

**Clarificatory Answers to the Academic Queries raised  
by Students pertaining to December 2014  
Examination**

**Executive programme**

- Company Law
- Tax Laws

**Disclaimer**

These FAQs are specifically developed for December, 2014 Examination. These answers are clarificatory, only query specific, developed for guidance of the students and not to be construed as comprehensive suggested answers for the purpose of examination. The Institute does not own the responsibility for any omissions or deletions etc. in these FAQs. Students are advised to cross check with Bare Acts and the Rules/ Regulations made thereunder, relevant to the subjects.

**Company Law (Old Syllabus) – Module II, Paper 3  
And  
Company Law (New Syllabus) – Module 1, Paper 1**

- 1. I am a student registered under old syllabus; please guide me whether Companies Act, 2013 is applicable to me.**

Notified provisions of Companies Act 2013 and the existing provisions of Companies Act 1956 which are still in force will apply for December 2014 exams. Company law study material (July 2014 edition) is updated accordingly. You may read the same.

- 2. I am a student registered under new syllabus; please guide me whether Companies Act, 2013 is applicable to me.**

Notified provisions of Companies Act 2013 and the existing provisions of Companies Act 1956 which are still in force will apply for December 2014 exams. Company law study material (July 2014 edition) is updated accordingly. You may read the same.

- 3. Whether any provisions of Companies Act, 1956 are applicable for December, 2014 examination?**

Notified provisions of Companies Act 2013 and the existing provisions of Companies Act 1956 which are still in force will apply for December 2014 exams. Company law study material (July 2014 edition) is updated accordingly. You may read the same.

- 4. Is it sufficient to read the provisions stated in the sections of the Companies Act, 2013 or should we read the procedural aspects which are stated in the Rules?**

You are expected to read the substantive law under Sections and the procedural aspects specified under Rules. Both sections and the relevant rules are important.

- 5. Where do I find the soft copy of the study material?**

Soft copy of the study material is available under the Academic Corner of the Institute's website at the link: <https://www.icsi.edu/AcademicCorner/StudyMaterialJuly2014.aspx>

- 6. Whether Circular, Notification, Order issued by MCA are applicable to December, 2014 Examination?**

Yes, circulars and notifications issued by Ministry of Corporate Affairs up to June 30, 2014 are applicable for December 2014 examination.

- 7. The provisions relating to Merger and Acquisitions are yet to be notified, should I read the provisions of Companies Act, 1956?**

The provisions relating to mergers, amalgamation and winding up etc. are yet to be notified under Companies Act, 2013 therefore you may read the provisions of Companies Act, 1956 in this regard.

**8. Is the study material of all the subjects covered under CS Course have been revised in the light of Companies Act, 2013?**

Yes, Study Material of all the subjects under the new syllabus, which are impacted by Companies Act 2013, has been revised in the light of notified provisions of Companies Act, 2013. Further, for the old syllabus students, supplement has been provided in this regard.

**9. How many sections have been notified under Companies Act, 2013?**

Till date, 283 Sections are notified under Companies Act, 2013.

**10. Can you please explain how a One Person Company (OPC) conduct board/general meeting?**

For a meeting there should always be more than one person and one person cannot meet himself. Recognising this, Section 96(1) of the Companies Act, 2013 excludes One Person Company from holding an Annual General Meeting in each year. Further, proviso to section 173(5) of the Act states that if there is only one director in an OPC then the provisions relating to minimum number of Board Meetings and quorum will not be applicable.

**11. Which form is prescribed to be filed for appointment and changes of Directors, Key Managerial Personnel?**

Form No Dir-12 is to be filed for appointment/ reappointment etc. of Directors and key managerial personnel.

**12. Whether PAN details are required for foreign nationals while filing form INC-7?**

No. The Ministry of Corporate Affairs vide its Circular No. 12/2014 dated May 22, 2014 has clarified that PAN details are mandatory only for those foreign nationals who are required to possess "PAN" in terms of provisions of the Income Tax Act, 1961 on the date of application for incorporation. Where the intending Director who is a Foreign National is not required to compulsorily possess PAN, it will be sufficient for such a person to furnish his/her passport number, alongwith undertaking stating that provisions of mandatory applicability of PAN are not applicable to the person concerned. The form of Declaration is required to be made in the proforma prescribed.

**13. Whether the provisions of CSR are applicable to section 8 companies?**

There is no specific exemption given to section 8 companies with regard to applicability of section 135, hence section 8 companies are required to follow CSR provisions in case such companies are falling in the criteria specified under Section 135(1).

**14. Please clarify whether form INC 27 is to be filed while conversion of public company into private company?**

The conversion of Public Company to Private Company involves the role of National Company Law Tribunal as provided under Second proviso to Section 14(1) and is not yet enforced under Companies Act, 2013. Ministry has also clarified vide its Circular No. 18/2014 dated June 11, 2014 that the corresponding provisions of Companies Act, 1956 (Proviso to sub-section (1) and subsection (2A) of Section 31) shall remain in force till

corresponding provisions of Companies Act, 2013 are notified. Applications for such conversions, therefore, have to be filed and disposed as per the earlier provisions.

**15. Section 96(2) provides for holding of Annual General Meeting on a day which is not a 'National Holiday'. The term 'National Holiday' is not defined anywhere, how is it to be construed?**

Explanation to section 96 (2) provides that "National Holiday" means and includes a day declared as National Holiday by the Central Government.

**16. Can Share transfer forms executed before April 01, 2014 in form 7B be accepted?**

Yes, share transfer forms executed before April 01, 2014 and submitted to the company within the prescribed period under Companies Act, 1956 can be accepted. The Ministry has also stated vide its Circular No 19/2014 dated June 12, 2014 that since transaction relating to transfer of shares is a contract between two or more persons/ shareholders, any share transfer form executed before 1st April, 2014 and submitted to the company concerned within the period prescribed under relevant section of the Companies Act, 1956 needs to be accepted by the companies for registration of transfers. In case any such share transfer form, executed prior to 1st April, 2014, is not submitted within the prescribed period under the Companies Act, 1956, the concerned company may get itself satisfied suitably with regard to justification of delay in submission etc. In case a company decides not to accept the share transfer form, it shall convey the reasons for such non-acceptance within time provided under section 56(4) (c) of the Act.

**17. Can a committee of directors' issue duplicate share certificates?**

Yes, in the light of sections 179 & 180 and regulation 71 of Table "F" of Schedule I of Companies Act, 2013 and clarification by MCA vide its Circular No 19/2014 dated June 12, 2014, a committee of directors may exercise such powers, subject to any regulations imposed by the Board in this regard.

**18. What is the effective date for mandatory e-voting?**

Companies (Management and Administration) Amendment Rules, 2014 dated June 23, 2014 states that the company to provide e-voting with effect from 01st January 2015, by adding a proviso to sub rule (1) of Rule 20.

**19. Is section 135 relating to Corporate Social Responsibility applicable to OPCs?**

Section 135 is applicable to every company having:

- net worth of Rs 500 crore or more; or
- turnover of Rs 1000 crore or more; or
- net profit of Rs 5 crore or more; during any of the three preceding financial years.

The word used here is 'every company', However, in terms of rule 6(2) of Companies (Incorporation) Rules, 2014, an OPC loses its status if paid up capital exceeds Rs. 50 lakhs or average annual turnover is more than Rs. 2 crores in three immediate preceding consecutive years. In view of this, it is unlikely that an OPC would meet the criteria specified in section 135.

**20. What is the format prescribed for Annual Return for the financial year ended March 2014? Whether the format of Annual Return (MGT-7) is to be filed with immediate effect?**

Section 92(1) of the Act requires annual return to contain particulars as they stood on the close of the financial year. It is, clarified by MCA vide Circular No. 22/2014 dated June 25, 2014 that Form MGT-7 shall not apply to annual returns in respect of companies whose financial year ended on or before 1st April, 2014 and for annual returns pertaining to earlier years. These companies may file their returns in the relevant Form applicable under the Companies Act, 1956.

**21. What are the requirements with respect to Vigil Mechanism under Companies Act, 2013?**

Section 177(9) of the Companies Act, 2013 read with rule 7 of the Companies (Meetings of Board and its Powers) Rules, 2014 states that every listed company and the companies belonging to the following class or classes shall establish a vigil mechanism for their directors and employees to report their genuine concerns or grievances-

- a. Companies which accept deposits from the public;
- b. Companies which have borrowed money from banks and Public Financial Institutions in excess of fifty crore rupees.

**22. Is constitution of Nomination and Remuneration Committee compulsory under Companies Act, 2013?**

Yes, as per rule 6 of Companies (Meeting of Board and its Powers) Rules, 2014 constitution of Audit Committee and Nomination and Remuneration Committee of the Board is mandatory for all public companies with a paid up Capital of ten crore rupees or more; all public companies having turnover of one hundred crore rupees or more; all public companies, having aggregate, outstanding loans, or borrowings or debentures or deposits exceeding fifty crore rupees or more.

**23. Whether transactions taken place at arm's length price with Independent Directors would take away independence? Whether receipt of remuneration affects pecuniary interest?**

It was clarified by Ministry of Corporate Affairs vide circular no. 14/2014 dated June 09, 2014 that in view of the provisions of section 188 which takes away transactions in the ordinary course of business at arm's length price from the purview of related party transactions, an 'ID' will not be said to have 'pecuniary relationship' under section 149(6) (c) in such cases. Further 'pecuniary relationship' provided in section 149(6) (c) of the Act does not include *receipt of remuneration, from one or more companies, by way of fee provided under sub-section (5) of section 197*, reimbursement of expenses for participation in the Board and other meetings and profit related commission approved by the members, in accordance with the provisions of the Act.

**24. Is it possible to appoint an individual as independent director for less than 5 years?**

Section 149(10) of the Act provides for a term of "upto five consecutive years" for an ID. As such while appointment of an ID for a term of less than five years would be permissible,

appointment for any term (whether for five years or less) is to be treated as a one term under section 149(10) of the Act.

**25. What would be the first calendar year for residency with respect to resident director?**

Section 149(3) of the Companies Act, 2013 (Act) requires every company to have at least one director who has stayed in India for a total period of not less than 182 days in the previous calendar year. It is clarified vide circular no 25/2014 dated June 26, 2014 that the 'residency requirement' would be reckoned from the date of commencement of section 149 of the Act i.e. 1st April, 2014. The first 'previous calendar year' for compliance with these provisions would, therefore, be Calendar Year 2014. The period to be taken into account for compliance with these provisions will be the remaining period of calendar year 2014 (i.e. 1st April to 31st December). Therefore, on a proportionate basis, the number of days for which the director(s) would need to be resident in India, during Calendar Year 2014, shall exceed 136 days.

Regarding newly incorporated companies it is clarified that companies incorporated between 1.4.2014 to 30.9.2014 should have a resident director either at the incorporation stage itself or within six months of their incorporation. Companies incorporated after 30.9.2014 need to have the resident director from the date of incorporation itself.

**26. With effect from what date the maintenance of registers of loans and investments is required to be in new format?**

The new format prescribed vide Form MBP 2 shall be used for particulars entered in such registers on and from 1.4.2014.

**27. Is CSR mandatory for private companies also?**

Yes, in terms of section 135, every company which meets the criteria of net worth, turnover or net profits mentioned therein is required to constitute a CSR Committee of the Board and also comply with the other requirements of section 135.

**And**

**Tax Laws and Practice (New Syllabus) - Module 1, Paper 4**

**1. Which Assessment year is applicable for December, 2014 Examination?**

For December 2014 examination, applicable Assessment Year is 2014-15 (Previous Year 2013-14).

**2. Which Finance act is applicable for December 2014 examination?**

Finance Act, 2013 is applicable for the December 2014 examination.

**3. Whether the changes made by union budget 2014 are applicable for December, 2014 Examination?**

No, the changes made by Union budget 2014 are not applicable for December, 2014 examination. These changes will be applicable for June, 2015 Examination.

**4. Is there any difference between the paper Tax Laws (OS) & Tax Laws & Practice (NS)?**

Yes, there is difference between the paper Tax Laws (OS) & Tax Laws & Practice (NS):

- Pattern of paper is elaborative for Tax Laws (OS) while OMR based for Tax Laws and Practice (NS)
- Weightage of Marks for Tax Laws (OS) is part A- 60 marks, part B-20 marks & part C- 20 marks while for Tax Laws and Practice (NS) part A- 70 marks & part B-30 marks.
- International Taxation is not a part of Tax Laws(OS)

**5. I have July 2013 edition of study material, do I need to refer 2014 edition of study material for December 2014 Examination?**

July 2013 edition is based upon Finance Act, 2013 so there is no need to purchase new book. However you should refer the notifications and circulars issued by CBEC & CBDT till 30<sup>th</sup> June, 2014 for December, 2014 Examination.

**6. What will be the pattern of examination for December 2014 Examination?**

Pattern of paper will be elaborative for Tax Laws (OS) while OMR based for Tax Laws and Practice (NS).

**7. From where can I get supplement on Tax or the Tax Updates for December, 2014 Examination?**

Supplements as well as Tax Updates have been uploaded on ICSI website [www.icsi.edu](http://www.icsi.edu) under the head Academic Corner. These may be referred for notifications, circulars etc. issued till 30<sup>th</sup> June 2014.

**8. Please share exact link for Tax updates applicable for December 2014 examinations.**

[https://www.icsi.edu/portals/0/tax%20updates\\_2014.pdf](https://www.icsi.edu/portals/0/tax%20updates_2014.pdf)

**9. Please share the link of the Supplements applicable for December 2014 examinations.**

<https://www.icsi.edu/Docs/Webmodules/Supplement.pdf>

**10. Where could I get the soft copy of the study material of Tax laws and Practice to be referred for December 2014 examinations?**

<https://www.icsi.edu/docs/webmodules/Publications/4.%20Tax%20Laws%20and%20Practice.pdf>

**11. What is the maximum limit for deduction under section 80 C applicable for December 2014 examination?**

For December 2014 examination, Finance Act, 2013 is applicable and accordingly the maximum limit for deduction under section 80 C is Rs. 1, 00,000 (one lakh).

**12. Which tax slab rate is applicable for December, 2014 examination?**

<b>Income tax slab for FY 2013-14 / AY 2014-15</b>	
<b>Income Tax Slabs for AY 14-15 for Resident Senior Citizens 60 or above but less than 80 years</b>	
<b>Income Range</b>	<b>Tax percentage</b>
Up to Rs 2,50,000	No tax / exempt
2,50,001 to 5,00,000	10%
5,00,001 to 10,00,000	20%
Above 10,00,000	30%
<b>Income Tax Slabs for AY 14-15 for Resident Super Senior Citizens 80 years or above</b>	
<b>Income Range</b>	<b>Tax percentage</b>
Up to Rs 5,00,000	No tax / exempt
5,00,001 to 10,00,000	20%
Above 10,00,000	30%
<b>Income Tax Slabs for AY 14-15 for Others (below 60 years)</b>	
<b>Income Range</b>	<b>Tax percentage</b>
Up to Rs 2,00,000	No tax / exempt
2,00,001 to 5,00,000	10%
5,00,001 to 10,00,000	20%
Above 10,00,000	30%

**13. What is the Tax rate for VAT?**

VAT comes under the purview of State Government and different state governments have prescribed different rates for VAT in their respective states. However, from exam point of view, students may refer the VAT rates given in the White Paper.

#### **14. What is Comprehensive approach of Service Tax?**

The Budget of 2012 introduced a comprehensive regime of taxation of services w.e.f. July 1, 2012 whereby all the services except those specifically exempted (by way of Negative List or Mega exemption Notification) are liable to service tax.

#### **15. Is service receiver liable to pay tax?**

Yes. Generally the liability to pay service tax has been placed on the 'service provider'. However, in respect of the taxable services notified under Section 68(2) of the Finance Act, 1994, the service tax shall be paid by such person and in such manner as may be prescribed at the rate specified in Section 66 of the Act and all the provisions of Chapter-V shall apply to such person as if he is the person liable for paying the service tax.

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