

HAND PICKED ARTICLES & UPDATES

1st DECEMBER, 2017

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Electronic Assessment – An E-Governance Initiative

November 30, 2017 [2017] 87 taxmann.com 319 (Article)

E-Proceeding is a part of e-governance initiative to facilitate an electronic means of communication between the Department and the taxpayer without the taxpayer having to visit the Income Tax Office. CBDT has notified step by step procedure for conducting e-proceeding. Under e-proceeding, all the communication from the tax authorities in the form of notices / questionnaires / letters shall be issued electronically to the tax payer and tax payer thereafter, can submit his response through e-filing Platform.

Introduction

1. In October, 2015, the Central Board of Direct Taxes (CBDT) - the apex income-tax administration body in India - introduced the concept of using email-based communication for paperless income-tax proceedings to reduce the physical interface between taxpayers and the Income Tax department. The scheme of e-proceeding was introduced as a pilot project in seven cities of Ahmedabad, Bengaluru, Chennai, Delhi, Hyderabad, Kolkata and Mumbai.

What is E-Proceeding

2. E-Proceeding is an initiative to facilitate a simple way of communication between the Income Tax Department and the taxpayer through electronic means that remove the necessity of taxpayers visiting the Income Tax office.

E-Proceeding offers the functionality to conduct income-tax proceedings through online exchange of communication in the form of notices/letters/questionnaires and similar online response(s)/submissions from taxpayers in compliance with such notices/letters/questionnaires, through e-submission using the e-filing platform.

Why E-Proceeding

3. The concept of e-proceeding facility was introduced by CBDT with the following objectives:

- To facilitate non-personal interface between taxpayers and the department in matters relating to income-tax proceedings;
- To facilitate 100% assurance of timely and non-disputable communication channel between various Income-tax authorities and taxpayers;
- To enhance the transparency and functional efficiency of the department;

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- To create an environment friendly initiative promoting paperless assessment proceedings.

Step-by-Step procedure on e-assessment or paperless assessment:

4. Step-by-step procedure for e-assessment proceeding has been notified¹ by CBDT which is summarised below:

- ◆ Tax officer shall send the notices/questionnaire/letters through Income Tax Business Application (ITBA) module (a platform developed for conducting income-tax proceedings electronically by the department) to the taxpayer.
- ◆ Tax officer shall also email notices/questionnaire to the taxpayer on his or her email address provided in the income-tax return.
- ◆ All notices/questionnaire/letters issued by Income Tax Officer will be visible to the taxpayer after login under E-Proceeding Tab in the income-tax portal of the department.
- ◆ Taxpayer will have the facility to opt out of e-proceeding and such an option has to be communicated to the department through the e-filing website.
- ◆ On delivery of the notice/questionnaire/letter, the taxpayer will submit his response along with attachments on the e-filing website.
- ◆ In order to facilitate a final date and time for e-submission, the facility to submit a response will be auto-closed seven days prior to the Time-Barring date, which is the last date for passing the order, if any. If there is no statutorily prescribed time barring date, then the Income-Tax authority can, on his volition, close the e-submission whenever the compliance time is over or when the final order or decision is under preparation to avoid last minute submissions. However, Income Tax authority can also re-enable the e-submission by taxpayer in both the situations.
- ◆ Relevant e-proceedings can also be conducted manually, if a taxpayer chooses not to opt for e-proceeding.
- ◆ The taxpayer will be able to view the entire history of notice/questionnaire/letter/orders on the e-filing website and of his responses, if the same has been submitted under this procedure.

Migration of manual time barring scrutiny cases to e-proceeding

5. With respect to the pending scrutiny proceedings, which are getting barred by limitation in financial year (FY) 2017-18, CBDT has issued instructions² that all such cases would be migrated to e-proceeding facility. The intimation to this effect has also been issued to all the taxpayers. Accordingly, all pending assessment

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proceedings for FY 2014-15 which are getting barred by limitation in December, 2017, have been migrated to the e-proceeding facility.

In case of pending limited scrutiny cases, an option has been given to taxpayers to furnish their consent to the tax department for conducting e-assessments. The department had issued letters to taxpayers seeking their consent to opt for e-assessment till 15 October, 2017. Till that time manual proceedings were kept on hold.

Opting out of e-assessment

6. In case of e-assessments proceeding, taxpayers also have the facility to voluntarily opt out of e-proceeding at a subsequent stage with prior intimation to the tax officer. Accordingly, once a taxpayer opts for manual mode in the middle of the e-proceedings on the e-filing website with prior intimation to the tax officer, further proceedings shall be conducted in manual mode.

Manual assessment in certain cases

7. The e-proceeding facility is not available where a scrutiny is being carried out in case of a search or a requisition. In that case assessment proceedings shall be conducted manually.

In addition to the above, the assessment proceedings may be conducted manually by the tax officer in the following situations:

- ◆ Where the manual books of account or original documents are to be examined;
- ◆ Where the tax officer enforces personal attendance of a person under section 131 of the Income Tax Act, 1961 (summons for personal appearance);
- ◆ Where the examination of a witness is required by the taxpayer or the tax department, or
- ◆ Where a show-cause notice contemplating an adverse view is issued by the tax authorities and the taxpayer requests for personal hearing to explain his case.

8. Pros and Cons of E-proceeding: whether to opt for e-proceeding

8.1 Pros

The e-proceedings facility would promote the government's Digital India campaign and is an environment friendly initiative promoting paperless assessment proceedings. Some of its benefits are discussed below:

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- It facilitates a simple way of communication between the department and the taxpayer through electronic means without the necessity of visiting the Income Tax office.
- It will not only save time and effort of the taxpayer but would also provide convenience to submit a response to the queries of the department under scrutiny proceedings anytime/anywhere.
- It will reduce compliance burden on taxpayers.
- Taxpayer can track complete information of all the e-submissions made during the course of assessment proceedings.
- The taxpayer can at any time at his discretion opt out of this scheme with prior intimation to the Assessing Officer.

8.2 Cons

There are several practical challenges in opting for e-proceedings, which are discussed below:

- In e-proceeding, since the taxpayer will not be able to appear before the Tax Officer and discuss submissions he has filed, he may not be able to make his judgement whether the tax officer is convinced with the submissions.
- The view taken by tax officer in the assessments may never be communicated to taxpayer before conclusion of assessments.
- The tax officer may still take recourse to manual proceeding if he wants to examine books of account or original documents personally. Therefore, even if taxpayer opts for e-proceeding, tax officer may still call for additional documents and seek personal appearance of the taxpayer which would eventually not serve the purpose of selecting online proceedings.
- At times, the tax officer himself may not be very comfortable with online assessments, as there are various legal and factual points which can be best explained personally.

Conclusion

9. The introduction of e-assessment is a welcome move and is intended to help both, the taxpayers as well as the tax administration in speedy completion of scrutiny assessments. This will make tax assessment proceedings less cumbersome and also time and cost effective for taxpayers. However, there could be practical challenges in the implementation stage as discussed above and, therefore, the taxpayer should carefully consider whether to opt for e-proceeding.

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IBC Ordinance: either run or lose your company

November 30, 2017 [2017] 87 taxmann.com 318 (Article)

With the enforcement of the Code, the position of India in resolving insolvency has improved from 136th rank in the year 2016 to 103rd rank in the year 2017 in the World Bank report. The amendments to the Code through an ordinance is a warning to either run a company after taking note of the provisions of the Code or lose a company completely.

Introduction

1. As regards the Insolvency and Bankruptcy Code, 2016 ("Code"), in less than a year with the provisions of the Code coming in force, more than, 1000 cases have been filed before NCLT. The regulatory authorities have started filing the gaps as and when identified by them. With an intention to strengthen the Code, the President has assented to the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 (hereinafter referred to as "IBC Ordinance") on November 23, 2017¹. This article analyses the areas which will require resolution professional's vigilance and the impact of the amendments to the existing resolution plans/applications.

Section 2 - Application

2. Part I of the Code is applicable to corporates as well as to individual insolvency. Section 2 of the Code deals with application, *i.e.*, applicability of the provisions of the Code. Though the provisions of the Code were made applicable to personal guarantors to corporate debtor and proprietorship firms, the applicability sections did not explicitly state so.

Part III of the Code deals with insolvency resolution and bankruptcy for individuals and partnership firms. Therefore, while initiating the process against persons referred to under clause (e) of section 2 of the Code, the provisions of Part III need to be complied with. The Adjudicating Authority for applications made under Part III is Debt Recovery Tribunal. However, in case of personal guarantors to corporate debtor the Adjudicating Authority shall be National Company Law Tribunal (section 60 (1)).

Section 5 - Definition

3. The definition of the term "resolution applicant" has been substituted. Prior to the IBC Ordinance, the term "resolution applicant" was defined to mean any person who submits a resolution plan to the resolution professional.

The definition being open ended, there was difference of opinion. Some were of the view that the definition of "resolution applicant" shall be read with section 25(2)(h) of the Code which requires resolution

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professional to invite prospective lenders, investors, and any other persons to put forward the resolution plan. However, others formed an opinion that the term does not make any reference to section 25 and, therefore, the plan submitted by any person shall be reviewed by the resolution professional and if found in compliance with the requirement specified under section 30, read with relevant rules then the same shall be put forward the committee of creditors.

With the IBC Ordinance falling in place, it has been made clear that only those persons shall submit the resolution plan who have been invited pursuant to section 25 (2) (h) of the Code for submission.

Section 25 - Duties of resolution professional

4. Section 25 of the Code lists down the duties of resolution professional. In addition to the duties itemized under section 25 of the Code, the resolution professional is also bound by the duties performed by the interim resolution professional (section 18) and other duties specified under the relevant regulations made thereunder. In order to comply with section 25(2)(h) of the Code, the resolution professional needs to ensure the following:

1. Lay down the criteria on who can be the resolution applicant
 - a. Criteria should be approved by the committee of creditors
2. Determine the requirement of resolution plan looking at the complexity and scale of operation of the business
 - a. To say, if the company has different segments, a resolution professional may ask the resolution applicant to provide a resolution plan to be accompanied with detailed plans for each of the business segments and/or corporate restructuring.
 - b. If the operations of the company are world wide, then such resolution professional may require the resolution applicant to submit resolution plans which can be country specific.

Section 29A - Persons not eligible to be resolution applicants

5. While the provisions of the Code do not provide the criteria on who can be the resolution applicant, section 29A of the Code carves out a negative list on who cannot be a resolution applicant. If any of the below mentioned persons meets any of the criteria specified in clause (a) to (h) of section 29A of the Code then such resolution applicant shall not be eligible to submit a resolution plan:

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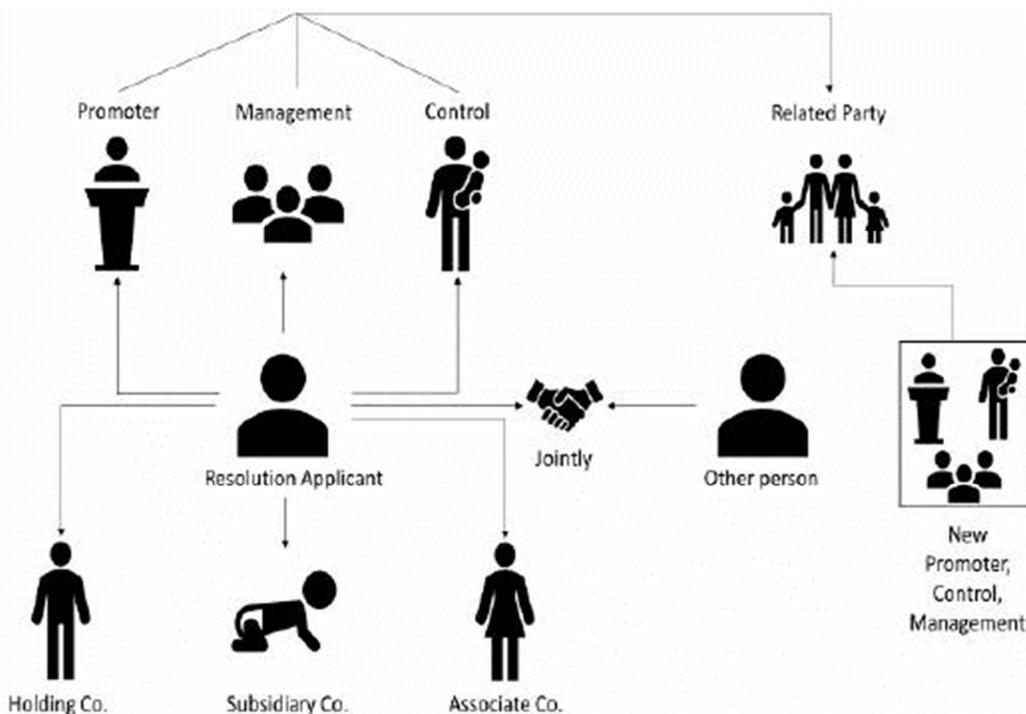
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Section 30 -Submission of resolution plan

6. Sub-section (4) of section 30 of the Code empowers committee of creditors to approve of the resolution plan by voting of not less than seventy-five percent of voting share of the financial creditors post considering the feasibility and viability of the plan.

The IBC Ordinance requires the resolution professional to ensure that in all on-going processes, the resolution plan should not be approved by the committee of creditors, if the resolution applicant is ineligible under section 29A of the Code. Consequently, if the resolution plans are not available then it shall be the duty of resolution professional to invite a fresh resolution plan.

Section 35 - Powers and duties of the liquidator

7. A new proviso has been inserted to restrict the persons who are not eligible to become resolution applicants from purchasing the property of the corporate debtor who is facing liquidation.

It is pertinent to note that the company is already dead. The liquidator is expected to sell the properties of an insolvent company at a good price and pay off the creditors and shareholders, depending upon the availability of the funds of the company. The eligibility criteria for being eligible to be appointed as a

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resolution professional is very wide and, therefore, disallowing such persons from purchasing the property of a dead company does not reach to any conclusion.

8. Self explanatory amendments:

Section No.	Pre-IBC Ordinance	Post-IBC Ordinance	Remark
2 Applicability	<p>- The provisions of this Code shall apply to -</p> <p>XX</p> <p><i>(d) such other body incorporated under any law for the time being in force....; and</i></p> <p><i>(e) partnership firms and individuals,</i></p> <p>XX</p>	<p>The word 'and' in clause (d) has been omitted.</p>	<p>This amendment could be to avoid any confusion on whether all the conditions shall be read together or on getting triggered by any one condition should be good enough for determining the applicability.</p>
5(26) - Definition of 'resolution plan'	<p>The term 'resolution plan' has been defined to mean '<i>aplan proposed by any person for insolvency resolution of the corporate debtor as a going concern...</i>'</p>	<p>For the word '<i>any person</i>', the words 'resolution applicant' is substituted.</p>	<p>Only a resolution applicant can submit the resolution plan for insolvency resolution of corporate debtor.</p>
235A Punishment	- -	<p>New insertion</p> <p><i>"If a person contravenes any of the provisions of this Code or the rules or regulations made thereunder for which no penalty or punishment is provided in this Code, such</i></p>	<p>Penal provision for contravention. This provision is not specific, therefore, can be applicable to the resolution applicant, resolution professional, corporate debtor, creditors, or any other</p>

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person shall be punishable with fine which shall not be less than one lakh rupees but which may extend to two crore rupees." stakeholder who contravenes the provisions.

Notably, this provision shall not become applicable, if any of the aforementioned person(s) gets attracted by any of the provisions of Chapter dealing with offences and punishment.

Therefore, if a person is getting punished under any specific section, then section 235A shall not apply.

240 - Power to - make regulations

Insertion of two new clauses -
(sa) other conditions under clause (h) of sub-section (2) of section 25;

(wa) other requirements under sub-section (4) of section 30

The Board (i.e., the IBBI) has been empowered to lay down additional criteria which needs to be ensured before submitting the resolution plan(s).

The committee of creditors are required to consider the feasibility and viability of the resolution plan before approving of such plan. The Board, pursuant to substitution, may lay down additional criteria which need to be considered by the committee of creditors before approving any plan.

Conclusion

9. These amendments to the Code will not only protect the interest of the stakeholder but will also gain the confidence of the investors/financers.

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Income Tax Updates

1. **Income tax notices to 1.16 lakh for cash deposit of over Rs25 lakh post demonetisation**

The Income Tax (I-T) department has slapped notices on 1.16 lakh individuals and firms who made cash deposits of more than Rs25 lakh in bank accounts post note ban but failed to file returns by the due date, CBDT chairman Sushil Chandra said. Besides, large cash deposit by people who have filed I-T returns are also under close scrutiny, he said. The tax department has combed as many as 18 lakh people who had deposited junked Rs500 and Rs1,000 currency notes of over Rs2.5 lakh each post demonetisation.

2. **Corporate results under I-T dept scanner**

The income-tax department is monitoring mis matches in revenue growth and advance tax payments by top 100 firms across sectors ahead of advance tax filing for the December quarter(Q 3). According to sources, the tax department has identified at least 30 firms that had claimed zero growth for Q 3, citing various macro economic factors such as uncertainties due to the G ST.

3. **Govt sets up task force to review income tax laws**

After overhauling indirect taxes, the government today formed a task force to draft a new direct tax law to replace the existing Income Tax Act, which has been in force since 1961. Eight years after he first helped draft a new direct tax code for India, top taxman Arvind Modi has been asked to do the task again to meet the contemporary economic needs of the country. Modi, Member, Central Board of Direct Taxes (CBDT), will steer a six-member panel on the issue, an official press statement said. Arvind Subramanian, chief economic advisor will be a permanent special invitee on the panel. The move, which is aimed to make direct taxes – income and corporate – simple, comes ahead of BJP-led government's last full Budget.

GST Updates

4. **More tweaks likely to GST rules**

After reducing the rates of more than 200 items in the previous goods and services tax (GST) Council meet, the panel might now significantly tweak rules to simplify procedures and ease rules for businesses. The six-member advisory panel formed by the government for simplification and rationalisation of GST will likely propose a faster refund procedure, deferment of electronic way bill, further simplification of the composition scheme, among others. It is expected to submit its report by the first week of December to the government.

5. **IGST refunds: Exporters claim Rs 6500 cr in July-October period**

The government on Wednesday said the exporters claim for integrated goods and services tax (IGST) refund amounted to Rs 6,500 crore for the July-October period, and said that the delay in disbursing refunds was primarily due to errors in the tax returns filed by them. It urged the exporters to fill in correct details while filing summary return GSTR-3B and rectify wrong information through jurisdictional customs authority. The IGST refund claim filed by exporters for July-October period amount to Rs 6,500 crore and the quantum of refund of unutilised input tax credit (ITC) stood at Rs 30 crore, the government said in a statement.

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