
- Latest Judgments

INDIRECT TAX

- GST rollout: Commerce ministry to modify certain portions of FTP
- GST to be launched on June 1 as planned, despite calls for delay: Revenue secretary

COMPANIES ACT

- ROC Notice u/s 248(1)- Strike off of Companies
- MCA Notifies Amendments in Schedule III to the Companies Act (CA) 2013 regarding disclosure requirements for companies on holding and dealings of Specified Bank Notes during Demonetization

OTHERS

- Google unveils 'Solve for India' program to help startups and entrepreneurs; all you need to know
- India sees highest listed foreign funds inflows at $1.7 billion
- Real Estate Regulation Act comes into effect: 10 things you need to know about new law
- Compliance Calendar – May, 2017

Procedure for Linking PAN Card & Aadhaar Card

- Newly Introduced Section 139AA of the Income Tax Act, 1961 by the Finance Act, 2017 provides for mandatory quoting of Aadhaar / Enrolment Id of Aadhaar application form, for filing of Return of Income and for making an application for allotment of Permanent Account Number with effect from 1st July, 2017.
- For Filing Return of Income it will be mandatory to quote Aadhaar or Enrolment ID of Aadhaar.
- Also, it is made mandatory to link Aadhaar with Income Tax Site to enable E-verification of Income Tax return instead of sending signed copy to Banglore CPC.
- In order to link PAN and Aadhaar cards, tax payers have to first register on the Income tax e-Filing portal. Once they have done so, they are to follow the steps outlined below:
  - Log in to the e-Filing portal of the Income Tax Department by entering the log-in ID, password and date of birth.
  - On logging in to the site, a pop up window will appear, prompting you to link your PAN card with Aadhaar card.
  - Details such as name, date of birth and gender will already be mentioned as per the details submitted at the time of registration on the e-Filing portal.
  - Verify the details on screen with the ones mentioned on your Aadhaar card.
  - If the details match, enter your Aadhaar card number and click on the “link now” button.
  - A pop-up message will inform you that your Aadhaar card has been successfully linked to your PAN card.

Issues in Linking PAN Card & Aadhaar Card

- But, In most of the cases Linking of PAN with Aadhaar becomes nightmare to many persons as Data as per Income Tax Department Database and data as per Aadhaar database seldom match with each other. A large number of people, especially those in the south of the country, feel hassled by the decision of making Aadhaar mandatory for filing income tax returns and linking their PAN with Aadhaar. When the PAN was issued, people were asked to expand their initials, and the card was issued with the full name. But in Aadhaar they used any format of Name not as per the format of Income Tax Database, resulting into hassles to most people.
- Individuals struggling to link their Permanent Account Number (PAN) with Aadhaar because of differently spelt names can now simply upload a scanned copy of PAN to get the work done. Besides, the tax department is planning to introduce an option on the e-filing portal through which taxpayers can choose to link the Aadhaar without changing the name by opting for a One-Time Password (OTP), provided that the year of birth of the person matches in both documents.
- With the linking of PAN with Aadhaar being made mandatory, individuals can log on to e-filing website of the Income Tax department but the seeding cannot happen if the name is differently spelt in the two cards — like use of full name in PAN and initials in Aadhaar.
- Linking PAN with Aadhaar should not be cumbersome for people whose registered mobile number with the Unique Identification Authority of India (UIDAI) is active. In case the taxpayer is unable to link PAN with Aadhaar because of discrepancy in name, they can log in to the Aadhaar website, request for a name change and upload a scanned copy of PAN card. However, the registered mobile number with UIDAI has to be functional

You can withdraw EPF for medical treatment without doctor certificate

- ***Govt allows withdrawal of funds from EPF accounts to pay medical bills including that of surgery and equipment to deal with handicap, without medical certificates.***
- Over four crore members of the retirement fund body EPFO can now withdraw funds from their EPF account for treatment of illness and purchasing equipment to deal with handicap without medical certificates.
- The employees' provident fund scheme 1952 has been amended to do away with the requirement of submission of various certificates and forms for seeking advance for treatment of illness and purchasing equipment required in case of physical disabilities. Now, the subscribers can seek fund withdrawal from their EPF account on various grounds by using a composite form along with a self-declaration.
- "The labour ministry has amended the clause 68-J and 68-N of the employees' provident fund scheme 1952 for enabling members to take non-refundable advances from their account for treatment of illness and buying equipment to minimise the hardship on account of handicap," a senior official said on Thursday. At present, the employees' provident fund organisation (EPFO) subscribers can seek advance under para 68-J of the EPF scheme for their and their dependents' treatment for illness. Besides, a physically-challenged member can seek advance for purchasing equipment to deal with handicap under para 68-N. The official further said the labour ministry issued a notification with regard to the amendment on 25 April.
- Under paragraph 68-J, the members can seek advance from the fund for treatment of illness in certain cases including hospitalisation lasting for one month or more, or major surgical operation in a hospital, or in case they are suffering from TB, leprosy, paralysis, cancer, mental derangement or a heart ailment. The advance under this para 68-J was granted on only after receipt of certificate from employers or employees that the member or his dependent is not covered under the employees' state insurance scheme facility and benefits. Besides, the members were required to submit a certificate from a doctor of the hospital that the member or his dependent has been hospitalised or requires hospitalisation for one month or more, or that a major surgical operation had or has become necessary.
- Now after the amendment, a member would no longer be required to submit any medical certificate or any other certificate or document or any form whatsoever to avail advance under paragraph 68-J. Under paragraph 68-N, the physically-handicapped member can seek advance to purchase equipment to minimise hardship on account of handicap. The withdrawal under this clause was allowed only after submission of medical certificate from a competent medical practitioner or an officer authorised by the EPFO. Under para 68-J and 68-N, the amount advanced shall not exceed the member's basic wages and dearness allowance for six months or his own share of contributions with interest thereon or the cost of the equipment, whichever is lower.

Latest Judgments

➢Loan from a Company wherein the Partners of the Firm are Shareholders is not 'Deemed Dividend', Not Taxable in the hands of Firm: ITAT Delhi

- In Business Strategy Group v. ACIT, the ITAT, Delhi held that the loan obtained from a Company wherein the partners of the Assessee-Firm are the shareholders cannot be termed as 'deemed dividend' of the Firm and therefore, it is not taxable in the hands of the Firm under the provisions of Income Tax Act.
- Assessee-Firm is engaged in the business of rendering Management Consultancy Services. The partners of the Firm are equal share holders in a Private Ltd Company, i.e, M/s TMI Associates Pvt. Ltd. The AO found that the assessee firm had shown a loan of Rs. 3 lakhs from M/s TMI Associates Pvt. Ltd and treated the same as the deemed dividend which is taxable in the hands of the assessee-Firm.
- Before the Trbunal, the assessee contended that it is not a share holder in the said Company and Section 2(22)(e) has no application to the amounts received from a Company by the non-shareholder. The bench noted the decision in Assistant Commissioner Of Income Tax Vs. Bhaumik Colour (P) Ltd wherein it was held that deemed dividend can be assessed only in the hands of a person who is a shareholder of the lender company and not in the hands of a person other than a shareholder.
- Following the above decision, it was held that so long as the assessee firm is not a shareholder, any loan obtained by the assessee firm from the Private Limited Company, wherein the partners of the assessee firm are the shareholders, is not taxable in the hands of the assessee.

➢Provisions of Deemed Dividend would not apply if Assessee is neither Share Holder nor Beneficial Share Holder in Company: ITAT Mumbai

- In a significant ruling, M/s. Om Siddivinayak Creations Pvt Ltd v. ITO, the division bench of the ITAT Mumbai held that the section 2(22)(e) of the Income Tax Act, which deals with the provisions of deemed dividend would not apply if the assessee is neither share holder nor the beneficial share holder in the company.

Contd..

- Assessment was completed against the assessee, a company engaged in business of film making and film financing in the form of loans, by making addition on account of deemed dividend.
- The first appellate authority deleted the addition by relying upon the decision of ITAT in the own case of the assessee, wherein it was held that the provisions of deemed dividend is not applicable since the assessee-company is neither share holder nor the beneficial share holder in the company.
- The Revenue appealed against the said order relying upon the CBDT's circular No 495 dated 22.09.1987, wherein the provisions of section 2(22)(e) have been explained as under: "The new provision would, therefore, be applicable in a case where a shareholder has 10 percent or more of the equity capital.
- Further deemed dividend would be taxed in the hands of a concern where all the following conditions are satisfied. (i) Where the company makes the payment by way of loans or advances to a concern (ii) Where a member or a partner of the concern holds 10 per cent of the voting power in the company; and (iii) Where the member or partner of the concern is also beneficially entitled to 20 per cent of the income of such concern.
- With a view to avoid the hardship in cases where advances or loans have already been given, the new provisions have been made applicable only in cases where loans or advances are given after 31st May 1987. These amendments will apply in relation to Assessment Year 1988-89 and subsequent years." The bench noted that the decision of the co-ordinate bench was on the basis of the order of Special bench of ITAT in ACIT vs. Bhaumik Colour P. Ltd. [2009] 118 ITD 1 (MUM.)(SB), wherein it has been held that Deemed dividend can be assessed only in the hands of a person who is a shareholder of the lender company and not in the hands of a person other than a shareholder.
- Further, the expression 'shareholder' referred to in section 2(22)(e) refers to both a registered shareholder and beneficial shareholder. If a person is registered shareholder but not the beneficial shareholder then the provisions of section 2(22)(e) will not apply. Similarly if a person is a beneficial shareholder but not a registered share holder then also the provisions of section 2(22)(e) will not apply.
- While concluding the matter in favour of the assessee, the ITAT further noticed the Bombay High Court decision in CIT, Vs Universal Medicare Pvt Ltd (2010) 324 ITR 263 (Bom) wherein it has held that "Even assuming that it was a dividend, it would have to be taxed not in the hands of the assessee but in the hands of the shareholder". Rejecting the contentions of the revenue, and applying the ration of the above cases to the facts of the case in hand, the bench held that the provisions of section 2(22)(e) of the Act are not applicable in the case of the assessee and therefore, the finding of the learned CIT(A) in deleting the addition made by the AO under section 2(22)(e) of the Act was upheld.

GST rollout: Commerce ministry to modify certain portions of FTP

- The commerce ministry will modify certain portions of the foreign trade policy (FTP) to align it with the Goods and Services tax, which is to be rolled out from July 1. The ministry also proposes to come out with the mid-year review of FTP, a few months ahead of the schedule, before the GST rollout.
- The 5-year foreign trade policy (2015-20) provides a framework for boosting exports of goods and services besides creation of employment and increasing value addition.
- The ministry was expected to complete the review by September but as the GST roll-out is scheduled from July 1, "we have to make changes in it and also prepone the completion of review", an official said.
- In view of the GST, the ministry may have to make changes in chapters relating to incentives for exporters; duty exemption schemes; export promotion capital goods scheme and deemed exports.
- As there is no provision of ab-initio exemption in the GST, exporters would have to pay the duties and then seek the refund. "Due to these provision, the language of the policy requires certain changes," the official added.
- FTP was announced in 2015 and it was stated that the ministry would conduct a mid-term review in September to see whether any tweaking is required in the policy to promote shipments. The policy sets a target of taking India's exports of goods and services to $900 billion by 2020.
- In 2016-17, India's merchandise shipments aggregated at $275 billion. Further, manufacturing exporters have raised certain concerns over refund of duties and according to the Federation of Indian Export Organisations (FIEO) a certain portion of working capital would be blocked in the process with the government for about three months.
- As per estimates, over Rs 1.85 lakh crore working capital of exporters may get stuck annually with the government under the GST. Blocking of this amount would push up the manufacturing cost of exporters as they have to borrow more from banks.
- FIEO Director General Ajay Sahai said the government should prepare a software to ensure that refunds are granted quickly.He added that the interest rates are about 12-15 per cent in India and borrowing at this rate would push up exporters' manufacturing cost.
- The commerce ministry had earlier pressed the GST Council to keep exports out of the framework of the new indirect tax regime and levy lower taxes on labour-intensive sectors like leather, cement and plantation.
- Refund of taxes takes about six to eight months and hence it is necessary to give an ab-intio exemption to exporters. Currently exporters are exempted from paying taxes. But under the GST regime, they have to pay the duties and then seek refunds.

GST to be launched on June 1 as planned, despite calls for delay: Revenue secretary

- India will launch the Goods and Services Tax (GST) as planned on July 1 to boost economic growth and state revenues, a finance ministry official said on Wednesday, despite calls from some businesses for a delay.
- The central and state governments were ready to roll out the GST, said Revenue Secretary Hasmukh Adhia, adding that firms should not count on a postponement of a tax more than a decade in the making.
- India's most ambitious tax reform since independence would transform its $2 trillion economy and market of 1.3 billion people into a single economic zone with common indirect taxes - something that neither the European Union nor the United States can boast.
- And, although the GST is designed to be revenue neutral, Adhia expects it to improve compliance by businesses as well as draw their owners into the income tax net, thus boosting overall tax revenues.
- "The entire parallel economy will vanish," Adhia told Reuters in an interview
- "The benefit of avoiding tax which was accruing to the entrepreneur or to the trader - that will now come to the government. That is why we expect revenue buoyancy to go up."

Checkposts to go

- Tax checkpoints at state borders would be dismantled, Adhia said, adding that a GST panel was in talks with other departments to remove other posts that could hinder the movement of goods. This would "take some time".
- Work is also complete on setting up the GST Network, an IT system that will match invoices, making it possible for companies to claim input credits that will soften the impact of initially high GST rates.
- There will be four tax 'slabs' - 5, 12, 18 and 28% - with rates on individual items broadly in line with levies that now apply. Parliament passed laws to implement the GST in the session now ending.
- "Our fundamental aim is to keep the rate closer to the existing one," said Adhia, one of Prime Minister Narendra Modi's most trusted bureaucrats.
- Other countries that have launched GSTs have faced a dip in growth and revenues due to initial teething troubles, but Adhia was confident that indirect revenues would exceed a target of 9-10% in the fiscal year to March 2018.

Contd..

- With company owners using their personal tax numbers to comply with the GST, Adhia expects income tax dodgers to have to come clean. Only around 3% of people in India pay income tax.
- "It will become harder for people to stay informal," he said. "They will have to come into the tax net, and that in turn will give us some benefit in direct taxes also."
- Looking further out, expected revenue buoyancy would leave room to lower GST rates and simplify the tax structure.
- "The 18% or 28% rates certainly need a relook, but right now we can't afford it," said Adhia. "Once our revenues are more steady, there is a reason for consumers also to benefit from GST. And that they will.".

ROC Notice u/s 248(1)- Strike off of Companies

This article highlights the provisions of section 248(1) of the *Companies Act, 2013 relating to Power of Registrar to remove name of company from register of companies. Its main thrust however, is on the effects of 'Show Cause Notices' (here after read as "SCN") issued by the Registrar of Companies (hereafter read as "ROC") to the companies for violation u/s. 248(1) (not carrying on any business or operation for a period of two immediately preceding financial years)*

Introduction

1. Thus Far all ROC's issued show cause notices to the Companies u/s. 248(1)(c). As per notice ROC shall strike off the Company if appropriate reply is not filed within 30 days and ROC will take appropriate action against the Directors. Many professionals have been raising questions on interpretation/provisions relating to strike off through Show Cause Notice, liability of director, etc.

Extract of Show Cause Notice

2. Extracts of the show cause notice, to the extent relevant for our discussion, are stated as under (with necessary comments and modifications, wherever felt necessary).

Notice is hereby given that as per available records the company is not carrying on any business or operation for a period of 2 immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company u/s 455.

If the company fails to submit the reply along with copies of the relevant documents, if any, within a period of 30 days from the date of the notice, it shall be published in the Gazette of India with a view to striking of the name of the Company from the Registry. ***"However the directors of the Company shall be liable for appropriate action under the Act."***
This dissolution is subject to the provisions that the ***liability of every director and members of the Company shall continue*** and may be enforced as if the company has not been dissolved.

Statutory Provisions Contained Under the Act
3. Provisions of the Companies Act, 2013, to the extent relevant for our discussion, are stated as under (with necessary comments and modifications, wherever felt necessary).
248 (1) Where the Registrar has reasonable cause to believe that—
a) a company has failed to commence its business within one year of its incorporation or;
b) a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455, he shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice.

MCA Notifies Amendments in Schedule III to the Companies Act (CA) 2013 regarding disclosure requirements for companies on holding and dealings of Specified Bank Notes during Demonetization

- The MCA has notified certain amendments in Schedule III to the Companies Act 2013, applicable w.e.f. 30 Mar. 2017, requiring the companies to disclose the details of Specified Bank Notes (SBN) held and transacted during the period 8 Nov. 2016 to 30 Dec. 2016 (i.e. during demonetization), as under:
  - G.S.R. 308(E).—In exercise of the powers conferred by sub-section (1) of section 467 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following further amendments to Schedule III of the said Act with effect from the date of publication of this notification in the Official Gazette, namely:-
- In the Companies Act, 2013 (hereinafter referred to as the principal Act), in Schedule III, in Division I, in Part I under the heading "General instructions for preparation of Balance Sheet" in paragraph 6, after clause 'W', the following clause shall be inserted namely:
  - "X. Every company shall disclose the details of Specified Bank Notes (SBN) held and transacted during the period from 8th November, 2016 to 30th December, 2016 as provided in the Table below:-

	SBNs	Other Denomination Notes	Total
Closing cash on hand as on 08.11.2016			
(+)Permitted Receipts			
(-)Permitted Payments			
(-)Amount Deposited in Banks			
Closing cash on hand as on 30.12.2016			

- Explanation : For the purposes of this clause, the term 'Specified Bank Notes' shall have the same meaning provided in the notification of the Government of India, in the Ministry of Finance, Department of Economic Affairs number S.O. 3407(E), dated the 8th November, 2016."

India sees highest listed foreign funds inflows at $1.7 billion

- Listed foreign funds pumped in $ 1.7 billion into India during March — the highest flows among the emerging countries says a report.

- As per foreign fund-flow tracker report by Kotak Institutional Equities,the strong fund flows for March were largely driven byExchange Traded Funds (ETFs) inflows of $ 1.1 billion.

- Non-ETF fund inflows stood at $620 million.The listed funds — passive exchange-traded funds (ETFs) and active non-ETFs — generally account for a large part of foreign portfolio investor (FPI) activity in India.

- For listed fund flows to emerging markets, India is followed by Taiwan and Brazil, which have seen listed foreign fund inflows to the tune$ 937 million and $ 785 million respectively. “Listed fund flows to India remained positive in March. India has seen $ 1.7 billion of inflows, driven by strong ETF inflows of $ 1.1 billion,” the report said. “Emerging market flows — India has seen strong inflows of $ 1.7 bn in March, followed by Taiwan and Brazil,” it added.

- The report also noted that allocations to India and China constitute more than one-third of the average Asia fund portfolio (excluding Japan). “Allocation to India by Asia ex-Japan funds has marginally decreased to 13.6 per cent,” the report said. “Allocation by Asia ex-Japan ETF funds to India increased to 9.6 per cent from 9.1 per cent in the previous month,” it added.

Google unveils ‘Solve for India’ program to help startups and entrepreneurs; all you need to know

- With an objective to support and mentor several initiatives, Google has announced 'Solve for India' program to aid the new wave of entrepreneurs and startups.
- Global tech giant Google has decided to help the new breed of entrepreneurs and developers in India. The company is building solutions for various issues in India. With an objective to support and mentor several initiatives, Google has announced ‘Solve for India’ program to aid the new wave of entrepreneurs and startups in emerging cities like Pune, Jaipur, Hyderabad, Kolkata, Kochi, Indore, Nagpur, Nashik, Madurai, Kanpur and Chennai. Through this initiative, Google is planning to expand and energise the start-up ecosystem in these tier II cities as well as provide inspiration to the entrepreneurs aim to ‘Solve for India’.
- Connectivity and rapid growth in web users, the internet has been providing ample opportunities for entrepreneurs to create solutions which will cater to problems in India. Google said, “The program will provide a platform for developers, entrepreneurs in tier 2 cities to hear from experts and learn about the latest Google technologies and get access to direct mentoring and support from Google.” Under this program, entrepreneurs will be provided opportunities to learn directly from Google engineers who will share product usage insights, how to develop mobile first solutions with strong offline and language capabilities and help them to build solutions in many sectors.
- Google is planning on a pan-India approach which will cater to the initiatives which have a wider reach. Karthik Padmanabhan, Program Manager Lead for Google India, said, “Majority of India’s Internet users are Indian language users, and over 80 percent of them access the Internet from their mobile phones. But the current Indian startup ecosystem is building products for English speaking audience and caters only to 15 percent of the population.”
- This is another initiative by the company, after the Google Launch pad mentoring program. The Launchpad accelerator program is of six months duration and users can sign up now. For web developers, Google will provide training from experts in Android, Firebase, Machine learning, Cloud APIs, Progressive Web Apps and Indian Language Translation solutions.
- Our director/Partner Mr. Vineet Rathi is on various startup forums. In case any advisory with regards to startups is required, please get in touch with him.

Real Estate Regulation Act comes into effect: 10 things you need to know about new law

The Real Estate (Regulation & Development) Act, 2016, the landmark realty law to protect home buyers from unscrupulous developers, will become operational from Monday, nine years after it was conceived. The act was cleared by Parliament in March last year. Under the act, states had to notify the realty rules and set up Real Estate Regulatory Authority (RERA) by April 30. Without notifying the rules, the law will not become operational.

Here's all you need to know about the new realty law:

1. It makes it mandatory for all builders - developing a project where the land exceeds 500 square metre - to register with RERA before launching or even advertising their project. Developers have been given time until July 31 to register.
2. Not doing so will invite up to a maximum imprisonment of 3 years or fine of up to 10% of the total project cost.
3. Developers will have to submit as well as upload project details, including approved layout plan, timeline, cost, and the sale agreement, that prospective buyers will have to sign to the proposed regulator.
4. Only developers who fulfil this disclosure clause would be permitted to advertise their project to prospective buyers.
5. Real Estate Appellate Tribunals to be set up in every state.
6. As of now, the real estate sector was largely unregulated in India. If a consumer had a complaint against a developer they had to make rounds of consumer or civil courts. Now, in case of any grievance, the consumer can go to the real estate regulator for redressal.
7. Developers will have to put 50% of the money collected from a buyer in a separate account to meet the construction cost of the project. This will put a check to the general practice by developers to divert buyer's money to start a new project instead of finishing the one for which money was collected. This will ensure that construction is completed on time.
8. The law is likely to stabilise housing prices. It will lead to enhanced activity in the sector, leading to more housing units supplied to the market.
9. It will weed out fly-by-night operators from the sector and channelize investment into it.
10. Builders will also benefit as the law has penal provisions for allottees who do not pay dues on time. The builder can also approach the regulator in case there is any issue with the buyer.

Compliance Calendar for May, 2017

Sr. No.	Particulars	Frequency	Due Date
1.	TDS Return	Quarterly	31st May
2.	TCS Return	Quarterly	15th May
3.	PF Payment	Monthly	15th May
4.	ESIC Payment	Monthly	21st May
5.	Service Tax Payment	Monthly	5th May

O.P. RATHI & CO.
CHARTERED ACCOUNTANTS

POLO

CONTACT US

VADODARA:
102 – 103 SHIVANI FLATS,
BH. BANK OF INDIA,
SUBHANPURA, ELLORA PARK,
VADODARA – 390 021
PH: +91 265 238 7747, 238 7757
FAX: +91 265 239 2665
EMAIL: RUCHI.RATHI@OPRATHI.IN

PUNE:
103 D GOLD HOUSE,
DYANESHWAR PADUKA CHOWK,
FERGUSON COLLEGE ROAD,
PUNE, MAHARASHTRA - 411005
MOB: +91 96730 70000
EMAIL: VINAY.RATHI@OPRATHI.IN

KRESTON
OPR ADVISORS