

Circulars/Notifications (... continued from page 143)

in Form 61A is 31st May 2017 (which was later on extended to 30.06.2017).

In case there are reportable transactions for the year, the reporting person/entity is required to register with the Income Tax Department and generate Income Tax Department Reporting Entity Identification Number (ITDREIN). The same can be generated by logging-in to the e-filing website (<https://incometaxindiaefiling.gov.in/>) with the login ID used for the purpose of filing the Income Tax Return of the reporting person/entity. Entity having PAN can take only PAN based ITDREIN. Entity having TAN can generate an ITDREIN only when such TAN's Organisational PAN is not available.

The registration of reporting person (ITDREIN registration) is mandatory only when at least one of the Transaction Type is reportable. A functionality "SFT Preliminary Response" has been provided on the e-Filing portal for the reporting persons to indicate that a specified transaction type is not reportable for the year.

Detailed procedure of ITDREIN registration and uploading of Form 61A is available under the "Help" section and Form 61A utility and scheme are available under the download section of <http://www.incometaxindiaefiling.gov.in> and <https://www.cleanmoney.gov.in>. Online filing of Form 61A requires a valid class 2 or 3 digital signature certificate of person responsible for filing the same. Please refer "DSC Management Utility" manual under "Help" section on how to generate the signature file, attaching the XML with signature and uploading of XML with signature file in e-Filing portal.

3. India Signs the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting at Paris—Press Release, dated 07-06-2017

The Honourable Finance Minister Shri Arun Jaitley signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting at Paris on 7th June, 2017 on behalf of India. More than 65 countries, including India, signed the Convention. More countries are expected to sign the Convention in coming days.

The Multilateral Convention is an outcome of the OECD / G20 Project to tackle Base Erosion and Profit Shifting (the "BEPS Project") i.e., tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity, resulting in little or no overall corporate tax being paid. The BEPS Project identified 15 actions to address base erosion and profit shifting (BEPS) in a comprehensive manner.

India was part of the Ad Hoc Group of more than 100 countries and jurisdictions from G20, OECD, BEPS associates and other interested countries, which worked on an equal footing on the finalisation of the text of the Multilateral Convention, starting May 2015. The text of the Convention and the accompanying Explanatory Statement was adopted by the Ad hoc Group on 24 November 2016.

The Convention enables all signatories, *inter alia*, to meet treaty-related minimum standards that were agreed as part of the Final BEPS package, including the minimum standard for the prevention of treaty abuse under Action 6.

The Convention will operate to modify tax treaties between two or more parties to the Convention. It will not function in the same way as an amending protocol to a single existing treaty, which would directly amend the text of the Covered Tax Agreement. Instead, it will be applied alongside existing tax treaties, modifying their application in order to implement the BEPS measures.

The Convention will modify India's treaties in order to curb revenue loss through treaty abuse and base erosion and profit shifting strategies by ensuring that profits are taxed where substantive economic activities generating the profits are carried out and where value is created.

4. Supreme Court judgement on Aadhar-PAN linkage—Press Release, dated 10-06-2017

Hon'ble Supreme Court in its landmark judgment has upheld Section 139AA as constitutionally valid which required quoting of the Aadhaar number in applying for PAN as well as for filing of income tax returns.

The Court also held that the "*Parliament was fully competent to enact Section 139AA of the Act and its authority to make this law was not diluted by the orders of this Court.*" Therefore, no violation of the earlier Supreme Court orders were found in enacting the provision.

The Court has also held that Section 139AA is not discriminatory nor it offends equality clause enshrined in Article 14 of the Constitution.

Section 139AA is also not violative of Article 19(1) (g) of the Constitution in so far as it mandates giving of Aadhaar number for applying PAN and in the income tax returns and linking PAN with Aadhaar number.

Section 139AA(1) as introduced 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 PAN w.e.f. 01.07.2017.

Section 139AA(2) provides that every person who has been allotted PAN as on 01.07.2017, and

who is eligible to obtain Aadhaar, shall intimate his Aadhaar on or before a date to be notified by the Central Government. The proviso to Section 139AA (2) provides that in case of non-intimation of Aadhaar, the PAN allotted to the person shall be deemed to be invalid from a date to be notified by the Central Government.

The Supreme Court has upheld Section 139AA(1) which mandatorily requires quoting of Aadhaar for new PAN applications as well as for filing of returns.

The Supreme Court has also upheld Section 139AA(2) which requires that the Aadhaar number must be intimated to the prescribed authority for the purpose of linking with PAN.

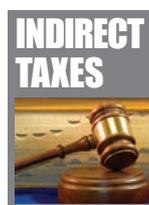
It is only the proviso to Section 139AA(2) where the Supreme Court has granted a partial stay for the time being pending resolution of the other cases before the larger bench of the Supreme Court. The Supreme Court has unequivocally stated as follows:

"125. Having said so, it becomes clear from the aforesaid discussion that those who are not PAN holders, while applying for PAN, they are required to give Aadhaar number. This is the stipulation of sub-section (1) of Section 139AA, which we have already upheld. At the same time, as far as existing PAN holders are concerned, since the impugned provisions are yet to be considered on the touchstone of Article 21 of the Constitution, including on the debate around Right to Privacy and human dignity, etc. as limbs of Article 21, we are of the opinion that till the aforesaid aspect of Article 21 is decided by the Constitution Bench a partial stay of the aforesaid proviso is necessary. Those who have already enrolled themselves under Aadhaar scheme would comply with the requirement of sub-section (2) of Section 139AA of the Act. Those who still want to enrol are free to do so. However, those assessee who are not Aadhaar card holders and do not comply with the provision of Section 139(2), their PAN cards be not treated as invalid for the time being. It is only to facilitate other transactions which are mentioned in Rule 114B of the Rules. We are adopting this course of action for more than one reason. We are saying so because of very severe consequences that entail in not adhering to the requirement of sub-section (2) of Section 139AA of the Act. A person who is holder of PAN and if his PAN is invalidated, he is bound to suffer immensely in his day to day dealings, which situation should be avoided till the Constitution Bench authoritatively determines the argument of Article 21 of the Constitution.

Since we are adopting this course of action, in the interregnum, it would be permissible for the Parliament to consider as to whether there is a need to tone down the effect of the said proviso by limiting the consequences."

Finally the effect of the judgment is as following:

- (i) From July 1, 2017 onwards every person eligible to obtain Aadhaar must quote their Aadhaar number or their Aadhaar Enrolment ID number for filing of income tax returns as well as for applications for PAN;
- (ii) Everyone who has been allotted permanent account number as on the 01.07.2017, and who has aadhaar number or is eligible to obtain Aadhaar number, shall intimate his Aadhaar number to income tax authorities for the purpose of linking PAN with Aadhaar;
- (iii) However, for non-compliance of the above point no.(ii), only a partial relief by the Court has been given to those who do not have Aadhaar and who do not wish to obtain Aadhaar for the time being, that their PAN will not be cancelled so that other consequences under the Income-tax Act for failing to quote PAN may not arise.



(Matter on Indirect Taxes has been contributed by the Indirect Taxes Committee of the ICAI)

CUSTOMS

1. Valmikinagar in West Champaran District, Bihar now notified as Land Customs Station

CBEC vide *Notification No. 50/2017-Customs (NT)*, dated: May 24, 2017 has declared the following as Land Customs Station in State of Bihar for the purpose mentioned against it:

S. No.	Place	Purpose
1.	(28) Valmikinagar in West Champaran District, Bihar	Road connecting Valmikinagar in West Champaran District, Bihar and Triveni Bazar in Nepal.

[Notification No. 50/2017-Customs (NT), dated: May 24, 2017]

2. Exemption from drawal of samples for the purpose of grant of drawback to the AEO certificate holders

Central Government vide earlier *Circular No. 5/2017-Cus*, dated 28.02.2017 had exempted exporters who have been accorded Authorised Economic Operator (AEO) certificate (Tier II & Tier III) from the requirements of drawal of samples for the purpose

of grant of drawback, except in case of any specific information or intelligence.

Further to above, Central Government vide *Circular No. 18/2017-Cus, dated: May 29, 2017* has, as a measure of further facilitation, provided to extend the exemption from the requirements of drawal of samples for the purpose of grant of drawback to Authorised Economic Operator (AEO) holding Tier-I certificate, except in case of any specific information or intelligence.

[Circular No. 18/2017-Cus, dated: May 29, 2017]

3. Facility for Online Generation of Rotation Number by Shipping Lines/Agents

Presently, for the allotment of 'Rotation Number' for a vessel that calls on a port, the concerned Shipping Line or Shipping Agent (SL/SA) is required to file an application with the designated section in the Custom House, along with the desired particulars in the prescribed format. After confirmation of the particulars, the designated official who is assigned the appropriate role on the Indian Customs EDI System (ICES), enters the relevant data in this system. Upon submission of this data, the 'Rotation Number' is generated by the System (ICES) and print-outs showing the vessel particulars and the 'Rotation Number' are generated for the (SL/SA).

Now, for simplifying the process of generation of 'Rotation Number' for vessels, a facility of online application and self-generation of Rotation Number by Shipping Lines/Agents (SL/SA) has been developed. Under the proposed facility, the Shipping Lines/Agents registered with ICEGATE using their digital signature would have an option "Rotation Number Generation" on the ICEGATE user menu. The declarant needs to provide the following details in the web-form:

Customs Location Code (LOCODE)	IMO Code of the vessel
Voyage Number	Master's Name
Shipping Line Code	Shipping Agent Code
Next Port of Call	Expected Date of Arrival of vessel

On submission of the above details and authentication by the user using a one-time password (OTP), the Rotation Number would be generated by the system. The user also has option to check the status of Rotation in the system under secure login. For casual visitors (members of the trade), a 'Rotation Number Inquiry' option would be made available on the ICEGATE website.

[Circular No. 20/2017-Cus, dated: May 31, 2017]

CENTRAL EXCISE

4. Amendment in CENVAT Credit Rules, 2004 for unavailed credit of Services provided by the Government

CENVAT Credit Rules, 2004 provide that credit of Service Tax paid in a financial year, on the one time charges payable in full upfront or in installments, for the service of assignment of the right to use any natural resource by the Government, local authority or any other person, shall be spread evenly over a period of three years.

Central Government vide *Notification No. 15/2017-Central Excise (N.T.), dated June 12, 2017* has amended Rule 4(7) of CENVAT Credit Rules, 2004 to allow unavailed CENVAT Credit in respect of services provided by the Government, local authority or any other person by way of assignment of the right to use any natural resource on the day immediately preceding the day on which Central Goods and Services Tax Act, 2017 shall come into force, in full on that very day.

Further, an explanation has been inserted to provide that "*unavailed CENVAT credit*" means the amount that remains after subtracting the amount of CENVAT credit already availed in respect of any service from the aggregate amount of CENVAT credit to which the recipient of such service was entitled to in respect of such service.

The Amendment would enable service recipients to carry forward such unavailed credit of Service Tax under the GST regime. As a result, Telecom Service Providers, who have been allotted Spectrum in auction conducted in 2016 and have already availed one third credit in respect of Service Tax paid by them, during 2016-17, would be eligible to take the remaining two thirds credit pertaining to 2016-17 in the GST regime, scheduled to roll-out on 1st July, 2017.

[Notification No. 15/2017-Central Excise (N.T.), dated June 12, 2017]



(Matter on FEMA has been contributed by CA. Manoj Shah, Mumbai and CA. Hinesh Doshi, Mumbai)

(A.) Abolition of Foreign Investment Promotion Board (FIPB)

F.No.01/01/FC/2017-FIPB dated 5th June 2017

Government approved the proposal to abolish FIPB. Subsequent to abolition, the work of granting government approval for foreign investment under extant FDI Policy and FEMA Regulations shall be entrusted to the concerned administrative ministries/departments. The eleven notified sectors/activities requiring government approval with concerned

administrative ministries/departments are listed below:

Sr. No.	Sector/Activity	Administrative Ministry/Department
1	Mining	Ministry of Mines
2	Defence	Department of Defence Production, Ministry of Defence
2A	Cases relating to FDI in small arms	Ministry of Home Affairs
3	Broadcasting	Ministry of Information and Broadcasting
4	Print Media	Ministry of Information and Broadcasting
5	Civil Aviation	Ministry of Civil Aviation
6	Satellites	Department of Space
7	Telecom	Department of Telecommunication, Ministry of Communication
8	Private Security Agencies	Ministry of Home Affairs
9	Trading (Single and Multi Brand and food products retail trading)	Department of Industrial Policy and Promotion, Ministry of Commerce and Industry
10A	Financial Services not regulated by regulator	Department of Economic Affairs, Ministry of Finance
10B	Banking (Public and Private)	Department of Financial Services, Ministry of Finance
11	Pharmaceuticals	Department of Pharmaceuticals, Ministry of Chemicals and Fertilisers

FDI proposals by NRIs/EOWs requiring prior approval of government will be dealt by DIPP and DIPP will continue to be the administrative ministry for this purpose. For detailed procedure on future handling of FDI Proposals by Government refer circular at <http://fipb.gov.in/Forms/OMabolitionFIPB.pdf>

CORPORATE LAWS



(Matter on Corporate Laws has been contributed by CA. Rahul Joglekar)

MCA (www.mca.gov.in)
MCA Notifications GSR (E) dated 13th June 2017 – Relaxations from

applicability of certain provisions of Companies Act 2013 to Private Companies, Government Companies and Sec. 8 Companies

In exercise of its powers u/s. 462 of the Companies Act 2013, the Central Govt. has provided additional

relaxations from the applicability of certain provisions of the Companies Act 2013 to Private Companies, Government Companies and Sec.8 Companies. For complete text of the notification, please refer the link: <http://www.mca.gov.in/Ministry/pdf/ExemptionPrivateCompanies.pdf>
http://www.mca.gov.in/Ministry/pdf/ExemptionGovernmentCompanies_14062017.pdf
http://www.mca.gov.in/Ministry/pdf/ExemptionSection8Companies_14062017.pdf

SEBI (www.sebi.gov.in)

SEBI Circular No. CIR/IMD/DF/51/2017–Disclosure Requirements for Issuance and Listing of Green Debt Securities

SEBI has released a set of guidelines for issuance and listing of green debt securities. These guidelines *inter alia* include definition of Green Debt Securities, disclosure of various objectives of the issue, review of the processes of the issuer etc. For complete text of the circular, please refer the link: http://www.sebi.gov.in/legal/circulars/may-2017/disclosure-requirements-for-issuance-and-listing-of-green-debt-securities_34988.html

RBI (www.rbi.org.in)

RBI Circular No. DBR.BP.BC.No.72/08.12.015/2016-17 dated 7th June 2017-Individual Housing Loans: Rationalisation of Risk-Weights and Loan to Value (LTV) Ratios

RBI has relaxed the LTV ratio requirement in case of housing loans availed by individuals. Risk weights for CRAR purposes have also been reduced where LTV is maintained below 75%. Standard assets provisioning in these cases has also been kept at 0.25%. These norms will apply to individual housing loans sanctioned on or after the date of the circular. For complete text of the circular, please refer the link: <https://rbi.org.in/Scripts/NotificationUser.aspx?Id=10995&Mode=0>

RBI Circular No. FIDD.CO.FSD.BC.No.29/05.02.001/2016-17 dated 25th May 2017-Continuation of Interest Subvention Scheme for short-term crop loans on interim basis during the year 2017-18

As an interim measure, the Central Govt. has decided to continue the implementation of the Interest Subvention Scheme for the year 2017-2018 on the basis of the scheme for the year 2016-2017. For complete text of the circular, please refer the link: <https://rbi.org.in/Scripts/NotificationUser.aspx?Id=10978&Mode=0>. ■