

Legal Update

VINOD KOTHARI & COMPANY

Date for filing Form 23B deferred- again!

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Legal Update

The statutory auditor of a company is the accounting watchdog entrusted with the responsibility of ensuring that the company's accounts are in compliance with extant provisions of law. Apart from safeguarding the interests of the shareholders, they are also morally responsible towards the stakeholders of a company.

The appointment of a statutory auditor is mandatory u/s 224 of the Companies Act, 1956 ("Act"). As per the provisions of Section 224 (1)(a) of the Act, every auditor has to intimate the Registrar, *within 30 days of intimation from the company of his appointment*, of whether he has accepted or refused to accept the appointment. Form 23B was the prescribed form for this and no fee was payable on this.

In the last few weeks, the Ministry of Corporate Affairs ("MCA") had vide its General Circular No. 14/2012 ("Circular 1") dated June 21, 2012 decided that filing fee would be imposed on certain forms, on which presently no fee is prescribed.

Form 23B was also one of the forms on which filing fee was imposed as per Schedule X of the Act. Circular 1 was come into effect from July 22, 2012

In the same context, MCA came up with the following two circulars:

1. General Circular No. 19/2012 dated July 27, 2012
This circular deferred the date of fees applicable as per Schedule X by two weeks and made the same applicable from August 05, 2012.
2. General Circular No. 22/2012 dated August 03, 2012
With this, the date for applicability of fees was further deferred by one week and was made applicable from August 12, 2012.



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Some general questions that come into minds of stakeholders:

Whether form 23B to be filed every year?

Our views:

Yes, as the filing is to be done pursuant to sec 224(1A) which requires every auditor to intimate RoC about his acceptance/refusal of appointment within 30 days of receipt of information from the company of the intimation of his appointment.

Whether fee is to be levied on forms pertaining to previous years also?

Our views:

The circular only says that "the fee shall be applicable on form 23B". Our view is that the filing fee will be charged on the form filed on or after August 5, 2012 irrespective of year for which it is being filed. Moreover, in our view, the system will accept the form irrespective of years for which the same has been filed.

This frequent flip flop of MCA seems to have become a trend and has come as no surprise. However, this can be viewed in a positive way by the statutory auditors. By extending the time of filing Form 23B without any filing fee till August 11, 2012, companies which have convened their Annual General Meetings ("AGM") prior to that can still save on their monetary resources only for this year and file Form 23B without paying any fee. However, looking at the trend of the MCA, it is advisable to file the same to avoid any last minute rush.

However, for companies which convene their AGMs post August 12, 2012, it would mean additional financial burden from this year, although marginal.