

# Tax & Corporate News Bulletin

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## From the Editor's Desk...

Dear Readers,

During May 2015, there has been flurry of legislative developments. Some of the important developments concerning India Inc. are as follows:

- On May 14, 2015, the Finance Bill, 2015 got assent of the President and enacted as the Finance Act, 2015.
- On May 13, 2015, the Companies (Amendment) Bill, 2014 was passed by the Rajya Sabha. The Bill was earlier passed by the Lok Sabha on December 17, 2014. The Amendment Bill introduces changes in the provisions relating to removal of minimum paid up share capital, punishment for contraventions for acceptance of deposits from the public, powers and duties of auditors, related party transactions, jurisdiction of special courts to try certain offences, etc.
- On May 6, 2015, the Lok Sabha passed the Constitution Amendment Bill relating to Goods and Services Tax (GST). GST seeks to harmonise the mosaic of state and central levies into a single national level tax. The Bill now needs to pass muster in the Rajya Sabha. GST is planned to be rolled out from April 1, 2016.

In yet another important development, on May 14, 2015, the Constitution Bench of the Supreme Court passed a historic judgment in *Madras Bar Association vs. Union of India and Anr.*, clearing the way for establishment of National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT). This, in turn, would fully operationalise the Companies Act, 2013.

Yours truly,

**Hitender Mehta**  
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## INDIRECT TAX

### GST Constitutional Amendment Bill passed by the Lok Sabha

On May 6, 2015, the Constitution (122nd Amendment) (GST) Bill, 2014 ("GST Constitutional Amendment Bill") was passed by the Lok Sabha. The proposed Goods and Services Tax (GST) seeks to harmonise the mosaic of state and central levies into a single national level tax. The Bill now needs to pass muster in the Rajya Sabha. GST is planned to be rolled out from April 1, 2016.

## RBI/ FEMA/ FDI POLICY

### Consolidated FDI Policy Circular of 2015

The Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India ("DIPP") has issued Consolidated FDI Policy Circular of 2015 on May 12, 2015 which subsumes all press notes/ clarifications/ press release in relation to Foreign Direct Investment (FDI) issued by DIPP, which were in force as on May 11, 2015 and reflects the FDI policy as on date.

The said Consolidated Policy Circular of 2015 is accessible at [http://dipp.nic.in/English/policies/FDI\\_Circular\\_2015.pdf](http://dipp.nic.in/English/policies/FDI_Circular_2015.pdf)

### Review of FDI Policy for Insurance sector

RBI has reviewed the FDI Policy for Insurance sector. Accordingly, *with immediate effect*, FDI in Insurance sector shall be permitted up to 49% subject to the revised conditions specified in the Press Note 3 (2015 Series) dated March 2, 2015. Also, a new activity, viz. "Other Insurance Intermediaries appointed under the provisions of Insurance Regulatory and Development Authority Act, 1999 (41 of 1999)" has been included within the definition of 'Insurance'.

The salient features of FDI Policy for Insurance sector are as under:

- FDI in Indian insurance company shall be limited up to 49% of the paid-up equity capital.
- FDI up to 26% shall be under automatic route, and beyond 26% and up to 49%, shall be with Government approval.

- FDI in Insurance sector is subject to the Insurance Act, 1938 and that the companies bringing in FDI shall obtain necessary license from the IRDA for undertaking insurance activities.
- the Indian insurance company shall ensure that its ownership and control remains at all times in the hands of resident Indian entities.
- Foreign portfolio investment in an Indian insurance company shall be governed by FEMA (Transfer of issue of security by a person resident outside India) Regulations, 2000 and SEBI (Foreign Portfolio Investors) Regulations.
- Any increase of foreign investment of an Indian insurance company shall be in accordance with the pricing guidelines specified by RBI under FEMA.

The Circular may be accessed at the following link:

<http://rbidocs.rbi.org.in/rdocs/Notification/PDFs/94APDIR080415.pdf>

[Source: A.P. (DIR Series) Circular No. 94 dated April 8, 2015]

### Operational Guidelines for International Financial Services Centre (IFSC)

In furtherance to the Foreign Exchange Management (International Financial Services Centre) Regulations, 2015 dated March 2, 2015, RBI has by Circular no. 92 dated March 31, 2015, framed the following operational guidelines:

- A financial institution or a branch of a financial institution set up in the IFSC and permitted/ recognized as such shall be treated as person resident outside India. Therefore, their transaction with a person resident in India shall be treated as a transaction between a resident and non-resident and shall be subject to the provisions of Foreign Exchange

Management Act, 1999 (FEMA) and the Rules/ Regulations/ Directions issued thereunder.

- The financial transaction in this context shall mean making or receiving payment, drawing, issuing or negotiating any bills of exchange or promissory note, transferring any security or acknowledging any debt. Similarly, financial service shall mean any activity which a financial institution is permitted to carry on by the respective Act of the Parliament or Government of India or any Regulatory Authority empowered to regulate the concerned financial institution.
- Subject to the provisions of Section 1(3) of FEMA, nothing contained any other Regulations shall apply to a financial institution or a branch of a financial institution set up in an IFSC unless there is some express and specific provision to that effect in Foreign Exchange Management (IFSC) Regulations 2015, or the other Regulations.

IFSC shall have the same meaning given in Section 2(q) of the Special Economic Zones Act, 2005 (28 of 2005). Accordingly, the Central Government may approve the setting up of an IFSC in a Special Economic Zone (SEZ) and may prescribe the requirements for setting up and operations of such IFSC.

The Circular may be accessed at the following link:

<http://rbidocs.rbi.org.in/rdocs/Notification/PDFs/92APDIRIFSC0104.pdf>

[Source: A.P. (DIR Series) Circular no. 92 dated March 31, 2015]

### Highlights of the Foreign Trade Policy, 2015-2020

By Notification no. 1/2015-2020 dated April 1, 2015, the new Foreign Trade Policy (2015-2020) has been notified by





the Ministry of Commerce & Industry, Department of Commerce, Director General of Foreign Trade (DGFT), the new Foreign Trade Policy (2015-2020). The following are the salient features of the new Foreign Trade Policy:

#### A. Simplification of Reward Schemes

1. Merchandise Exports from India Scheme (MEIS)
  - (a) Earlier, there were 5 different schemes (Focus Product Scheme, Market Linked Focus Product Scheme, Focus Market Scheme, Agri. Infrastructure Incentive Scrip, etc.) for rewarding merchandise exports with different kinds of duty scrips with varying conditions (sector specific or actual user only) attached to their use. Now all these schemes have been merged into a single scheme, namely - 'Merchandise Exports from India Scheme' and there would be no conditionality attached to the scrips issued under the scheme.
  - (b) Rewards for export of notified goods to notified markets under MEIS shall be payable as percentage of realized FOB value (in free foreign exchange). The debits towards basic customs duty in the transferable reward duty credit scrips would also be allowed adjustment as duty drawback. At present, only the additional duty of customs / excise duty / service tax is allowed adjustment as CENVAT credit or drawback, as per Department of Revenue (DoR) Rules.
2. Service Exports from India Scheme (SEIS)
  - (a) Served from India Scheme (SFIS) has been replaced with Service Exports from India Scheme (SEIS). SEIS shall apply to 'Service Providers located in India' instead of 'Indian Service Providers'. Thus, SEIS provides for rewards to all Service providers of notified services,

who are providing services from India, regardless of the constitution or profile of the service provider.

- (b) The rate of reward under SEIS would be based on net foreign exchange earned. The reward issued as duty credit scrip, would no longer be with actual user condition and will no longer be restricted to usage for specified types of goods but be freely transferable and usable for all types of goods and service tax debits on procurement of services / goods. Debits would be eligible for CENVAT credit or drawback.
3. Duty credit scrips to be freely transferable and usable for payment of custom duty, excise duty and service tax
  - (a) All scrips issued under MEIS and SEIS and the goods imported against these scrips would be fully transferable.
  - (b) Scrips issued under exports from India schemes can be used for the following:-
    - (i) Payment of customs duty for import of inputs/ goods including capital goods, except items listed in Appendix 3A.
    - (ii) Payment of excise duty on domestic procurement of inputs or goods, including capital goods as per DoR notification.
    - (iii) Payment of service tax on procurement of services as per DoR notification.
  - (c) Basic Customs Duty paid in cash or through debit under Duty Credit Scrip can be taken back as Duty Drawback as per DoR Rules, if inputs so imported are used for exports.

#### 4. Status Holders

Criteria for export performance for recognition of status holder have been changed from Rupees to US dollar earnings. The new criteria are as under:-

Status category	Export Performance*
One Star Export House	3
Two Star Export House	25
Three Star Export House	100
Four Star Export House	500
Five Star Export House	2000

\* FOB / FOR (as converted) Value (in US \$ million) during current and previous two years

#### B. Boost to "MAKE IN INDIA"



1. **Reduced Export Obligation (EO) for domestic procurement under EPCG scheme:** Specific Export Obligation under EPCG scheme, in case capital goods are procured from indigenous manufacturers, which is currently 90% of the normal export obligation (6 times at the duty saved amount) has been reduced to 75%, in order to promote domestic capital goods manufacturing industry.
  2. **Higher level of rewards under MEIS for export items with high domestic content and value addition:** It is proposed to give higher level of rewards to products with high domestic content and value addition, as compared to products with high import content and less value addition.
- #### C. Trade Facilitation & Ease of Doing Business
1. Online filing of documents/ applications and paperless trade in 24x7 environment
  2. Simplification of procedures/ processes, digitisation and e-governance

Besides, the new FTP includes new initiatives for EOUs, EHTPs and STPs; measures for facilitating & encouraging Export of defence exports; promotion of e-Commerce exports, etc.

For more details, please refer the following URL: <http://dgft.gov.in/>

## SEBI/ CAPITAL MARKETS

### SEBI (Delisting of Equity Shares) Regulations, 2009

SEBI has amended the SEBI (Delisting of Equity Shares) Regulations, 2009.

Under Delisting Regulations, a delisting offer is considered successful if post-offer shareholding of the promoters is higher of (a) 90% of total shares, or (b) aggregate percentage of promoter's pre-offer shareholding and 50% of the offer size. The amendment specifies that an offer for delisting would be considered successful if post-offer shareholding of promoter, along with persons acting in concert, is 90% of total issued shares, excluding shares held by custodian towards issue of depository receipts, and, at least 25% of the public shareholders (holding shares in demat account) on the date on which the Board of Directors of the company approves the delisting, should have participated in the Reverse Book Building process. However, this condition shall not apply if it is shown to the stock exchanges that the promoters/acquirers have delivered the letter of offer to all public shareholders through registered/speed post/courier/hand delivery with a proof of delivery or through email with a read receipt.

Under the prior Delisting Regulations, the final price at which the promoter was required to facilitate other shareholders to exit was the price at which the maximum shares were tendered under the Reverse Book Building process. This has been amended to provide that the final price shall be the price up to which

the aggregate number of shares offered, if accepted, will enable the promoter along with persons acting in concert to reach the threshold of 90%.

Prior to approval of the delisting proposal, the Board of Directors of the company must make disclosure to the recognized stock exchanges that the promoters or acquirers have proposed to delist the company and must also appoint a merchant banker to conduct a due diligence of trading in shares or off market transaction, during the preceding 2 years, by top 25 shareholders as on the date of meeting convened to approve the delisting proposal.

### SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

SEBI has amended the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

Under the amended Takeover Code, in the event the acquirer makes a public announcement of an open offer for acquiring shares of a target company in terms of regulations 3, 4 or 5, he may instead delist the company in accordance with the provisions of the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009, provided that the acquirer shall have declared upfront his intention to so delist at the time of making the detailed public statement.

Where an offer to delist the target company has failed, the acquirer is required to make an announcement within 2 working days in respect of such



failure. Thereafter, the acquirer shall be liable to proceed with the open offer as per the Takeover Regulations.

Consequently, the acquirer will file the draft letter of offer with SEBI within 5 working days of the announcement. Shareholders who have tendered shares in the delisting offer can withdraw their shares, within 10 working days from the date of such announcement.

Shareholders who have not tendered their shares in acceptance of the delisting offer shall be entitled to tender their shares in acceptance of the open offer.

In case of failure of delisting offer, offer price shall stand enhanced by an amount equal to a sum determined at the rate of 10% per annum for the period between the scheduled date of payment of consideration to the shareholders and the actual date of payment of consideration to the shareholders. For this purpose, the scheduled date shall be the date on which the payment of consideration ought to have been made to the shareholders in terms of the timelines in these regulations.

In a manner similar to Delisting Regulations, amendment to the Takeover Code has permitted tendering of shares and their settlement through the stock exchange mechanism.

## COMPANIES ACT

### The Companies (Amendment) Bill, 2014

On May 13, 2015, the Companies (Amendment) Bill, 2014 was passed by the Rajya Sabha. The Bill was earlier passed by the Lok Sabha on December 17, 2014. The Amendment Bill introduces certain amendments in the provisions relating to removal of minimum paid up share capital, punishment for contraventions for acceptance of deposits from the public, reporting of fraud by

auditors, related party transactions, jurisdiction of special courts to try certain offences, etc.

### Supreme Court upholds the constitutional validity of National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT)

On May 14, 2015, the Constitution Bench of the Supreme Court passed a historic

judgment in *Madras Bar Association v. Union of India and Anr.* upholding the validity of the 2002 amendment with certain conditions. The Supreme Court has held the provisions of Section 409(3)(a) and Section 409(3)(c) of the Companies Act, 2013 to be invalid. The Supreme Court addressed the issues of –

- (i) constitutional validity of NCLT and NCLAT;

- (ii) qualification of technical members of NCLT/ NCLAT; and
- (iii) constitution of Selection Committee.

Earlier, the amendment to the Companies Act 1956 to set up the NCLT was rendered unconstitutional by the Madras High Court on several counts. The judgement further mentions that it is the high time that these Tribunals start functioning now and the Government shall take remedial measures as per the directions contained in this judgment at the earliest, so that the NCLT and NCLAT are adequately manned and start functioning in near future. Now, the Companies Act, 2013 need minor amendment to be in line of Supreme Court decision.

By this judgment, the apex court has cleared the way for operationalisation of National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT). This, in turn, would fully operationalise the Companies Act, 2013.

### **The Companies (Incorporation) Rules, 2015**

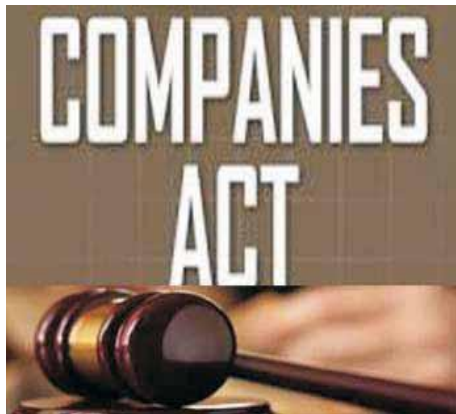
Ministry of Corporate Affairs (MCA) by Notification dated May 1, 2015 has notified the Companies (Incorporation) Amendment Rules, 2015. Salient features of the amended Rules are as under:

Rule 5 of the Companies (Incorporation) Rules, 2014 [**"Incorporation Rules"**] which provided for fine on One Person Company (OPC) or any officer thereof for contravention of the Companies (Incorporation) Rules, has been omitted and new Rule 7A has been inserted in the Incorporation Rules to provide that if OPC or any officer of such company contravenes the provisions of these rules, the OPC or any of its Officers shall be punishable with a fine which may extend to INR 5,000/- and with a further fine which may extend to INR 500/- for every day after the first offence during which such contravention continues.

### **Criteria for conversion of Private Company into OPC (Rule 7(1))**

#### **Position before amendment**

A private company other than a company



registered under Section 8 of the Act having –

- paid up share capital of fifty lakh rupees or less, or
- average annual turnover during the relevant period is two crore rupees or less,

may convert itself into one person company by passing a special resolution in the general meeting .

#### **Position after amendment**

A private company other than a company registered under Section 8 of the Act having –

- paid up share capital of fifty lakh rupees or less, and
- average annual turnover during the relevant period is two crore rupees or less.

may convert itself into one person company by passing a special resolution in the general meeting

#### **Integrated process for incorporation**

A new Rule 36 has been inserted to provide for integrated process for incorporation whereby application for allotment of Director Identification Number (DIN) up to three directors, reservation of a name, incorporation of company and appointment of directors of the proposed company shall be filed in Integrated Form No. INC 29, for OPC, Private Company, Public Company and Producer Company, with the jurisdictional Registrar, along with the fee of INR 2,000/- in addition to the registration fee as specified in the Companies (Registration of Offices and Fees) Rules,

2014. The jurisdictional Registrar shall process INC-29 including application for allotment of Director Identification Number. The Certificate of Incorporation shall be issued by the Registrar in Form No. INC-11.

The facility to file integrated application for incorporation in Form no. INC-29 is optional and has come into force with effect from May 1, 2015.

For more details, please refer the Notification at the following URL:  
[http://www.mca.gov.in/Ministry/pdf/AmendmentRules\\_01052015.pdf](http://www.mca.gov.in/Ministry/pdf/AmendmentRules_01052015.pdf)

### **The Companies (Auditor's Report) Order, 2015**

The Central Government has notified the Companies (Auditor's Report) Order, 2015 dated April 10, 2015 {"CARO-2015"} specifying the matters required to be specified in the Auditor's Report for the financial year ending March 31, 2015. CARO shall apply to every company, including a foreign company as defined under Section 2(42) of Companies Act, 2013. Exemptions from applicability of CARO has been granted to:

- i. banking company as defined in Clause (c) of Section 5 of the Banking Regulation Act, 1949
- ii. insurance company as defined under the Insurance Act, 1938
- iii. company licensed to operate under Section 8 of the Companies Act, 2013
- iv. One Person Company as defined under clause (62) of Section 2 of the Companies Act, 2013
- v. Small Company as defined under clause (85) of Section 2 of the Companies Act, 2013
- vi. Private limited company with a paid up capital and reserves not more than rupees fifty lakh; and which does not have loan outstanding exceeding rupees twenty five lakh from any bank or financial institution; and does not have a turnover exceeding rupees five crore at any point of time during the financial year.



As compared to CARO-2003, the reporting requirements under the CARO-2015 have been reduced considerably (i.e., from 21 Clauses to 12 Clauses).

The said Order is accessible at:

[http://www.mca.gov.in/Ministry/pdf/Companies\\_Auditors\\_Report\\_Order\\_2015.pdf](http://www.mca.gov.in/Ministry/pdf/Companies_Auditors_Report_Order_2015.pdf)

#### **Clarification w.r.t. Loan and Investment by a Company under Section 186(7) of the Companies Act, 2013**

- Section 186 (7) of the Companies Act, 2013 states that no loan shall be given under this section at a rate of interest lower than the prevailing yield of one year, three year, five year or ten year Government Security closest to the tenor of the loan. The Ministry of Corporate Affairs has now clarified vide General

Circular no. 6/2015 dated April 9, 2015 that in cases where the effective yield for the tax free bonds is greater than the yield on the one, three, five, ten year Government security, there shall be no violation of the Section 186 of the Companies Act, 2013.

The said General Circular is accessible at: [http://www.mca.gov.in/Ministry/pdf/General\\_Circular\\_06\\_2015.pdf](http://www.mca.gov.in/Ministry/pdf/General_Circular_06_2015.pdf)

#### **Clarification w.r.t. Payment of Managerial Remuneration by Listed Companies and their Subsidiaries in terms of Schedule XIII of the Companies Act, 1956**

- By General Circular no. 07/2015 dated April 10, 2015, Ministry of Corporate Affairs (MCA) has issued a clarification about the managerial

person(s) of *listed companies and their subsidiaries* who, subject to meeting conditions prescribed, were allowed to pay remuneration in excess of limits prescribed in Para C, Part II, Schedule XIII of the *erstwhile* Companies Act, 1956, without approval of the Central Government.

- Accordingly, the managerial person of such companies may continue to receive remuneration for his/ her remaining term in accordance with the terms and conditions approved by company in terms of the provisions of Schedule XIII of the *erstwhile* Companies Act, 1956 even if the part of his/ her tenure falls after April 1, 2014.

The said General Circular is accessible at: [http://www.mca.gov.in/Ministry/pdf/General\\_Circular\\_07\\_2015.pdf](http://www.mca.gov.in/Ministry/pdf/General_Circular_07_2015.pdf)

## **SPECIAL ECONOMIC ZONE (SEZ)**



#### **Incentives to SEZ Units under Foreign Trade Policy**

By Notification no. 1/2015-2020 dated April 1, 2015, the new Foreign Trade Policy (2015-2020) has been notified by the Ministry of Commerce & Industry, Department of Commerce, Director General of Foreign Trade (DGFT), the new Foreign Trade Policy (2015-2020).

Under the new Foreign Trade Policy (April 1, 2015 to March 31, 2020), which comes into force w.e.f. April 1, 2015, the incentives provided under Chapter 3 have been extended to SEZ units.

Accordingly, the SEZ Units would be eligible to avail incentives under Merchandise Exports from India Scheme (MEIS) and Service Exports from India Scheme (SEIS).

#### **Guidelines for Power Generation in Special Economic Zones (SEZs)**

By Directive no. P.6/3/2006-SEZ dated April 6, 2015 issued by Ministry of Commerce & Industry, Department of Commerce (SEZ Division), it has been decided that –

- the Guidelines for Power Generation in SEZ issued on March 21, 2012 stand withdrawn with effect from April 1, 2015, and
- the Guidelines for Power Generation issued on February 27, 2009 stand resorted.

In pursuance of the above decision, henceforth setting up of power plants

shall be allowed only in the non-processing area of SEZs. Further, those power plants which are presently situated in processing areas of SEZs, shall be demarcated as non-processing areas and no operation and maintenance benefits will now be available for such power plants.

The said Notification is accessible at:

<http://sezindia.nic.in/writereaddata/GeneralNotifications/1111.pdf>



## BIOGRAPHY RELEASE

### “THE JOURNEY OF O P VAISH – CELEBRATING LIFE WITH GRATITUDE”

The biography of Founder of the Firm, Late Shri O. P. Vaish titled ‘*Celebrating Life with Gratitude*’ was released on April 29, 2015 by Hon’ble Justice Mrs. Leila Seth at New Delhi.

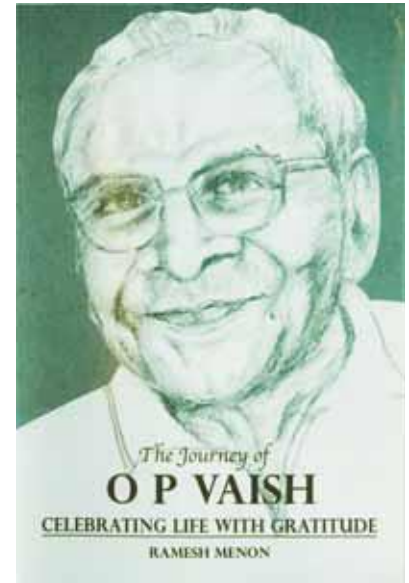
‘*Celebrating Life with Gratitude*’ tells the evocative story of Senior Advocate and social activist, O P Vaish, who battled difficult circumstances in his childhood to study and dream big despite humble beginning. The book details his journey as an officer in the prestigious Indian Revenue Service, his forays into the private sector when few would have given up a government job with its clout, and later by diving into the world of tax law.

He built Vaish Associates into one of India’s eminent full service law firms that attracted some of the top national and international clients. His values and insistence upon caring for his employees ensured that they stayed on with him for decades. His philosophy of being grateful for everything he had, gave him a different lens to look at the people around him. He was an active Rotarian and led Rotary in its efforts to eradicate polio. He actively campaigned to make body donation popular. He led from the front by donating his body for medical research. He was a role model for many.

Readers can obtain a copy of the book which is priced at a nominal price of ₹ 295 (USD 5) by writing to Mr. Vinay Vaish ([vinay@vaishlaw.com](mailto:vinay@vaishlaw.com)) or Mr. Bomi Daruwala ([bomi@vaishlaw.com](mailto:bomi@vaishlaw.com)). The proceeds from the sale will go directly to the Rotary Foundation supported by the Vaish family for charity.



(L to R) Mr. Ramesh Menon, Mrs. Manju Vaish, Justice Mrs. Leila Seth, Mr. Sudarshan Agarwal, Mr. Rajendra K. Saboo and Mr. Sudhir Malhotra



### Half Day Seminar on “Analysis of Income Computation & Disclosure Standard (ICDS)”

To understand the various intricate issues that may arise from the notified ICDS, which will have ramification on computation of taxable income, Vaish Associates Advocates is organizing a half day Seminar titled “Analysis of Income Computation & Disclosure Standard”, from 10.00 am to 1.30 pm on May 23, 2015, at Hotel The Lalit, Barakhamba Avenue, New Delhi.

For registration and other details please contact Mr. Orit Runda at [orit@vaishlaw.com](mailto:orit@vaishlaw.com), Tel: +91-11-49292511



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