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## LINKAGE OF AADHAAR CARD WITH PAN WHILE FILING OF THE INCOME TAX RETURNS

The Hon'ble Supreme Court in its judgment dated 9<sup>th</sup> June 2017 upheld Section 139AA of the Income Tax Act, 1961. The aforesaid provision mandates the quoting of Aadhaar number for filing of income tax returns and in the application form for a Permanent Account Number (PAN).

Every person who has been allotted permanent account number (PAN) as on 1<sup>st</sup> day of July, 2017, and who is eligible to obtain Aadhaar number is to intimate his Aadhaar number and in case of failure to intimate the Aadhaar number, the permanent account number allotted to the person shall be deemed to be invalid and the other provisions of the Act shall apply, as if the person had not applied for allotment of permanent account number. Those who have applied for an Aadhaar number, the Enrolment ID of Aadhaar application form is to be quoted at the time of filing of the income tax returns.

### Impact of Aadhaar and its Linkage to PAN

*Mentioned below are the impacts as noticed by the apex Court:*

- The various welfare schemes for which the Government sets aside large amount of funds are unable to reach the socially and economically backward classes. One of the main reasons is due to the failure to identify these persons for lack of means by which identity could be established of such genuine needy class. Resultantly, lots of ghosts and duplicate beneficiaries are able to take undue and impermissible benefits. The UID scheme will be able to help out in this aspect.
- Our country's economic progress is severely affected by the corruption and black money situation. The Special Investigation Team (SIT) and CBDT both have suggested that the UID scheme and linking of PAN to the Aadhaar will prevent people from entering into the financial world

using other means of identification which can be easily duplicated. CBDT also says that this would prevent black money and money laundering through shell companies which are held by people through multiple PANs under different names.

- A large section of the citizens are concerned about the security of the data and the possibility of a data leak. The court has directed the Government to address such concerns by taking proper measures and instilling confidence among the public at large that it is highly unlikely for an unauthorized data leak to occur.

### Decision of the Court & Conclusion

- The Court clearly stated that, under the Aadhaar (Targeted Delivery of Financial and other Subsidies, benefits and services) Act, 2016, it is voluntary to obtain the Aadhaar number in order to claim the benefits of various welfare schemes but when it comes to Income Tax Act, Aadhaar is compulsory. Those who are not PAN holders are required to quote their Aadhaar number when applying for one as given under sub-section (1) of Section 139AA, which has been upheld by the Hon'ble Supreme Court.
- Since the provisions are yet to be considered with regard to Article 21 of the Constitution and the debate around Right to Privacy and human dignity are yet to be decided in front of a Constitution Bench, a partial stay has been ordered on the provision. Thus, those who have already enrolled with the Aadhaar scheme will be required to comply with sub section (2) of the provision, which mandates intimating of the Aadhaar number to the concerned authorities for the purpose of linking the Aadhaar number with the PAN.

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- However, the Court was clear in stating that those assesses who are not Aadhaar card holders and do not comply with the above-mentioned provision, their PAN cards will not be treated as invalid for the time being till the decision on Article 21 is pending before the

Constitution Bench. This step has been taken by the Court to avoid any interference with the day-to-day dealings of the people till a decision pertaining to interpretation of Article 21 in this matter is taken up by the Constitution Bench.



### HIGHLIGHTS OF THE GST COUNCIL MEETINGS HELD IN JUNE 2017

#### What is GST?

Goods and Services Tax (GST) is a single composite indirect tax which has been brought to replace the various indirect taxes levied by the Central and State governments. The basic intent is to create a single, cooperative and undivided Indian market, to make the economy stronger and powerful. The GST will make a significant breakthrough paving way for an all-inclusive indirect tax reform in the country.

*The highlights of the GST council meetings held in June 2017 have been summarised below for better understanding:*

**Meeting dated 3<sup>rd</sup> June 2017:** The meeting was chaired by the Finance Minister, Mr. Arun Jaitley, wherein the meeting focused only on the tax rates on essential items such as gold, textiles, packaged goods, biscuits and footwear, among others. The Council further cleared the pending rules (Transition provisions and Returns) for the rollout of the new indirect tax regime from 1<sup>st</sup> July, 2017.

**Revised rates as decided in the meeting dated 3<sup>rd</sup> June 2017:**

Revised Tax Rate	0%	5%	12%	18%
Commodity	Silk	Solar Panels	Apparel above Rs.1000	Footwear above Rs.500
	Jute	Cotton & Natural Fibres	Readymade garments	Man-made textiles
		Indian National Flag	Apparel below Rs.1000	
		Packaged food items		
		Agricultural Machinery		

**Meeting dated 11<sup>th</sup> June 2017:** The Council has recommended increase in its turnover limit for Composition Levy for CGST and SGST purposes from

Rs. 50 lakhs to Rs. 75 lakhs for all eligible registered person. Further, the GST Council approved revision of rates on certain commodities based on representations received from the industry and on the principles of "maintaining equivalence and utilisation behaviour". It was announced that, after getting various recommendations and suggestions from business houses and associations, the rates of 66 (sixty-six) items have been revised out of 133 (One Hundred Thirty Three) items recommended.

- The GST rate fixed for movies earlier was 28% which was modified to (a) 18% (ticket value of Rs.100 or less) and (b) 28% (for ticket value of Rs.100 or more)
- The GST rate for Job work in textile, leather, printing, jewellery (Gems) and diamond processing which was earlier fixed at 18% has now been modified to 5%.

**Meeting dated 18th June 2017:** The Council has recommended to continue the said limit of Rs. 50 Lakhs for CGST and SGST purposes in case of nine States The nine states are Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh. For the State of Jammu & Kashmir the turnover limit for the Composition levy will be decided in due course. Further, the GST council meeting ruled out any deferment of the implementation of the GST and stated that the Bill is to be implemented from the 1st July 2017. The Council meeting considered the concerns on the preparedness of Trade and Industry, and hence decided to relax the rules pertaining to filing of returns for July, 2017 and August, 2017. The relaxations were as follows:

- The returns for July, 2017 and August, 2017 to be filed on self assessment by the 20th of the following month in Form GST Return 3 B, which will be a summary of Inward and Outward Supplies and the applicable tax is to be paid.
- GST network will make available the return filing module by 15th July 2017. GST Return 1 and GST Return 2 can be filed for July 2017, by 5th September 2017 and for August 2017.



- The timelines for filing of returns will be strictly adhered to, from the return period, i.e., from September 2017.

Further, the rates of taxes on lottery tickets and hotel rooms were announced, which were as follows:

Commodity	Rates
For hotel rooms	18% for rooms with tariff between ₹ 2,000 and ₹ 5,000 and 28% for rooms with tariff of ₹ 7,500 or more
For restaurants in these hotels	18% (i.e. at par with the other air-conditioned restaurants)
Lotteries	12% of the face value for State-run Lotteries and 28% for the State Authorised Lotteries

In furtherance to the above, the GST Council approved Rules relating to Advance Ruling, Appeal and Revision, Assessment and Audit, Anti Profiteering and Funds

Settlement including e-way bills, GST returns and tax rates.

- The Rules for Anti Profiteering Clause (pass on the benefit, due to reduction in rate of tax or from input tax credit, to the consumer by way of commensurate reduction in prices) have been announced. It was stated by the Council that the Anti Profiteering Clause is more of a deterrent. It is learnt that action under Anti Profiteering Clause would be invoked on specific complaint of profiteering.
- The Anti Profiteering Authority would have powers to summon a person whose attendance is considered necessary. The Anti Profiteering Body will have powers to direct reduction of price and also decide on the punitive action.
- GST has recommended that the manufacturer of Ice cream, other edible ice (whether or not containing cocoa), pan masala, tobacco and manufactured tobacco substitutes should not be eligible to claim Composition Levy Scheme.



## MASALA BONDS

Debts have always been the cheaper and the more attractive mode of assimilating funds by the Corporates over the years considering the tax benefits they provide. The form of raising debts has evolved over time and has resulted in the advent of instruments which provide benefits of two or more conventional instruments through one instrument. This article provides an overview of one such instrument, 'Masala Bonds' and analyses its benefits in light of the amendments made in the governing regulations recently.

**Overview:** Masala Bonds are debt instruments denominated in Indian Rupees issued to persons resident outside India and repaid on maturity in the local currency of the country of the Investor. Masala Bond is a less restrictive version of External Commercial Borrowings ("ECB") with features more advantageous to the Indian borrowers.

**Eligible Investors:** The Masala bonds can only be issued and be subscribed by a resident of a country:

- that is a member of Financial Action Task Force (FATF) or a member of a FATF-Style Regional Body; and
- Whose securities market regulator is a signatory to the International Organization of Securities Commission's (IOSCO's) Multilateral Memorandum of Understanding or a signatory to bilateral Memorandum of Understanding with SEBI for information sharing arrangements; and

- Should not be a country identified in the public statement of the FATF

*Note: Per Master Direction – Borrowing and Lending transactions in Indian Rupee between Persons Resident in India and Non-Resident Indians/ Persons of Indian Origin, an NRI/PIO are eligible to lend money to Indian Companies only by subscribing to a public offer of Non-Convertible Debentures and therefore will not be recognized lenders in case of privately placed bonds.*

### Available Routes:

**Automatic Route:** the amount of borrowing will be up to INR 50 billion per financial year.

**Approval Route:** Cases beyond this limit will require prior approval of the Reserve Bank under the approval route.

**Permitted End-uses:** The proceeds of the borrowing can be used for all purposes except for the following:

- Real estate activities other than development of integrated township / affordable housing projects;
- Investing in capital market and using the proceeds for equity investment domestically;



- Activities prohibited as per the foreign direct investment guidelines;
- On-lending to other entities for any of the above purposes; and
- Purchase of Land

### Benefits to the Company

- Raised in Indian currency, therefore, provides necessary convenience to the borrower;
- The repayment is made on maturity in the local currency of the investor, thereby the risk of loss on account of foreign exchange fluctuations is borne by the Investor;

Eg. X Ltd., an Indian Company raises INR 1,00,000/- (Rupees One Lakh only) through the issue of Masala Bonds in the United States which shall be repaid after 3 years. Assuming that the INR depreciates vis-à-vis the USD at the time of repayment, X Ltd. will not be affected by the same as the amount to be repaid is only INR 1,00,000/- (Rupees One Lakh only) converted into USD at the conversion rate applicable on the date of the settlement.

- The eligible lenders under the framework of Masala Bonds are much wider than that available under the ECB framework thereby attracting a wider investor base.

### Benefits to Investors:

- Investors can benefit when Indian Rupee appreciates against the bond's redeemable or repayable currency.
- A concessional with-holding tax rate of 5% is being charged on interest earned by lenders. Also, exemption from capital gains is available in respect of transfer of rupee denominated bonds from non-resident to non-resident.
- During 2007-08, Indian Companies tended to issue bonds in USD under ECB framework and repaid them whenever the USD-INR exchange rate was lower. The Masala Bonds framework ensures that the Indian Companies do not take advantage of such speculations by evenly distributing the risks.

**Amendments made to the governing regulations:** Vide A. P. (DIR Series) Circular No.47 dated June 7, 2017, RBI has made the following amendments to the

regulation on Issuance of Rupee denominated bonds overseas

- **Maturity period:** Minimum original maturity period for Masala Bonds which was 3 years earlier has been revised to: (i) Upto USD 50 million equivalent in INR per financial year – 3 years and (ii) above USD 50 million equivalent in INR per financial year - 5 years. This amendment shall allure the long-term investors for large issuances.
- **All-in-cost ceiling:** The all-in-cost ceiling for Masala bonds will be 300 basis points over the prevailing yield of the Government of India securities of corresponding maturity. This shall ensure that only fundamentally sound corporates having good credit rating are able to raise funds through Masala Bonds.
- **Recognised investors:** Recognized Investors as explained earlier should not be related party within the meaning as given in Indian Accounting Standards 24. lays down that (i) a holding company; (ii) a subsidiary; (iii) fellow subsidiary; (iv) group company; (v) an associate or a joint venture entity; (vi) an entity which is a joint venture partner of the borrower's joint venture partner; (vii) One entity is a joint venture of a third entity and the other entity is an associate of the third entity; (viii) key managerial personnel which includes a director (executive or otherwise); (ix) any person having significant control or influence over the borrower, among others are the related parties.

**Summary:** The Government has been introducing multiple relaxations with respect to the issue of rupee denominated bonds overseas in order to promote foreign direct investments through this method. The recent amendments have opened up windows to the Companies to attract long term investments considering the elongation of lock-in period at low interest rates. As the Masala Bonds combine the best features of rupee bonds with the simpler regulatory framework, vis-à-vis ECBs, it proves to be a highly advantageous instrument to raise funds from foreign persons. Further, entities which are classified as related party within the meaning of Indian Accounting Standards- 24, will no longer be eligible to invest in Masala Bond thus impacting companies who are looking to raise funds for their operations from its related overseas entities.



### MCA ISSUES EXEMPTION TO PRIVATE COMPANIES

The Ministry of Corporate Affairs *vide* its notification dated 13<sup>th</sup> June 2017 has amended the notification no. G.S.R. 464(E) dated 5<sup>th</sup> June 2015 (hereinafter referred to as the “**Principal Notification**”) in respect of the exemptions extended to private limited companies as under:

<b>EXEMPTIONS TO PRIVATE COMPANIES (w.e.f. 13.06.2017)*</b>				
S. No.	Section of Companies Act, 2013	Topic	Earlier position under the Principal Notification	Position after exemption
1.	2(40)	Cash flow statement	One person company, dormant company and small company were exempted from including a cash flow statement in their financial statements.	Start ups, which are private companies, are additionally exempted from submitting a cash flow statement.
2.	73(2) (a) to (e)	Procedure to accept deposits	<p>Shall not apply</p> <p>(A) to a private company accepting deposits from members monies not exceeding one hundred per cent of the aggregate of the paid up share capital, free reserves and securities premium account.</p> <p>(B) to a Specified IFSC public company which accepts from its members, monies not exceeding one hundred per cent. of aggregate of the paid up share capital and free reserves, and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified. - Notification Date 4th January, 2017</p>	<p>Shall not apply to a private company:</p> <p>(A) Which accepts from its members monies not exceeding one hundred per cent of the aggregate of the paid up share capital, free reserves and securities premium account; or</p> <p>(B) Which is a start up for five years from the date of its incorporation; or</p> <p>(C) Which fulfils the following conditions, namely:</p> <p>a) Which is not an associate or a subsidiary company of any other company;</p> <p>b) if the borrowings of such a company from banks or financial institutions or anybody corporate is less than twice of its paid up share capital or fifty Crore rupees, whichever is lower; and</p> <p>c) Such a company has no default in repayment of such borrowings subsisting at the time of accepting deposits under this section.</p> <p>Provided that the company referred to in clauses (A), (B) or (C) shall file the details of monies accepted to the Registrar in such manner as may be specified.”</p>



				D) to a Specified IFSC public company which accepts from its members, monies not exceeding one hundred per cent of aggregate of the paid up share capital and free reserves, and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified. - Notification Date 4th January, 2017
3.	92 (1)(g)	Disclosures in annual return	Remuneration of Directors and Key Managerial Personnel to be disclosed separately	In case of private companies which are small companies, aggregate amount of remuneration drawn by directors to be disclosed.
4.	Proviso to 92 (1)	Signing of annual return	In relation to One Person Company and small company, the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.	Additionally, in case of Start ups, if they are private companies, Annual return can be signed by Director of Company if there is no Company Secretary.
5.	143(3)	Disclosure in the report regarding internal financial controls	No exemption	Shall not apply to a private Company:- a) Which is one person Company or a Small Company; or  b) Which has turnover less than Rs. 50 Crores as per latest audited financial statement or which has aggregate borrowings from banks or financial institutions or anybody corporate at any point of time during the financial year less then Rs. 25 Crore.
6.	173(5)	Number of board meetings to be conducted in a financial year	A One Person Company, small company and dormant company shall be deemed to have complied with the provisions of this section if at least one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than ninety days: Provided that nothing contained in this sub-section and in section 174 shall apply to One Person Company in which there is only one (1) director on its Board of Directors.	A private Company (if such private Company is a start-up) is additionally added to the class of companies exempted under this sub-section.



7.	174(3)	Interested Director - quorum	Director who is interested in a board resolution was exempted in case of private company from a disqualification to vote on the same	In case of private company, a Director who is interested in a board resolution, in addition to being exempted from a disqualification to vote on the same, is also now allowed to be counted for quorum.
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**\*Note: All the exemptions available to a private company, i.e. under the Principal Notification and the aforesaid exemptions, shall be available to a company only if the company has not defaulted in filing of financial statements under section 137 of the Companies Act, 2013 (“Act”) or annual return under section 92 of the Act. Further a company is termed as a ‘Start-up company’ in the event it falls with the definition of a start up company as set forth notification number G.S.R. 180(E) dated 17th February, 2016 issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry.**



### LEX REVISERS

- The Cabinet on 17<sup>th</sup> May 2017 approved Pan-India implementation of Maternity Rule which will provide compensation for the wage loss in terms of cash incentives so that the women can take adequate rest before and after delivery and not be deprived of proper nutrition. [Source: <http://pib.nic.in/newsite/PrintRelease.aspx?relid=161857>].
- A notification (F.No. 01/01/FC12017 –FIPB) dated 5<sup>th</sup> June 2017 notified the abolition of the Foreign Investment and Promotion Board (FIPB). Individual administrative ministries and/ or departments of the Government have been empowered to clear FDI proposals. Further, Department of Industrial Policy and Promotion (DIPP) shall deal with the FDI proposals by Non Resident Indians (NRI)/ Export Oriented Unit's (EOU's) and issue of equity shares under the FDI policy. [Source: <http://fipb.gov.in/Forms/OMabolitionFIPB.pdf>].
- A notification dated 4<sup>th</sup> May 2017 by the Ministry of Labour and Employment amended the Employees' Provident Fund Scheme, Employees' Pension Scheme and the Employees' Deposit-Linked Insurance Scheme, wherein the amendment allowed payment to be made to a person through digital or electronic fund transfer through any Scheduled commercial bank or any post office under the aforementioned schemes. [Source: <http://www.labour.nic.in/sites/default/files/Notifications%20for%20amendment%20under%20EPF%2C%20EPS%20and%20EDLI%20Schemes%20for%20e-Payment.pdf>].
- A GST facilitation cell has been set up in the Department of Industrial Policy & Promotion to answer queries regarding GST. The GST facilitation cell is headed by Shri Sudhansu Sekhar Das, Economic Adviser ([ss.das@nic.in](mailto:ss.das@nic.in), Tel: 23063932) and consists of the following persons: 1. Shri Piyush Mishra; 2. Ms. Astha Funda; 3. Ms. Akshita Bhatia; and, 4. Ms. Nitu Jaiswal. They can be contacted over phone: 011-23062379, 23062665; or alternatively at [gstcell-dipp@gov.in](mailto:gstcell-dipp@gov.in). The cell will function on all working days between 9.00 A.M. to 5.30 P.M.  
[Source: [https://www.icsi.edu/docs/webmodules/InfoCapsule/INFOCAPSULE\\_21062017.pdf](https://www.icsi.edu/docs/webmodules/InfoCapsule/INFOCAPSULE_21062017.pdf)]
- MCA has deployed an e-form for DIR-5 as an application for surrender of Director Identification Number (DIN) which will be made available for filing purposes w.e.f. 21<sup>st</sup> June 2017. Stakeholders who wish to surrender DINs shall be required to file this e-form instead of it being filed as an attachment to form RD-1. [Source: [https://www.icsi.edu/docs/webmodules/InfoCapsule/INFOCAPSULE\\_21062017.pdf](https://www.icsi.edu/docs/webmodules/InfoCapsule/INFOCAPSULE_21062017.pdf)].

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- The Competition Commission of India (CCI) in its order dated 14th June 2017, has found Hyundai Motor India Limited (HMIL) to be in contravention of the provisions of the Competition Act, 2002 for imposing arrangements upon its dealers which resulted into Resale Price Maintenance in sale of passenger cars manufactured by it. The CCI, apart from issuing a cease and desist order against HMIL, also imposed a penalty of Rs. 87 Crore upon HMIL for the anti-competitive conduct.  
[Source: <http://www.cci.gov.in/sites/default/files/36%20and%2082%20of%202014.pdf>].
- Ministry of Corporate Affairs, *vide* its notification dated 22.06.2017, amended Companies (Audit and Auditors) Rules, 2014. Per the said amendment, the provisions regarding rotation of auditors under Section 139(2) of the Companies Act, 2013 shall be applicable to private companies having paid-up capital of Rupees Fifty Crores or more which threshold stood at Rupees Twenty Crores or more earlier to the amendment  
[Source: <http://www.mca.gov.in/Ministry/pdf/CompaniesAuditandAuditorsSecondAmendmentRules2017.pdf>]
- The Insolvency and Bankruptcy Board of India, *vide* notification no. S.O.1910(E) dated 14<sup>th</sup> June, 2017 has notified Sections 55 to 58 of the Insolvency and Bankruptcy Code, 2016 and *vide* notification no. IBBI/2017-18/GN/REG 012 dated 15<sup>th</sup> June, 2017 notified IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017. The regulations provide for a mechanism of insolvency resolution process which should be completed within 90 days as against 180 days in other cases.  
[Source:[http://www.ibbi.gov.in/Insolvency\\_and\\_Bankruptcy\\_Board\\_of\\_India\\_Fast\\_TrackInsolvency\\_Resolution\\_Process\\_for\\_Corporate\\_Persons\\_Regulations\\_2017.pdf](http://www.ibbi.gov.in/Insolvency_and_Bankruptcy_Board_of_India_Fast_TrackInsolvency_Resolution_Process_for_Corporate_Persons_Regulations_2017.pdf) and  
[http://www.ibbi.gov.in/notification\\_before\\_publication.pdf](http://www.ibbi.gov.in/notification_before_publication.pdf)]. June
- Ministry of Corporate Affairs, *vide* its notifications bearing nos. G.S.R. 584 (E) and G.S.R. 582 (E) dated 13.06.2017, has amended the notification nos. G.S.R. 466(E) dated the 5th June, 2015 and G.S.R. 463(E) dated the 5th June, 2015 regarding exemptions to Section 8 Companies and Government Companies respectively  
[Source: [http://www.mca.gov.in/Ministry/pdf/ExemptionGovernmentCompanies\\_14062017.pdf](http://www.mca.gov.in/Ministry/pdf/ExemptionGovernmentCompanies_14062017.pdf) and  
[http://www.mca.gov.in/Ministry/pdf/ExemptionSection8Companies\\_14062017.pdf](http://www.mca.gov.in/Ministry/pdf/ExemptionSection8Companies_14062017.pdf)].



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