

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

**PROFESSIONAL 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.

**Advanced Company Law and Practice - Module 1, Paper1**  
**Secretarial Audit, Due Diligence and Compliance Management - Module1, Paper 2**  
**And**  
**Ethics, Governance and Sustainability - Module 2, Paper 6**

- 1. I am a student registered under the old syllabus. Whether the provisions of Companies Act, 2013 is applicable to me?**

Yes, notified provisions of Companies Act 2013 and the provisions of Companies Act 1956 which are still in force are applicable for both old and new syllabus students.

- 2. I am a student registered under old syllabus for the paper Due Diligence & Corporate Compliance Management, the chapters “Share Transfer Audit” and “Compliance Certificate” is not included in the supplement. From where should I refer them?**

Provisions regarding Share Transfer Audit can be referred from the study material of Advanced Company Law and Practice July 2014 edition and Compliance Certificate can be referred from the checklist under Secretarial Audit Chapter provided in the supplement.

- 3. “Due Diligence for banks” is given in the supplement provided to me and I am registered under the old syllabus. Should I read this chapter?**

For old syllabus, it is given for broader perspective to the subject and not from examination point of view. For new syllabus students, it is applicable for examination.

- 4. Which Act is applicable for Corporate Restructuring and Insolvency / Corporate Restructuring, Valuation and Insolvency paper?**

Companies Act, 1956 is applicable for Corporate Restructuring and Insolvency (old syllabus) / Corporate Restructuring, Valuation and Insolvency (New Syllabus), since the provisions relating to Mergers, winding up etc are not yet notified under Companies Act 2013. However, the provisions of buy-back of shares and alteration of capital is already notified which is updated in the 2014 series and a supplement is also provided to old syllabus students in this regard.

- 5. I am a student registered under old syllabus. For the paper Company Secretarial Practice, can I read the study material ‘Advanced Company Law and Practice-2014’ under the New syllabus?**

Yes. For the paper Company Secretarial Practice, you may refer to Advanced Company Law and Practice, under the new syllabus.

- 6. What are the provisions under Companies Act, 2013 relating to “Declaration prior to commencement of business”?**

Section 11 of the Companies Act, 2013 read with Rule 24 of Companies (Incorporation) Rules, 2014 provides that a company having a share capital shall not commence any

business or exercise any borrowing power unless a declaration is filed by a director in Form No. INC-21 with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him and the paid-up share capital of the company is not less than five lakh rupees in case of a public company and not less than one lakh rupees in case of a private company on the date of making of this declaration; and the company has filed with the Registrar a verification of its registered office in Form No. INC-22. Further, where no declaration has been filed with the Registrar by the company within a period of one hundred and eighty days of the date of incorporation of the company and the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, Registrar can initiate action for the removal of the name of the company from the Register of Companies.

### **7. Which class of companies are required to appoint woman director on the Board?**

- (i) every listed company;
- (ii) every other public company having -
  - (a) paid-up share capital of one hundred crore rupees or more; or
  - (b) turnover of three hundred crore rupees or more:

### **8. Can you explain about Provisions for entrenchment relating to Articles of Association?**

Section 5(3) of the Companies Act, 2013 states that the articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with. As per sub-section (4) of Section 5, the provisions for entrenchment referred to in sub-section (3) shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company. Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in INC 2 / INC 7 (at the time of incorporation) and MGT 14 in case of (existing company).

### **9. Whether issue of shares at discount is prohibited under Companies Act, 2013?**

Yes, issue of shares at discount is prohibited under Companies Act, 2013. Further, except in the case of sweat equity shares any such issue shall be void.

### **10. For which purpose security premium account can be used? What is the significance that the share premium is used for any other purpose?**

Section 52(2) of the Companies Act, 2013 states that securities premium account may be applied by the company \_\_

- (i) Towards the issue of unissued shares to the members as fully paid bonus shares
- (ii) In writing off the preliminary expenses
- (iii) In writing off the expenses of, or Commission paid / discount allowed on any issue of shares/debentures of the company
- (iv) Providing premium on redemption of redeemable preference shares
- (v) For purchase of its own shares or other securities under section 68

However, securities premium account used for any other purposes other than those stated above [(i) to (v)] will amount to reduction of share capital.

**11. What are the forms involved in issue of private placement under section 42 of the Companies Act, 2013?**

- Form No. PAS- 4 =Private Placement offer letter
- Form No. PAS – 5=Record of private placement
- Form No. PAS- 3 =Allotment of securities as private placement.
- Form No. MGT -14= Filing of Resolution and agreements to the Registrar (Authorising private placement)

**12. Can you please clarify the limits on private placement?**

The limits for private placements are: 50 persons/200 persons in the aggregate in a financial year, excluding Qualified Institutional Buyers (QIB), employees under Employee Stock Option Scheme.

**13. Is there any time limit for allotment of its securities specified for private placement?**

Yes, within 60 days from the date of receipt of application money. If a company is not able to allot securities or refund money within 15 days from the expiry of 60 days, it shall be liable to repay the money with 12% p.a. interest from the expiry of 60<sup>th</sup> days.

**14. Regarding further issue of share capital under section 62, can you confirm that whether special resolution is required, if it has to be issued to persons other than existing holders?**

Yes, special resolution is required under section 62(1) (c) of the Companies Act, 2013.

**15. Are both Board/Shareholders resolution required for issue of Bonus shares?**

Yes, section 63 (2)(b) of the Companies Act, 2013 requires recommendation by board and authorised by shareholders resolution.

**16. Does the cancellation of shares amount to reduction of capital?**

No, section 61(2) states that cancellation of shares under section 61(1) shall not be deemed to be a reduction of capital.

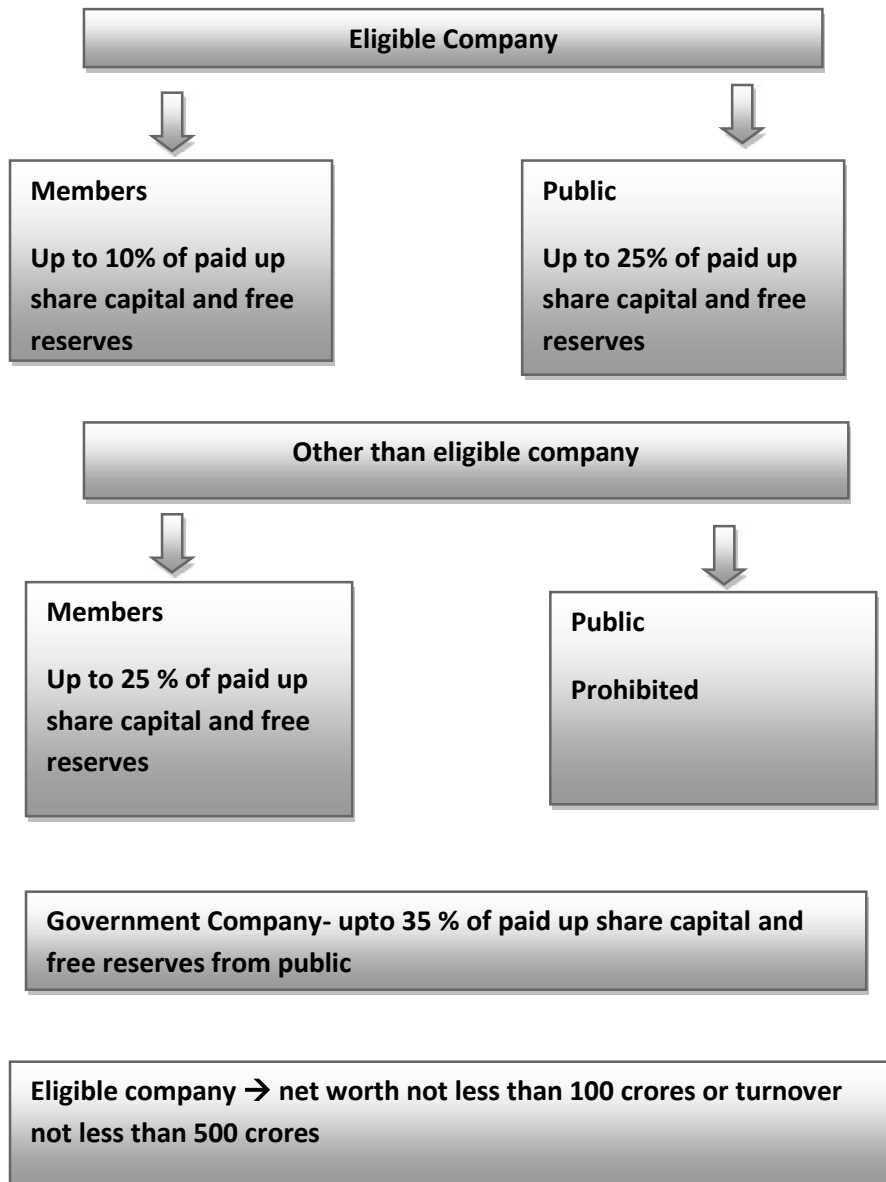
**17. Whether provisions relating to reduction of capital under Companies Act, 2013 are notified?**

The provisions relating to reduction of capital under Companies Act, 2013 are yet to be notified.

**18. Can you brief on e- stamping?**

The e- stamping is made through MCA portal. Companies are compulsorily required to make payment electronically in respect of all states that has authorised central government to collect stamp duty (w.e.f. April 01, 2010).

**19. Can you clarify on the quantum of deposits that can be accepted?**



**20. What are the instruments of transfer used under Rule 11 of the Companies (Share Capital and Debentures) Rules, 2014?**

- Form No. SH-4 = physical transfer
- Form No. SH-5 = in case of partly paid shares

**21. What is the time limit prescribed under section 58(4) of the Companies Act, 2013 with respect to refusal to register the transfer of securities?**

The time limit prescribed 30 days.

Section 58(4) of the Act states that if a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no

intimation has been received from the company, within ninety days of the delivery of the instrument of transfer or intimation of transmission, appeal to the Tribunal.

**22. What are the provisions relating to Resident Director under Companies Act, 2013?**

As per Section 149(3) of the Act, every company shall 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.

**23. What is the maximum number of directorship held by an individual under the Companies Act, 2013?**

- 20 companies (including alternate directorship)
- 10 in case of public companies

**24. State the circumstances under which the company is required to file DIR 12 with Registrar of Companies?**

In DIR 12, company is required to file particulars of appointment and changes of Directors and the Key Managerial Personnel.

**25. Can you explain Rule 8 and Rule 8A of Companies (Appointment and Remuneration of Managerial Personnel) Rule, 2014?**

- Rule 8A – Every company having a paid-up capital of Rs. 5 crore or more is required to have a Whole Time Company Secretary.
- Rule 8 – Every listed company and every other public company having paid-up capital of Rs. 10 crore or more shall have whole time Key Managerial Personnel.

**26. Report on Annual General Meeting is a new initiative under the Companies Act, 2013. Which form is required to be filed with ROC on the report on the Annual General Meeting?**

Report on AGM is to be made in Form MGT 15.

**27. Please clarify the provisions relating to quorum required for Public Company and Private Company.**

Public company:

- 5 members personally present if the number of members as on the date of meeting is not more than 1000;
- 15 members personally present if the number of members as on the date of meeting is more than 1000 but up to 5000;
- 30 members personally present if the number of members as on the date of the meeting exceeds 5000.

Private company:

- 2 members personally present, shall be the quorum for a meeting of the company.

**28. Which class of company is required to appoint Internal Auditor to conduct internal audit?**

- (a) Every listed company;
- (b) Every unlisted public company having –
  - (i) paid up share capital of fifty crore rupees or more during the preceding financial year; or
  - (ii) turnover of two hundred crore rupees or more during the preceding financial year; or
  - (iii) outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year; or
  - (iv) outstanding deposits of twenty five crore rupees or more at any point of time during the preceding financial year; and
- (c) Every private company having –
  - (i) turnover of two hundred crore rupees or more during the preceding financial year; or
  - (ii) Outstanding loans or borrowings from banks or Public Financial Institutions exceeding 100 crore rupees or more at any point of time during the preceding financial year.

**29. Which companies are required to file Secretarial Audit Report?**

- 1) Every listed company and
- 2) Every public company having a paid-up share capital of fifty crore rupees or more; or every public company having a turnover of two hundred fifty crore rupees or more.

## **Advanced Tax Laws and practice (Old Syllabus) – Module III, paper 6**

**And**

## **Advanced Tax Laws and Practice (New Syllabus) - Module 3, Paper 7**

### **1. Which Finance Act is applicable for Direct & Indirect Tax - December, 2014 Examination?**

Finance Act, 2013 is applicable for December, 2014 Examination.

### **2. 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.

### **3. Is there any difference between the paper Advanced Tax Laws and Practice (OS) & Advanced Tax Laws and Practice (NS)?**

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

- Weightage of Marks for Advanced Tax Laws and Practice (OS) is:
  - Part A: Direct taxation Law and Practice- 30 marks
  - Part B: Indirect taxation Law and Practice which covers Introduction, Central Excise laws, Custom Laws, Promissory Estoppel in fiscal laws, tax planning and financial management- 50 marks
  - Part C: International Taxation- 20 marks
  
- Weightage of Marks for Advanced Tax Laws and Practice (NS) is:
  - Part A: Direct tax Management- 30 marks
  - Part B: Central Excise, Customs, VAT and Service Tax- 70 marks

### **4. 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.

### **5. Whether the changes made by interim budget 2014 applicable for December, 2014 Examination?**

No, the changes made by interim budget 2014 are not applicable for December, 2014 examination.



**6. Do we have GST covered under the new syllabus?**

Yes, GST is in the syllabus for Advanced Tax Laws and Practice (New Syllabus)

**7. 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)

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

<https://www.icsi.edu/Docs/Webmodules/PROFESSIONAL%20PROGRAMME%20New%20syllabus-%20supplememnt.pdf>

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

<https://www.icsi.edu/docs/webmodules/Publications/7.%20ATLP-%20Professional.pdf>

**10. 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 of 60 years or above</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 of 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%

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

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

**13. What is the last attempt for Professional Programme (Old Syllabus)?**

The last attempt for Professional Programme (Old Syllabus) is June, 2015.

**14. What are new amendments in Customs Act, 1962?**

The latest amendments applicable for the December, 2014 examination are available in the Tax Updates, uploaded on the link:

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

**15. Is Cess and SHEC required to be added twice to find special CVD?**

Cess and SHEC are applicable only on total customs duty as cess and SHEC on CVD is exempt with effect from 17.03.12 vide Notification No. 13 & 14/2012 (T) dated 17.03.2012.

**16. What is the latest amendment in the baggage rules?**

Please refer Notification No. 10/2014-Customs (N.T.) dated the 10<sup>th</sup> February, 2014 for the latest amendments made to the Customs Baggage Declaration Regulations, 2013.

**17. What are interconnected undertakings for the purpose of Central excise?**

For the purpose of Central Excise Law Inter-connected undertakings have the meaning assigned to it in Clause (g) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969. An illustration explaining the same is given below:

Undertaking B is inter-connected with undertaking A and undertaking C is inter-connected with undertaking B. Undertaking C is inter-connected with undertaking A. Now, if undertaking D is interconnected with undertaking C, undertaking D will be inter-connected with undertaking B and consequently with undertaking A; and so on.

**18. What is Doctrine of Estoppels?**

“Estoppel” is a legal term that essentially means an enforced bar or ban. It has its origin in principles of Equity and was defined under Section 115 Evidence Act, 1872. The case

of Delhi Cloth and General Mills Ltd. V. Union of India could be referred to get better understanding about the concept of Estoppels.

### **19. What is Pari-Passu Charge?**

Pari-Passu is a latin phrase meaning “equal footing”, it describes situations where two or more assets, securities, creditors, obligations etc. are equally managed without any display of preference.

### **20. 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.

### **21. What are the conditions for evaluating the exemptions for SSI units?**

For evaluating the eligibility of a Small Scale Industry, under Central Excise Act, the following conditions must be satisfied:

- a. The turnover of the Unit must not exceed rupees One Hundred and Fifty Lakhs made on or after the 1<sup>st</sup> day of April in any financial year; and
- b. The turnover of the Unit must not exceed rupees Four Hundred Lakhs in the preceding financial year.

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