

Companies (Branch Audit Exemption) Rules, 1961

In exercise of the powers conferred by sub-section (4) of section 228 of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following rules, namely :-

1. Short title.-

These rules may be called The Companies (Branch Audit Exemption) Rules, 1961.

2. Definitions.-

In these rules, unless the context otherwise requires,-

(a) "quantum of activity" means-

- (i) the aggregate value of the goods or articles produced, manufactured or processed, or
- (ii) the aggregate value of the goods or articles sold and of services rendered, or
- (iii) the amount of the expenditure, whether of a revenue or capital nature, incurred by a branch office of a company during a financial year, whichever is higher ;

(b) "relevant financial year" means the financial year of the company in respect of which exemption from branch audit is to be determined.

(c) "section" means a section of the Companies Act, 1956 (1 of 1956).

3. Exemption based on quantum of activity.-

Where a company carrying on any manufacturing, processing or trading activity has a branch office whose average of the quantum of activity during the relevant financial year does not exceed rupees two lakhs or two per cent of the average of the total turnover of the company including all its branch and other offices and the earning from services rendered and from any other source during the same period whichever is higher, the branch office shall be exempt from provisions of section 228.

Provided that in any such case, the auditor of the company shall have the rights referred to in sub-section (2) of section 228 in relation to the accounts of the branch office.

Explanation.-

For the purpose of this rule, the average quantum of activity shall be taken to be-

- (a) the average of the quantum of activity during the three financial years immediately preceding the relevant financial year, or
- (b) if three financial years have not been completed since the establishment of the branch office the average of the quantum of activity during the two financial years or, as the case may be, the quantum of activity during the year, immediately preceding the relevant financial year, or
- (c) in other cases, the quantum of activity during the relevant financial year.

4. Grant of exemption in other cases.-

- (1) The Central Government on application made to it in this behalf may, after making such inquiry, as it may think fit, by order in writing, exempt the branch office of a company from the provisions of section 228 on any of the following grounds, namely :-
 - (a) that a company carrying on activities other than those of manufacturing or processing or trading has made satisfactory arrangements for the scrutiny and check at regular intervals, of the accounts of the branch office by a responsible person who is competent to scrutinize and check accounts ;
 - (b) that a company has made arrangements for the audit of the accounts of the branch office by a person otherwise qualified for appointment as branch auditor, even though such person is an employee of the company ;
 - (c) that having regard to the nature and the quantum of activity carried on at the branch office or for any other reason, a branch auditor is not likely to be available at a reasonable cost ; and
 - (d) that, for any other reason, the Central Government is satisfied that exemption may be granted.
- (2) An order made under sub-rule (1) shall be in force to such extent, for such period and subject to such conditions, if any, as may be specified in the order.
- (3) A copy of every order of exemption shall be communicated to the company which shall forthwith transmit a copy thereof to the auditor of the company and shall also cause it to be read before the next general meeting.
- (4) where, under this rule, an exemption has been granted to a branch office of a company the auditor of the company shall have rights referred to in sub-section (2) of section 228 in relation to the accounts of the branch office.

5. Application for exemption.-

- (1) Every application for exemption under Rule 5 shall be made by the company in the form set out in the Annexure to these rules and shall be accompanied by a treasury challan in token of payment of the fee prescribed therefor under section 637-A of the Act ; the fee shall be credited to the Head "XXI-Miscellaneous - Department- Miscellaneous-Registration of Joint Stock Companies " :

Provided that, except in cases where the relevant financial year for which exemption is sought closes on or before the 31st of March, 1961, no application for exemption shall be made unless the company has by ordinary resolution passed at a general meeting approved the proposal to apply for such exemption.

- (2) An application for exemption on the ground mentioned in clause (b) of sub-rule (i) of rule 4 shall be accompanied by-
 - (a) a certificate signed by the managing agents, secretaries and treasurers, managing director or manager of the company, as the case may be, to the effect that arrangements have been made for the audit of the accounts of the branch office as specified in clause (b) of sub-rule (1) of rule 4 ; and
 - (b) a written statement from the auditor of the company that in his opinion, arrangements made for the audit of the accounts of the branch office are

adequate and that the arrangements made for the keeping of the accounts of the branch office are such as would enable the person auditing the accounts to certify that they show a true and fair view of the branch office.

6. Conditions of exemption in certain cases.-

In every case in which an exemption is granted on the ground mentioned in clause (b) of sub-rule (1) of rule 4-

- (a) the company shall give the person employed for the purpose of audit of the accounts of the branch office access at all times to the books, accounts and vouchers maintained at the branch office and also furnish such information and explanation as such person may require ;`
- (b) the person so employed shall, during the period the exemption is in force, prepare in respect of each financial year a report on the accounts of the branch office examined by him and forward the same to the company's auditor ; and
- (c) there shall be attached to the balance-sheet for each financial year a certificate to the effect that no material change has taken place in the arrangements made for the audit of the accounts of the branch office, such certificate being signed by a director and by the managing agent, secretaries and treasurers, manager or secretary of the company or where there is no managing agent, secretaries and treasurers, manager or secretary by two directors of the company, one of whom shall be the managing director where there is one.

7. Audit report to refer exemption.-

Where, in any financial year, the accounts of the branch office of a company have not been audited by an auditor mentioned in sub-section (1) of section 228, the auditor of the company shall expressly state in the audit report that the branch office is exempt from the requirements of section 228 by virtue of rule 3 or that an exemption has been granted under rule 4.

8. Revocation of exemption.-

The Central Government may, after giving the company reasonable opportunity to make its objections, revoke an exemption granted under these rules, if-

- (a) there has been a contravention of any of the terms and conditions subject to which the exemption was granted ;
- (b) there has been a material alteration in the circumstances relating to the scrutiny, check or audit of the accounts of the branch office on the basis of which the exemption was granted ; and
- (c) for any other reason, the Central Government is satisfied that the exemption is no longer necessary or justified.

ANNEXURE

(See Rule 5)

Form of application for exemption of a branch office from audit

1. (a) Name of company.

- (b) Registration number of company.
- (c) Nominal capital Rs.
- 2. Full description of the activities in which engaged (e.g. goods produced, articles manufactured or processed, services rendered as the case may be).
- 3. Situation of all the branch offices of the company and the nature of activities carried on at each of them, indicating separately the branch office(s) in respect of which exemption from audit is desired :

Note :-

Where the applicant company is a banking company, it shall also furnish the following particulars :

- (a) the situation of those branch offices which are to be compulsorily audited by the company's statutory auditor (s) appointed under section 224 or by the branch auditor (s) appointed under section 228(7) during the financial year (s) to which the application relates ;
- (b) the situation of the branch offices, other than those included under (a) above which were audited by the company's statutory auditor (s) appointed under section 224 or by the branch auditor(s) appointed under section 228(3) during the financial year immediately preceding the financial year (s) to which the application relates ; and
- (c) the situation of the branch offices, other than those included at (a) above, which are proposed to be audited by the company's statutory auditor (s) appointed under section 224 or by the branch auditor (s) appointed under section 228(3) during the financial year (s) to which the application relates.
- 4. Financial year or years in respect of which exemption is desired.
- 5. Date of the general meetings at which the proposal to apply for exemption was approved (copy of the resolution and the explanatory note under section 173(2) of the Act to be attached).
- 6. Reasons _____ for _____ which exemption is asked for

Grounds on

- 7. (a) Where the applicant company is not a banking company, the value of the total turnover of the company including earnings from services rendered and/or from any other sources for each of the last three financial years (copy of the latest audited balance-sheet and profit and loss account of the company to be attached)
- (b) Where the applicant company is a banking company, the total amount of outstanding deposits (including time-deposits) of the company as at the last date of each of the last three financial years (a copy each of the audited balance-sheet and profit and loss account of the company for the last three financial years to be attached).

Note.-

No copy or copies of the audited balance-sheet (s) and profit and loss account(s)

need be attached if a copy thereof has already been submitted to the Department of Company Law Administration, New Delhi, in any other connection ; but the number and date of the communication with which it has been so submitted should be quoted ; and

- 8.** (a) Where the applicant-company is not a banking company, a statement showing separately the following particulars in respect of each of the branch offices for which exemption from audit is desired for each of the last three financial years :-
 - (i) the value of the goods or articles produced, manufactured or processed at each branch office ;
 - (ii) the value of the goods or articles sold and of services rendered at each branch office;
 - (iii) the amount of expenditure of a revenue nature incurred by each branch office ;
 - (iv) the amount of expenditure of a capital nature incurred by each branch office ;
- (b) Where the applicant company is a banking company a statement showing separately the total amount of outstanding advances (including bills purchased and discounted) of each of branch offices as at the last date of each of the last three financial years.
- 9.** If the application is for exemption under clause (a) of sub-rule (1) of rule 4, the details of the arrangements made for the regular and periodical scrutiny of the accounts of branch offices and the name, qualification and experience of the person appointed to conduct such scrutiny.
- 10.** Whether audit of the accounts of the branch offices is at present carried out by the auditor of the company ; if not, the existing arrangements, if any, for the audit of each of the branch offices should be fully explained.
- 11.** Amounts paid as remuneration to each of the auditors including auditors of branch offices during the last financial year.
- 12.** Whether the company has made or proposes to make arrangements for the audit of branch office or office for which exemption is asked for by a person otherwise qualified for appointments as branch auditor even though such person may be an officer or employee of the company.
- 13.** If the reply to item 12 is in the affirmative, the following details to be stated :
 - (a) Name of the qualified accountant concerned
 - (b) Designation.
 - (c) Emoluments.
 - (d) Year of qualification.
 - (e) Previous experience, whether as a practising accountant or as an employee (along with the name of the employer and the period served).
- 14.** A certificate from the company as required under clause (a) of sub-rule (2) of rule 5 together with a written statement from the auditor of the company as required under clause (b) of sub-rule (2) of that rule.

- 15.** If the application is made on the ground that no auditor is available at reasonable cost for the audit of the accounts of any branch or branches, a statement showing the names of the auditors who had been requested to undertake the audit of the branch or branches and the fees quoted by them to be attached.
- 16.** Any other relevant details.
Managing Director or any other officer
duly authorised by the Board