

INDORE BRANCH OF CIRC OF ICAI



NEWSLETTER

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Conversion of **LOAN** into Share Capital of a company

Conversion of Loan into Share Capital of a company is a common practice in the market because many companies that have borrowed money from their directors, financial institutions, or any other entity are obligated to repay the debt within the time frame set forth in the loan agreement or on mutual terms agreed upon by the company and the lender. Such loan can be converted into share capital. This article highlights the provisions and procedure of acceptance of loan and conversion of loan into share capital.

Section 62(3) of the Companies Act, 2013 deals with the conversion of loan into share capital. In order to convert loan into share capital, the Company take loan with the condition to convert such loan into shares in future.

Compliance before acceptance of loan

Step 1: Hold Board Meeting –

- Pass resolution for acceptance of loan and approve terms of loan upon the conversion of such loan into the share capital
- To fix the day, date and venue of Extraordinary General Meeting (EGM) and approve notice of EGM

Step 2: Hold Extraordinary General Meeting:

Hold EGM for approving terms of loan by passing a special resolution before receipt of amount of loan.

Step 3: Filing Resolution passed at the General meeting:

File MGT-14 with ROC within 30 days of passing special Resolution at the General Meeting.

Step 4: Enter into Agreement: The Company shall enter into an agreement containing terms of converting loan into share capital of the Company.

Procedure for conversion of Loan into Share

Capital:

Part A:- Pursuant to section u/s 62(1) (c) & u/s 42- Preferential allotment/ Private Placement

Step 1: Dispatch notice of Board Meeting (At least 7 Days prior to Board Meeting) to pass following resolution:

- i. Hold Board Meeting and pass resolution for conversion of loan into share capital subject to shareholder's approval at the General Meeting.
- ii. To fix the day, date and venue of Extra Ordinary General Meeting (EGM) and approve notice of EGM

Step 2: Hold Extraordinary General Meeting:

Hold EGM and pass special resolution for approving terms and conditions for the proposed conversion of loan into share capital.

Step 3: Filing Resolution passed at the General meeting:

File MGT-14 with ROC within 30 days of passing special Resolution at the General Meeting.

Step 4: Hold Board Meeting:

Hold the Board meeting to pass following resolution:

- i. To allot the Shares.
- ii. To authorize 2 Directors or 1 Director and CS, if any for the issue of share certificates.

Step 5: Filling Form PAS-3:

File Form PAS-3 with ROC within 30 days from the date of allotment.

Attachments for Form PAS-3: -

- List of allottees.
- Copy of Board or shareholders' resolution.
- Valuation Report from the valuer.

Copy of contract where securities have been allotted for consideration other than cash or attachment wherein the details of contract reduced in writing by the company.

Step 6: To issue Share Certificate: Pursuant to

section 56(4)(b) Issue Share Certificates to the security holders within two months from the date of Allotment.

Step 7: Payment of Stamp Duty:

Pay stamp duty on the share certificates on the value of shares

Part B- Pursuant to section 62

(a)- Rights issue of Shares

Step 1: Dispatch notice of Board Meeting (At least 7 Days prior to Board Meeting) and hold Board Meeting:

- Hold Board Meeting and pass resolution for conversion of loan into Share Capital.

Step 2: File Form MGT-14 (Filing Resolution passed at the Board meeting).

File MGT-14 with ROC within 30 days of passing of board resolution for issue of shares [section 117(3)(g)].

Step 3: Filling Form PAS-3:

File Form PAS-3 with ROC within 30 days from the date of allotment.

Attachments for Form PAS-3:

- List of allottees.
- Copy of Board resolution.

Step 4: To issue Share Certificate:

Pursuant to section 56(4)(b) Issue Share Certificates to the Security holders within two months from the date of Allotment

Step 5: Payment of Stamp Duty:

Pay stamp duty on the share certificates on the value of shares.

Important Notes:

1. To check if the conversion requires the change in authorized Share capital, if yes then the alteration of Memorandum process to be done.
2. Authority for making issue on Preferential allotment/Private placement basis / Right

issue of Shares should be in the Articles of Association of the Company.

3. To check whether the terms of Loan grant permission to convert the Loan into Share Capital.

4. The explanatory statement under Section 102 for passing special resolution at the general meeting should state the following-

Applicable if Preferential allotment/ Private Placement :

- (i) the objects of the issue;
- (ii) the total number of shares or other securities to be issued;
- (iii) the price or price band at/within which the allotment is proposed;
- (iv) basis on which the price has been arrived at along with report of the registered valuer;
- (v) relevant date with reference to which the price has been arrived at;
- (vi) the class or classes of persons to whom the allotment is proposed to be made;
- (vii) intention of promoters, directors or key managerial personnel to subscribe to the offer;

(viii) the proposed time within which the allotment shall be completed;

(ix) the names of the proposed allottees and the percentage of post preferential offer capital that may be held by them;

(x) the change in control, if any, in the company that would occur consequent to the preferential offer;

(xi) the number of persons to whom allotment on preferential basis have already Been made during the year, in terms of number of securities as well as price;

(xii) the justification for the allotment proposed to be made for consideration other than cash together with valuation report of the registered valuer.

(xiii) The pre issue and post issue shareholding pattern of the company in the format prescribed in Rule 13 of Chapter IV.



Taxation of **CRYPTO CURRENCY** in India



Cryptocurrency and Income Tax

Clarification on the taxation of cryptocurrency in India was highly awaited for the crypto holders. With the introduction of Budget 2022, the government has announced taxation norms on the same. Key pointers regarding income tax implications on cryptocurrencies in India are as follows:

1. Cryptocurrency – Meaning as per Income Tax provisions

- a form of virtual digital asset
- not being an Indian currency or foreign currency as per the provisions of Foreign Exchange Management Act, 1999
- functions as a store of value, unit of account
- can be transferred, stored or traded electronically

2. Classification of Virtual Digital Asset

As per the Finance Bill, 2022, the cryptocurrencies are classified as a capital asset for the purpose of taxation and hence, income under the head capital gain will arise on transaction of the same.

3. Tax on income from Cryptocurrencies [Section 115BBH]

- Income from transfer of cryptocurrencies will be taxed at the rate of 30%
- Deduction – No deduction of any expenditure except for cost of acquisition will be allowed
- Set off/ Carry forward of losses – No set off of losses against any income is allowed as well as carry forward of losses in this respect is also not

Computation of capital gains on transfer of Cryptocurrencies

Particulars	Amount (Rs.)
Full Value of Consideration	XXXX
Less: Cost of Acquisition	(XXXX)
Long -term/ Shortterm Capital Gains	XXXX

The following should be ignored while computing capital gains on transfer of cryptocurrencies

- i) Cost of improvement relating to the asset
- ii) Selling expenses i.e. the expenditure incurred in connection with the transfer of virtual digital asset
- iii) Indexation of cost of acquisition
- iv) Any exemption under section 54F

Further, no deduction under Chapter VI-A shall be allowed. However, relief under section 87A i.e. rebate can be claimed.

1. Applicability of TDS provisions [Section 194S]

A new section 194S is proposed to be inserted in The Income Tax Act, 1961 w.e.f. 01.07.2022 regarding TDS.

Deductor - Any person responsible for paying any sum by way of consideration for the transfer of cryptocurrency.

Deductee – Tax is required to be deducted if amount is payable to a resident person.

Rate of TDS – 1% of consideration

When to deduct – At the time of payment or at the time of credit of such sum to the account of resident, whichever is earlier.

Exemption from TDS

1. If consideration is payable by any person (other than a specified person) and its aggregate value does not exceed Rs. 10,000 during the financial year
2. If consideration is payable by a specified person and its aggregate value does not exceed Rs. 50,000 during the financial year

Meaning of “specified person”

- An individual or a HUF, whose total sales, gross receipts does not exceed Rs. 1 crore in case of business or Rs. 50 lakh in case of a profession, during the financial year immediately preceding the financial year in

which such virtual digital asset is transferred

- An individual or a HUF who does not have any income under the head profits and gains of business or profession.

Cryptocurrency and GST (Goods and Services Tax)

The matter of taxability of cryptocurrencies under The Goods and Services Act is yet to be addressed by the government.

Let's go into its classification under GST –

If Cryptocurrencies are to be classified as “money” under the purview of GST?

On perusal of its features i.e., store of value, unit of account etc., it seems to be money. However, as per the provisions of CGST Act, 2017 “money” means legal tender or foreign currency recognized by RBI and hence, it will not be regarded as money, as the same does not fulfil such conditions.

If Cryptocurrencies are to be classified as “Securities” under the purview of GST?

The CGST Act, 2017 defines securities as having the same meaning as assigned to it under The Securities Contracts (Regulation) Act, 1956. On perusal of that definition too, cryptocurrencies are concluded to be fallen outside the meaning of “securities”.

Whether it is a good or service?

On examination of the definition of “goods” as specified in CGST Act, 2017, observation is such that it cannot be classified as “goods” as the same is neither a movable property nor an actionable claim.

Further, “services” are defined in GST as follows – *“services” means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;*

Explanation—

For the removal of doubts, it is hereby clarified that the expression “services” includes facilitating or arranging transactions in securities

The definition of services clearly states that whatever that is not good is a service, so it seems really appropriate to classify cryptocurrencies as “services”.

Hence, there is no clarity even on classification of cryptocurrencies in GST.

Further, provision of services outside India and getting paid in cryptocurrency is not to be classified as export as one of the condition for classification as export according to GST provisions is that “the payment must be received in convertible foreign exchange or in Indian

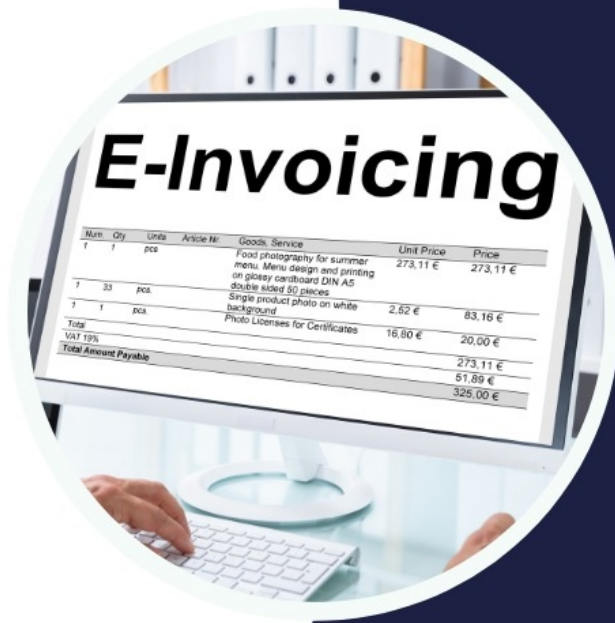
rupees, whenever permitted by the RBI”.

Now, since crypto is not a legal tender, hence fails to fulfil this very condition of export. At this, the government may consider such supply of service as domestic supply and may tax it accordingly.

However, as of now no legal clarification is present in this respect. One can only think of possible implications under GST on transactions connected therewith.



E-invoicing for whose turnover **EXCEEDS** **Rs. 20 CRORES** in a financial year with effect from 01.04.2022



CBIC notifies vide Notification No. 1/2022 Central Tax dated 24.02.2022 that e-invoicing has been made mandatory in case of companies / firms/ Proprietors whose turnover exceeds Rs. 20.00 crores in a financial year with effect from 01.04.2022.

Concept of Aggregate Turnover in GST

Turnover, in common parlance, is the total volume of a business. The term 'aggregate turnover' has been defined in GST law as under: "aggregate turnover" means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess.

The aggregate turnover computed for the entire financial year between April of a year up to March of next year is called annual aggregate turnover.

Annual aggregate turnover being sum of the following:

- Taxable sales value
- Exempt sales value
- Export of goods and services
- Interstate supplies by the business to its sister concern under the same PAN or interstate stock transfer or supplies between distinct persons under the same PAN

However, the above sum excludes the tax components such as the Central tax, State tax, Union territory tax, Integrated tax and Cess.



Shri Faggan Singh Kulaste (Minister of State for Rural Development and Steel) meeting with MCM at ICAI Bhawan



CA. Kirti Joshi, Regional Council Member addressing Udhmi Jagrukta Abhiyan at Ujjain.



CA. Manish Dafia addressing in Union Budget 2022 at ICAI Auditorium

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To,

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